



**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA REQUEST**

TO: Board of County Commissioners
Mark McCauley, County Administrator

FROM: Pinky Feria Mingo, Environmental Health and Water Quality Director
Tami Pokorny, Natural Resources Program Coordinator

DATE: April 22, 2024

SUBJECT: Agenda item – Grant Agreement: Jefferson Land Trust for the Schmidt Farm Conservation Futures Project; March 1, 2021 – January 2, 2027; \$60,000

STATEMENT OF ISSUE:

Jefferson County Public Health requests BoCC signature on an agreement with Jefferson Land Trust for the Schmidt Farm Conservation Futures Project; March 1, 2021 – January 2, 2027; \$60,000

ANALYSIS/STRATEGIC GOALS/PRO'S and CON'S:

This project, for Jefferson Land Trust to acquire a 67-acre property, was approved for Conservation Futures funds in Resolution #03-24 on January 2, 2024 and was initially discussed with the commissioners on June 5, 2023.

FISCAL IMPACT/COST BENEFIT ANALYSIS:

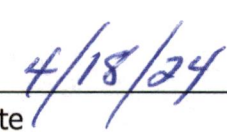
Funding for this project is provided by the Conservation Futures Fund, and there is no impact to the County's General Fund..

RECOMMENDATION:

JCPH Management recommends BoCC signature on an agreement with Jefferson Land Trust for the Schmidt Farm Conservation Futures Project; March 1, 2021 – January 2, 2027; \$60,000

REVIEWED BY:


Mark McCauley, County Administrator


Date

CONTRACT REVIEW FORM
(INSTRUCTIONS ARE ON THE NEXT PAGE)

Clear Form

CONTRACT WITH: Jefferson Land Trust

Contract No: WQ-24-018

Contract For: Schmidt Farm - Conservation Futures

Term: March 1, 2021 - January 2, 2027

COUNTY DEPARTMENT: Public Health/Environmental Health

Contact Person: Tami Pokorny

Contact Phone: X498

Contact email: tpokorny@ca.jefferson.wa.us

AMOUNT: \$60,000

Revenue: _____

Expenditure: \$60,000

Matching Funds Required: _____

Sources(s) of Matching Funds: _____

Fund # 128

Munis Org/Obj 12855310

PROCESS:

☐	Exempt from Bid Process
☐	Cooperative Purchase
☐	Competitive Sealed Bid
☐	Small Works Roster
☐	Vendor List Bid
☐	RFP or RFQ
☐	Other: _____

APPROVAL STEPS:

STEP 1: DEPARTMENT CERTIFIES COMPLIANCE WITH JCC 3.55.080 AND CHAPTER 42.23 RCW.

CERTIFIED: ☒ N/A: ☐

Signature

Apr. 17, 2024

Date

STEP 2: DEPARTMENT CERTIFIES THE PERSON PROPOSED FOR CONTRACTING WITH THE COUNTY (CONTRACTOR) HAS NOT BEEN DEBARRED BY ANY FEDERAL, STATE, OR LOCAL AGENCY.

CERTIFIED: ☒ N/A: ☐

Signature

Apr. 17, 2024

Date

STEP 3: RISK MANAGEMENT REVIEW (will be added electronically through Laserfiche):

Electronically approved by Risk Management on 4/18/2024.

STEP 4: PROSECUTING ATTORNEY REVIEW (will be added electronically through Laserfiche):

Electronically approved as to form by PAO on 4/17/2024.
Standard language.

STEP 5: DEPARTMENT MAKES REVISIONS & RESUBMITS TO RISK MANAGEMENT AND PROSECUTING ATTORNEY(IF REQUIRED).

STEP 6: CONTRACTOR SIGNS

STEP 7: SUBMIT TO BOCC FOR APPROVAL

JEFFERSON COUNTY CONSERVATION FUTURES PROGRAM
PROJECT GRANT AGREEMENT

Project Sponsor: Jefferson Land Trust (UBI Number 601 173 681)

Project Title: Schmidt Farm

Contract Number: WQ-24-018

Approval: Resolution No. 03-24

1. Parties to this Agreement

This Jefferson County Conservation Futures Program Project Grant Agreement (this Agreement) is entered into between Jefferson County (County), PO Box 1220, Port Townsend, Washington 98368 and Jefferson Land Trust (Sponsor), 1033 Lawrence Street, Port Townsend, Washington 98368.

2. Purpose of this Agreement

This Agreement sets out the terms and conditions by which a grant is made through the Jefferson County Conservation Futures Fund, Chapter [3.08](#) of the Jefferson County Code (JCC), as approved by Resolution No. 03-24.

3. Grant Administration

The grant is administered by Jefferson County Public Health Department on behalf of the project Sponsor.

4. Description of Project

The subject project is described in the Scope of Work ([Appendix A](#)).

5. Project Requirements

Jefferson Land Trust shall implement a Conservation Futures Program project to acquire a grant deed of conservation easement ([Exhibit A](#)) for the 67-acre property known in the records of the Jefferson County Assessor as APN#s 701 182 005 and 701 183 003 and as described in the 2023 Conservation Futures project application for the Schmidt Farm Project ([Exhibit B](#)) and 2023 Conservation Futures Program Manual ([Exhibit C](#)), and as authorized by Resolution No. 03-24. ([Exhibit D](#)). The grant deed of conservation easement shall prevent subdivision while allowing for agricultural uses, forest management and habitat protections. Language must be included in the deed of conservation easement to protect the County's interests and conservation values, including, at a minimum, the following:

Grantee's costs of acquiring this Easement were provided in part by grant funding from the Jefferson County Conservation Futures property tax authorized by Washington law. Grantee hereby agrees to be bound by Jefferson County Code (JCC) [3.08.030\(9\)](#), the uses authorized under RCW [84.34.230](#), including the obligation to ensure the long-term conservation of the Property in accordance with the terms and conditions of this Easement, and to obtain the consent of

Jefferson County prior to any conveyance of any interest acquired hereby. Consistent with JCC [3.08.030\(9\)](#), this Easement shall not be converted to a different use unless and only if other equivalent lands or interest in lands within Jefferson County are received by Grantee in exchange.

6. Period of Performance

The Project reimbursement period for acquisition expenses shall begin on March 1, 2021 and end on January 2, 2027 unless proof of match is provided prior to this date and a request for a timeline extension is submitted. The Project reimbursement period for operations and maintenance expenses shall begin on January 2, 2024 and end on January 2, 2034. Work performed consistent with this Agreement during its term, but prior to the adoption of this Agreement, is hereby ratified.

7. Annual Reporting Required.

Annual reporting by the Sponsor to the County is required every year on or before December 31st until three years after the acquisition funds are dispersed and for every year that operations and maintenance funding is expended up to a maximum of ten years.

8. Project Funding

The total grant award provided by the Conservation Futures Fund for the Project shall not exceed \$60,000. The Conservation Futures Fund shall not pay any amount beyond that approved in this Agreement for funding of the Project. The Sponsor shall be responsible for no less than fifty (50%) percent of eligible project costs at the time of each invoice. The contribution by the Sponsor toward work on the Project shall be as indicated below. The contribution by the Conservation Futures Fund toward work on the Project is described immediately above.

	Acquisition	O & M	Totals	%
Schmidt Farm – Conservation Futures	\$55,000	\$5,000	\$60,000	10
Estimated Project Sponsor Contribution	\$509,600	\$5,000	\$514,600	90
Estimated Total Project Cost	\$564,600	\$10,000	\$574,600	100%

9. Unexpended Project Allocations

Should unexpected Project allocations, including (but not limited to) project completion at less than the estimated cost or (alternatively) the abandonment of the Project occur, then the Sponsor shall notify the County within 30 days.

10. Modification of this Agreement

All rights and obligations of the parties to this Agreement are subject to this Agreement and its attachments. Except as provided in this Agreement, no alteration of any of the terms or conditions of this Agreement shall be effective unless provided in writing. All such alterations, except those concerning the period of performance, must be signed by both parties. Period of performance extensions need only be signed by Jefferson Board of County Commissioners.

11. Indemnification

Sponsor shall indemnify and hold harmless the County, its past or present employees, officers, agents, elected or appointed officials or volunteers (and their marital communities), from and against all claims, losses or liability, or any portion thereof, including reasonable attorney's fees and costs, arising from injury or death to persons, including injuries, sickness, disease or death to Sponsor's own employees, or damage to property occasioned by a negligent act, omission or failure of the Sponsor. Sponsor shall be liable only to the extent of Sponsor's proportional negligence. The Sponsor specifically assumes potential liability for actions brought against the County by Sponsor's employees, including all other persons engaged in the performance of any work or service required of the Sponsor under this Agreement and, solely for the purpose of this indemnification and defense, the Sponsor specifically waives any immunity under the state industrial insurance law, Title [51](#) RCW. The Sponsor recognizes that this waiver was specifically entered into pursuant to provisions of RCW [4.24.115](#) and was subject of mutual negotiation. For the avoidance of doubt, the obligations in this section shall survive the expiration or termination of this Agreement.

12. Insurance

The Sponsor shall secure and maintain in force throughout the duration of this Agreement policies of insurance as follows:

Workers Compensation Insurance. If and only if the Sponsor employs any person(s) in the status of employee or employees separate from or in addition to any equity owners, sole proprietor, partners, owners or shareholders of the Sponsor, Worker's Compensation Insurance in an amount or amounts that are not less than the required statutory minimum(s) as established by the State of Washington or the state or province where the Sponsor is located.

Commercial Automobile Liability Insurance providing bodily injury and property damage liability coverage for all owned and non-owned vehicles assigned to or used in the performance of the work for a combined single limit of not less than \$500,000 each occurrence with the County named as an additional insured in connection with the Sponsor's performance of the contract.

General Commercial Liability Insurance in an amount not less than a single limit of one million dollars (\$1,000,000) per occurrence and an aggregate of not less than two (2) times the occurrence amount (\$2,000,000.00 minimum) for bodily injury, including death and property damage, unless a greater amount is specified in the contract specifications. The insurance coverage shall contain no limitations on the scope of the protection provided and include the following minimum coverage:

- a. Broad Form Property Damage, with no employee exclusion;
- b. Personal Injury Liability, including extended bodily injury;
- c. Broad Form Contractual/Commercial Liability – including completed operations;
- d. Premises – Operations Liability (M&C);
- e. Independent Contractors and subcontractors;
- f. Blanket Contractual Liability.

Such insurance coverage shall be evidenced by one of the following methods:

- * Certificate of Insurance;

- * Self-insurance through an irrevocable Letter of Credit from a qualified financial institution.

The County shall be named as an additional insured party under this policy.

Certificates of coverage as required by this section shall be delivered to the County within fifteen (15) days of execution of this Agreement.

Any deductibles or self-insured retention shall be declared to and approved by the County prior to the approval of the contract by the County. At the option of the County, the insurer shall reduce or eliminate deductibles or self-insured retention or the Sponsor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

The Sponsor shall include all subcontractors as insured under its insurance policies or shall furnish separate certificates and endorsements for each subcontractor. All insurance provisions for subcontractors shall be subject to all of the requirements stated in this Agreement.

Failure of the Sponsor to take out or maintain any required insurance shall not relieve the Sponsor from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification.

It is agreed by the parties that insurers shall have no right of recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above described insurance. It is further agreed by the parties that insurance companies issuing the policy or policies shall have no recourse against the County (including its employees and other agents and agencies) for payment of any premiums or for assessments under any form of policy. It is further agreed by the parties that any and all deductibles in the above described insurance policies shall be assumed by and be at the sole risk of the Sponsor.

It is agreed by the parties that judgments for which the County may be liable, in excess of insured amounts provided in this Agreement, or any portion thereof, may be withheld from payment due, or to become due, to the Sponsor until such time as the Sponsor shall furnish additional security covering such judgment as may be determined by the County.

The County reserves the right to request additional insurance on an individual basis for extra hazardous contracts and specific service agreements.

Any coverage for third party liability claims provided to the County by a "Risk Pool" created pursuant to Ch. [48.62](#) RCW shall be non-contributory with respect to any policy of insurance the Sponsor must provide in order to comply with this Agreement.

If the proof of insurance or certificate indicating the County is an "additional insured" to a policy obtained by the Sponsor refers to an endorsement (by number or name) but does not provide the full text of that endorsement, then it shall be the obligation of the Sponsor to obtain the full text of that endorsement and forward that full text to the County.

The County may, upon the Sponsor's failure to comply with all provisions of this Agreement relating to insurance, withhold payment or compensation that would otherwise be due to the Sponsor.

For the avoidance of doubt, the obligations in this section shall survive the expiration or termination of this Agreement.

13. Independent Contractor

The Sponsor is an independent contractor with respect to the services provided pursuant to this Agreement. The Sponsor is not as an agent, an employee or a servant of the County. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties. The Sponsor specifically has the right to direct and control Contractor's own activities and over all of its subcontractors, employees, agents and representatives in providing the agreed services in accordance with the specifications set out in this Agreement. Neither Sponsor nor any employee of Sponsor shall be entitled to any benefits accorded County employees by virtue of the services provided under this Agreement. The County shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to Sponsor, or any employee of Sponsor. The Sponsor agrees to file all necessary governmental documents, including appropriate tax returns, reflecting income status as an independent contractor for services rendered to the County under this Agreement.

14. No Assignment

The Sponsor shall not sublet or assign any of the services covered by this Agreement without the express written consent of the County or its authorized representative. Assignment does not include printing or other customary reimbursable expenses that may be provided in an agreement.

15. Ownership and Use of Documents

All documents, drawings, specifications and other materials produced by the Sponsor in connection with the services rendered under this Agreement shall be the property of the Sponsor whether the project for which they are made is executed or not. The County shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference, and use in connection with the Sponsor's endeavors.

16. Compliance with Applicable Statutes, Rules, and Jefferson County Policies

This Agreement is governed by, and the Sponsor shall comply with, all applicable state and federal laws and regulations, including RCW [84.34.210](#), and published agency policies, which are incorporated into this Agreement by this reference as if fully set forth.

17. No Harassment of Discrimination

Any form of harassment, discrimination, or improper fraternization with any County employee is strictly prohibited. The Sponsor shall not discriminate on the grounds of race, color, national origin, religion, creed, age, sex, sexual orientation, or the presence of any physical or sensory disability in the selection and retention of employees or procurement of materials or supplies.

18. Sponsor's Accounting Books and Records

The Sponsor shall maintain complete financial records relating to this Agreement and the services rendered including all books, records, documents, receipts, invoices, and all other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect cost of any nature expended in the performance of this Agreement. The Sponsor's records and accounts pertaining to this Agreement are to be kept available for inspection by the Office of the State Auditor, federal auditors, the Jefferson County Auditor, and any persons duly authorized by the County shall have full access and the right to examine any of these materials during this period for a period of ten (10) years after the date of the final payment to Sponsor. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. Copies shall be made available upon request. Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed.

19. Licensing, Accreditation and Registration

The Sponsor shall comply with all applicable local, state and federal licensing, accreditation, permitting, and registration requirement/standards necessary for the performance of this Agreement.

20. Disputes

Except as otherwise provided in this Agreement, when a bona fide dispute arises between Jefferson County and the Sponsor and it cannot be resolved, either party may request a dispute hearing with a mediator agreed upon by the parties, or if agreement cannot be made, the mediator

shall be selected by the Jefferson County Superior Court. Either party's request for a dispute hearing must be in writing and clearly state:

- a. the disputed issue(s);
- b. the relative positions of the parties; and,
- c. the Sponsor's name, address and agency contact number.

Requests for dispute hearings must be mailed to the Project Manager, Jefferson County Environmental Public Health Department, 615 Sheridan St., Port Townsend, WA 98368, within fifteen (15) days after either party received notice of the disputed issue(s). The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal. The parties shall split evenly the cost of mediation or whatever form of dispute resolution is used. The parties shall bear their own costs and attorney's fees in any dispute.

The venue for any legal action shall be solely in the appropriate state court in Jefferson County, Washington, subject to the venue provisions for actions against counties in RCW [36.01.050](#).

Each party to this Agreement shall be responsible for their own dispute and litigation costs, including attorney's fees.

21. Termination for Funding

Jefferson County may unilaterally terminate this Agreement in the event funding from state, federal, or other sources are withdrawn, reduced, or limited in any way after the effective date of this Agreement.

22. Termination for Convenience

The County reserves the right to terminate this Agreement at any time by giving ten (10) days written notice to the Sponsor.

23. Assignment

The Sponsor shall not sublet or assign any interest in this Agreement, and shall not transfer any interest in this Agreement without the express written consent of the County.

24. No Waiver

Waiver by any party of any provision of this Agreement or any time limitation provided for in this Agreement shall not constitute a waiver of any other provision.

No consent by either party to, or waiver of, a breach by either party, whether express or implied, shall constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either party.

No term or provision of this Agreement shall be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. Failure of a party to declare any breach or default

immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default.

25. County Does Not Assume Additional Duties

The County does not assume any obligation or duty, except as required by federal or state law, to determine if Sponsor is complying with all applicable statutes, rules, codes ordinances or permits.

26. Agreement Representatives

All written communications sent to the Sponsor under this Agreement shall be addressed and delivered to:

Sponsor Contact

Sarah Spaeth, Director of Conservation
Jefferson Land Trust
1033 Lawrence St.
Port Townsend, WA 98368

Conservation Futures Program Contact

Tami Pokorny
Jefferson County Environmental Public
Health – Conservation Futures
615 Sheridan Street
Port Townsend, WA 98368

These addresses shall be effective until receipt by one party from the other of a written notice of any change.

27. Entire Agreement

This Agreement, along with all attachments, constitutes the entire agreement of the parties. No other understandings, oral or otherwise, regarding this Agreement shall exist or bind any of the parties.

28. Severability

Provided it does not result in a material change in the terms of this Agreement, if any provision of this Agreement or the application of this Agreement to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application this Agreement shall not be affected and shall be enforceable to the fullest extent permitted by law.

29. Survival

Those provisions of this Agreement that by their sense and purpose should survive the term of this Agreement shall survive the term of this Agreement. Without limiting the generality of the preceding sentence, and for the avoidance of doubt, the provisions that survive the term of this agreement include: (a) controlling law; (b) insurance; and, (c) indemnification.

30. Binding on Successors, Heirs and Assigns

This Agreement shall be binding upon and inure to the benefit of the parties' successors in interest, heirs and assigns.

31. No Third-party Beneficiaries

The parties do not intend, and nothing in this Agreement shall be construed to mean, that any provision in this Agreement is for the benefit of any person or entity who is not a party.

32. Signature in Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Agreement at different times and places by the parties shall not affect the validity of this Agreement, so long as all the parties execute a counterpart of this Agreement.

33. Facsimile and Electronic Signatures

The parties agree that facsimile and electronic signatures shall have the same force and effect as original signatures.

34. Public Records Act

Notwithstanding any provisions of this Agreement to the contrary, to the extent any record, including any electronic, audio, paper or other media, is required to be kept or indexed as a public record in accordance with the Washington Public Records Act, Chapter [42.56](#) RCW (as may be amended), the Sponsor agrees to maintain all records constituting public records and to produce or assist the County in producing such records, within the time frames and parameters set forth in state law.

The Sponsor also agrees that upon receipt of any written public record request, the Sponsor shall, within two business days, notify the County by providing a copy of the request per the notice provisions of this Agreement.

This Agreement, once executed, shall be a "public record" subject to production to a third party if it is requested pursuant to the Washington Public Records Act.

35. Effective Date of this Agreement

This Agreement shall be effective upon signing by all parties.

36. Controlling Law

It is understood and agreed that this Agreement is entered into in the State of Washington. This Agreement shall be governed by and construed in accordance with the laws of the United States, the State of Washington and the County of Jefferson, as if applied to transactions entered into

and to be performed wholly within Jefferson County, Washington between Jefferson County residents. No party shall argue or assert that any state law other than Washington law applies to the governance or construction of this Agreement.

37. Order of Precedence.

If there is an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order: (a) Applicable state statutes and rules; (b) local laws and rules; and, (c) case law.

38. Force Majeure

Neither party shall be in default by reason of any failure in performance of this Agreement, if such failure arises out of causes beyond a party's control and without fault or negligence of such party, including but not limited to; (a) acts of God; (b) terrorism or other acts of a public enemy; (c) war; or, (d) epidemics, pandemics or quarantine restrictions.

39. Attachments

Any attachment to this Agreement is part of this Agreement and is incorporated by reference into this Agreement.

40. Representations and Warranties

The parties represent and warrant that: (a) Each person signing this Agreement is fully authorized to enter into this Agreement on behalf of the party for whom signature is being made; (b) Each party that is a corporate entity is duly organized and validly existing in good standing under the laws of one of the states of the United States of America; (c) The making and performance of this Agreement will not violate any provision of law or of any party's articles of incorporation, charter, or by-laws; (d) Each corporate party has taken all necessary corporate and internal legal actions to duly approve the making and performance of this Agreement and that no further corporate or other internal approval is necessary; and, (e) Each party has read this Agreement in its entirety and know the contents of this Agreement, that the terms of this Agreement are contractual and not merely recitals, and that they have signed this Agreement, having obtained the advice of legal counsel.

DATED this _____ day of _____, 20_____.

(SIGNATURES FOLLOW ON THE NEXT PAGE)

JEFFERSON COUNTY WASHINGTON

Board of County Commissioners
Jefferson County, Washington

By: _____
Kate Dean, Chair Date

By: _____
Greg Brotherton, Commissioner Date

By: _____
Heidi Eisenhour, Commissioner Date

SEAL:

ATTEST:

Carolyn Galloway CMC Date
Clerk of the Board

Approved as to form only:

 _____
Philip C. Hunsucker Date
Chief Civil Deputy Prosecuting Attorney

JEFFERSON LAND TRUST

By: _____
Signature

Name: _____

Title: _____

Date: _____

APPENDIX A

Scope of Work

Jefferson Land Trust, as project sponsor “Sponsor”, will perform the following tasks in order to implement the Schmidt Farm Project:

Task 1: Acquire Matching Contribution

Sponsor shall secure the necessary matching contribution as described in Section 8 of this Agreement, and at no less than fifty percent (50%) at the time of each invoice. The match must be in an eligible form consistent with JCC [3.08.030\(5\)](#).

Deliverable 1a: Matching contribution(s) as indicated of no less than 50% of eligible project costs at the time of each invoice.

Task 2: Acquire Grant Deed of Conservation Easement

Sponsor shall acquire a grant deed of conservation easement on the subject property, APN# 701 182 005 and 701 183 003 that incorporates approved Conservation Futures Program language, including the language in Section 5 of this Agreement.

Deliverable 2a: Final draft grant deed of conservation easement

Deliverable 2b: Qualifying appraisal and estimated settlement statement (HUD-1)

Deliverable 2c: Recorded grant of conservation easement deed

Task 3: Stewardship Plan

Sponsor shall provide a plan for stewardship

Deliverable 3a: Electronic copy of stewardship plan

Task 4: Operations & Maintenance

Perform the operations and maintenance activities described in the Exhibit “B”, such as annual monitoring, invasive plant treatments, riparian and stream habitat improvements, and consulting with landowners.

Deliverable 4a: Written description of operations and maintenance activities performed each year to be included with Annual Reporting.

Deliverable 4b: Annual invoice to reimburse for operations and maintenance activities accompanied by receipts, photos, maps or additional appropriate backup.

Task 5: Annual Reporting

Sponsor shall monitor and report on the property as described in Section 7 of this Agreement and submit required reports to the Conservation Futures Citizen Oversight Committee (through staff) in the format provided for each year that it is required.

Deliverable 5a: Completed annual reports.

Exhibit A

Grant Deed of Conservation Easement for Schmidt Farm

AFTER RECORDING RETURN TO:

JEFFERSON LAND TRUST
1033 LAWRENCE ST.
PORT TOWNSEND, WA 98368

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. PAUL A. SCHMIDT

2. MARY E. SCHMIDT

☐ Additional names are on page(s) _____ of document.

Grantee(s) (Last name first, then first name and initials)

1. JEFFERSON LAND TRUST

2.

☐ Additional names are on page(s) _____ of document.

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

SE NW & PTN GL 2 (LS TAX 78 & 54) 18-27-1W
(COMPLETE LEGAL DESCRIPTION IS ON PAGE A-1)

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

Assessor's Property Tax Parcel/Account Number

☐ Assessor Tax # not yet assigned

701182005; 701183003

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.

GRANT DEED OF AGRICULTURAL CONSERVATION EASEMENT

This GRANT DEED OF AGRICULTURAL CONSERVATION EASEMENT ("**Easement**") is made by PAUL A. SCHMIDT and MARY E. SCHMIDT, husband and wife, having an address of 255 Jakeway Road, Quilcene, Washington 98376 ("**Grantor**"), in favor of JEFFERSON LAND TRUST, a Washington nonprofit corporation, having an address of 1033 Lawrence Street, Port Townsend WA 98368 ("**Grantee**") (each a "**Party**," collectively the "**Parties**"). The State of Washington, by and through the Washington State Recreation and Conservation Office ("**RCO**") is a third party beneficiary under this Easement and has certain rights hereunder, including third party right of enforcement.

1. RECITALS

- 1.1. Grantor is the owner in fee simple of the certain real property located in Jefferson County, Washington, more particularly described in Exhibit A (Legal Description) and shown on Exhibit B (Site Map), which are attached to this instrument and incorporated herein by this reference (the "**Property**"). The Property consists of approximately 67 acres in two tax parcels.
- 1.2. The Property possesses significant agricultural values of great importance to Grantor, Grantee, the people of Jefferson County, and the people of the State of Washington (collectively, "**Agricultural Conservation Values**"). The Agricultural Conservation Values include prime, unique, and important agricultural soils of State-wide importance; the suitability of the Property for the production of vegetables and other agricultural products, the size of the commercially productive portion of the Property; existing and potential economic productivity; the viability of the site for continued agricultural production, including farm-to-market access; proximity to roads and utilities; and water availability.
- 1.3. The Property also possesses fish and wildlife habitat values of importance to Grantor, Grantee, the people of Jefferson County, and the people of the State of Washington (collectively, "**Habitat Values**"). The Property is bisected by a portion of Jakeway Creek that is further described in the Baseline Documentation (1.6); the Jakeway Creek corridor is referred to herein as the "**Riparian Conservation Zone**" that is depicted in Exhibit B (Site Plan). The Riparian Conservation Zone is documented by the Washington Department of Fish and Wildlife as providing spawning habitat for salmonids (coho and cutthroat trout) and also provides access to spawning habitat in upstream portions of Jakeway Creek. The Riparian Conservation Zone is to be managed as provided in Section 5.5 of this Easement and an Approved Stewardship Plan.
- 1.4. The Property consists primarily of farmland (as defined in RCW 79A.15.010) whose soils have been classified as "Prime Farmland", "Prime Farmland if Drained", and "Farmland of Statewide Importance" by the Natural Resources Conservation Service, U.S. Department of Agriculture, because this land has soil quality, growing season, and moisture supply needed for sustained agricultural production.

- 1.5. The Property contains features that make the Property valuable farmland, such as ditches, ponds, and reservoirs, topographic features, scenic open space, and historic farm identity.
- 1.6. The Agricultural Conservation Values and Habitat Values are documented in an inventory of relevant features of the Property on file at the offices of Jefferson Land Trust and incorporated herein by this reference ("**Baseline Documentation**"). The Baseline Documentation consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Property at the effective date of this Easement and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. Grantor and Grantee acknowledge and agree that the Baseline Documentation is complete and accurate as of the effective date of this Easement. The Parties further agree that within three (3) months of the execution of this Easement, a collection of additional Baseline Documentation may be compiled by Grantee and incorporated into the Easement by this reference. Failure to timely compile the additional Baseline Documentation shall not affect the enforceability of this Easement or any of its provisions. The Baseline Documentation may be used to establish that a change in the use or condition of the Property has occurred, but its existence shall not preclude the use of other evidence to establish the condition of the Property as of the date of this Easement. Grantee may use the Baseline Documentation in enforcing provisions of this Easement but is not limited to the use of the Baseline Documentation to show a change in the use or condition of the Property.
- 1.7. Permanent protection of the Property will further the purposes of the Washington State Farm and Forest Account (FFA) established under RCW 79A.15.130, which provides that moneys appropriated to the FFA "must be distributed for the acquisition and preservation of farmlands and forestlands in order to maintain the opportunity for agricultural and forest management activity upon these lands." The legislatively declared policies of the State of Washington in the Washington State Open Space Tax Act, Chapter 84.34 RCW (OSTA), provide that "it is in the best interest of the state to maintain, preserve, conserve, and otherwise continue in existence adequate open space lands for the production of food, fiber and forest crop, and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens." Under the OSTA, lands eligible for preferential real property tax treatment include lands such as the subject Property where the preservation in its present use would conserve and enhance natural resources and promote conservation of soils. Pursuant to this legislative directive, Jefferson County has adopted an Open Space Tax Program, Ordinance No. 09-1203-03, that recognizes the importance of and provides preferential tax treatment for the agricultural resource land and habitat that occur on the Property, including land devoted to commercial agriculture and/or production of livestock; protection of open space, stream corridors, wetlands, habitat; and promotion of conservation principles by example or by offering educational opportunities. The parties and RCO intend that the Property shall be managed for agriculture as the primary use under this Easement in a manner that allows it to remain eligible for OSTA classification.
- 1.8. This Easement is acquired in part with a Washington Wildlife and Recreation Program-Farmland Preservation grant from RCO pursuant to that certain grant

agreement #22-1408 between RCO and Grantee dated August 9, 2023 ("**RCO Grant Agreement**"). RCO is a third-party beneficiary of certain rights under this Easement.

- 1.9. The United States of America, through the Department of the Navy (the "**Government**"), operates Naval Magazine Indian Island in Jefferson County, Washington, and Naval Base Kitsap Bangor in Kitsap County, Washington (the "**Installations**"), in the vicinity of the Property. The Government and Grantee (Jefferson Land Trust) entered into an agreement identified as Multi-Year Encroachment Protection Agreement Number N4425511RP00034 as amended, whereby Grantee agreed to accomplish the acquisition of certain real property interests in the vicinity of the Installations for purposes that are consistent with the objectives of the Government and Grantee. The Government's objective of preventing incompatible land uses and development in the vicinity of the Installations and the protection of the Agricultural Conservation Values of the Property, as identified herein, are consistent with Grantee's mission and objectives.
- 1.10. Grantee's costs of acquiring this Easement were provided in part by grant funding from the Jefferson County Conservation Futures property tax authorized by Washington law. Grantee hereby agrees to be bound by Jefferson County Code Section 3.08.030(9), the uses authorized under RCW 84.34.230, and the terms of that certain Grant Agreement #WQ-24-018 between Jefferson County and Grantee, including the obligation to ensure the long-term conservation of the Property in accordance with the terms and conditions of this Easement, and to obtain the consent of Jefferson County prior to any conveyance of any interest acquired hereby. Consistent with Jefferson County Code Section 3.08.030(9), this Easement shall not be converted to a different use unless and only if other equivalent lands or interest in lands within Jefferson County are received by Grantee in exchange.
- 1.11. The Parties acknowledge there will be two easements on the Property: (1) this Easement held by Grantee, and (2) a Grant Deed of Restrictive Easement held by Grantee with rights and obligations assigned to the Government "**Restrictive Easement**." The Parties further acknowledge that the Easement and the Restrictive Easement are for different, as well as similar and complementary purposes and that, accordingly, these two instruments prohibit, permit, and regulate certain different uses and activities.
- 1.12. The Parties agree that, in order to maintain the opportunity for agricultural activity upon the Property pursuant to RCW 79A.15.130, it is appropriate to include in this Easement any and all adjudicated and un-adjudicated water rights, whether appropriative or riparian, including but not limited to ditches and ditch rights, springs and spring rights, reservoir and reservoir rights, wells and groundwater rights, water allotments, units or shares, memberships, shares, or rights to receive water from any water company, ditch company, or irrigation district, permits, certificates, or claims under Chapter 90.14 RCW, and any other types of rights related to the ownership of water, appurtenant to or customarily or historically used or associated with or upon the Property, including but not limited to those specifically described in Exhibit C (Water Rights), which is attached to this instrument and incorporated herein by this reference (collectively, the "Water Rights"). For purposes of this Easement, the Water Rights shall also include any and all of the rights associated with the historical

and beneficial use of any of the embankments, flumes, headgates, measuring devices or any other structures that are appurtenant to those water rights, together with all easements and rights of way therefor.

- 1.13. Grantor and Grantee intend that the Agricultural Conservation Values and Habitat Values be preserved and maintained in perpetuity by permitting only those land uses on the Property that do not impair or interfere with the Agricultural Conservation Values or Habitat Values.
- 1.14. Grantor holds the fee interest in and to the Property, has the right to protect and preserve the Agricultural Conservation Values and Habitat Values, and desires and intends to transfer such rights to Grantee in perpetuity.

2. CONVEYANCE AND CONSIDERATION

- 2.1. For the reasons stated above, and in consideration of the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of Washington and in particular RCW 64.04.130 and RCW 84.34.210, Grantor hereby voluntarily grants, conveys, and warrants, for valuable consideration, the receipt of which is acknowledged hereby, to Grantee a conservation easement in gross and in perpetuity over the Property, consisting of the rights in the Property, hereinafter enumerated, subject only to the title matters set forth in Exhibit D (Permitted Exceptions), which is attached to this instrument and incorporated herein by this reference.
- 2.2. This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130.
- 2.3. Grantor expressly intends that this Easement runs with the land and that this Easement shall be binding upon Grantor's and Grantee's successors and assigns in perpetuity.

3. PURPOSE

- 3.1. **Purpose.** The "**Purpose**" of this Easement is to protect the Agricultural Conservation Values of the Property forever and prevent any use of the Property that will impair or interfere with its Agricultural Conservation Values, thereby maintaining the opportunity for agricultural activity upon the Property pursuant to RCW 79A.15.130. To the extent that the protection of Habitat Values is consistent with maintaining the opportunity for agricultural activity upon the Property, it is within the Purpose of this Easement to protect such Habitat Values by preventing any use of the Property that will impair or interfere with its Habitat Values. Notwithstanding the foregoing, if Grantor, Grantee, and RCO mutually agree that commercially-productive agricultural activity is no longer viable on designated portions of the Property due to external factors such as climate change impacts, Grantee, with written approval from RCO, may allow the protection, restoration, enhancement and management of Habitat Values on those designated portions of the Property as a Purpose of this Easement even if such activities are inconsistent with maintaining the opportunity for

agricultural activity on those portions of the Property, provided that all incidental use on the Property does not exceed the maximum allowed for the Property to continue meeting RCW 84.34.020 definition of farm and agricultural land or farm and agricultural conservation land .

- 3.2. **Stewardship Plan.** To further the Purpose of this Easement, Grantor and Grantee have developed and approved, as indicated by the signatures of the parties to the plan, a plan for stewardship of the Property ("**Approved Stewardship Plan**") dated _____, on file at the offices of Grantee and incorporated herein by this reference.

- 3.2.1. An Approved Stewardship Plan that is effective as of the date of any change of ownership shall become an interim plan that will be valid for no more than 90 days following the date of conveyance of the Property. Grantee shall meet with the new owner during such 90 day period for the purpose of reviewing the plan with the new owner of the Property and determining whether such plan should be extended or revised. Any extension or revision of an Approved Stewardship Plan must be approved in writing by Grantee and the new owner.

3.3. **Interpretation of the Easement and Approved Stewardship Plan.**

- 3.3.1. The Parties intend that this Easement and an Approved Stewardship Plan be interpreted in a manner consistent with the Purpose of this Easement.

- 3.3.2. The Parties intend that this Easement and an Approved Stewardship Plan be interpreted to confine Grantor's use of the Property to such activities that are consistent with the Purpose and terms of this Easement. At the same time, the Parties intend, and this Easement is structured, to give Grantor maximum flexibility and discretion to undertake activities that are consistent with the Purpose and terms of this Easement.

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

4. **RIGHTS CONVEYED TO GRANTEE**

To accomplish the Purpose of this Easement, the following rights are conveyed by Grantor to Grantee by this Easement:

- 4.1. **Protection.** Grantee shall have the right to identify, protect, preserve, maintain, and conserve in perpetuity, and to enhance, restore, or improve by mutual agreement the Agricultural Conservation Values and Habitat Values of the Property.
- 4.2. **Development Rights.** Grantor hereby grants to Grantee all development rights except as specifically reserved herein, and it is agreed that such rights may not be used on or transferred off the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or (except as expressly

permitted herein) used for the purpose of calculating permissible lot yield or density of the Property or any other property.

- 4.3. **Access by Grantee.** As provided for and limited herein, Grantor hereby grants to Grantee reasonable and non-exclusive access at reasonable times across the Property solely for the purposes of fulfilling Grantee's obligations under this Easement and exercising its affirmative rights under this Easement. Specifically, Grantee shall have the right:
- 4.3.1. To enter upon, inspect, observe and study the Property, with such persons as Grantee may require, at mutually agreeable dates and times and upon reasonable prior notice to Grantor, for the purpose of (a) identifying the current uses and practices on the Property and the condition of the Property, and (b) monitoring the uses and activities on the Property to determine whether they are consistent with this Easement.
 - 4.3.2. To enter upon the Property, at a mutually agreeable date and time and upon prior notice to Grantor, to inspect the Property after major natural events occur, such as fires, windstorms, and floods.
 - 4.3.3. To enter upon the Property at such other times as are necessary if there is reason to believe that a violation of the Easement is occurring, for the purposes of enforcing the provisions of this Easement. Prior to entry, Grantee must provide Grantor notice and describe the basis of the reasonable belief that a violation is occurring on the Property.
 - 4.3.4. Grantee shall exercise its access rights in compliance with applicable law and in a manner that will not materially disturb or interfere with Grantor's reserved rights, any other person's lawful use of the Property, or Grantor's quiet enjoyment of the Property.
 - 4.3.5. Grantor shall not unreasonably withhold or delay its consent to dates and times of access proposed by Grantee.
- 4.4. **Injunction and Restoration.** Grantee shall have the right to prevent, or cause Grantor to prevent, any use of, or activity on, the Property that is inconsistent with the Purpose and terms of this Easement, including but not limited to trespasses by members of the public, and shall have the right to undertake or cause to be undertaken the restoration of such areas or features of the Property as may be materially damaged by activities contrary to the provisions hereof, all in accordance with Section 9.
- 4.5. **Enforcement.** Grantee shall have the right to enforce the terms of this Easement, in accordance with Sections 8 and 9. Jefferson County has no obligation to participate in the enforcement of the terms of this Easement.
- 4.6. **Assignment.** Grantee shall have the right to assign, convey, or otherwise transfer Grantee's interest in the Property in accordance with Section 13.

- 4.7. **Signage.** Grantee shall have the right to erect and maintain a sign or other appropriate marker on the Property, visible from a public road, bearing information indicating that the Property is protected by this Easement and held by Grantee. The sign shall also name the funding sources for the acquisition of the Easement to the extent required by the funding sources. The location and design of the sign shall be determined by written agreement of Grantor and Grantee; consent to such agreement shall not be unreasonably withheld. Grantee shall be responsible for the costs of erecting and maintaining such sign or marker.

5. PERMITTED USES

- 5.1. **General.** Grantor reserves for Grantor and Grantor's successors and assignees, any and all rights not otherwise conveyed to Grantee under this Easement and any and all uses of, or activities on, the Property that are not inconsistent with the Purpose and terms of this Easement, and that are not prohibited herein. Without limiting the generality of the foregoing, Grantor specifically reserves the following uses and activities, which shall be considered permitted uses and activities under the Easement.
- 5.2. **Well.** There is one well within the Property as of the effective date of this Easement. The well and its related infrastructure are located inside Building Envelope 1. Grantor reserves the right to use, maintain, repair, replace and decommission the existing well and its related infrastructure in the location depicted on Exhibit B (Site Map).
- 5.3. **Septic System.** There is one septic system within the Property as of the Effective Date of this Easement. The septic system is located within Building Envelope 2 as noted in the Baseline Documentation and as depicted in Exhibit B (Site Map). Grantor reserves the right to use, maintain, repair, and decommission the septic system that exists on the Property as of the Effective Date of this Easement. If the system that is in place at the Effective Date of the Easement cannot accommodate future uses and activities and if Grantor provides Grantee advance written notice of the proposed Improvement as provided for in Section 7 and further subject to impervious surfaces restrictions listed in Section 6.7, Grantor reserves the right to install, use, maintain, and decommission one additional septic system within Building Envelope 1 or Building Envelope 2; provided, however, that if there is no feasible location for a second system within Building Envelope 1 or Building Envelope 2, Granting Owner reserves the right to locate, in whole or in part, said second system outside of a Building Envelope subject to notice and consent requirements of Section 7 to minimize adverse effects to Agricultural Conservation and Habitat Values.
- 5.4. **Agricultural Activities.** Grantor may engage in, and allow others to engage in, Agricultural Activities (as defined below) on the Property, as further provided for and limited in this Section and in Section 6.
- 5.4.1. As used herein, "**Agricultural Activities**" shall mean the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products, including but not limited to crops commonly found in the community surrounding the Property, field crops, fruits, vegetables, horticultural specialties, livestock or livestock products, or the commercial production of

berries, grain, hay, straw, seed, or Christmas trees not subject to the excise tax imposed by Chapter 84.33 RCW, and all conditions and activities occurring on a farm in connection with such commercial production, including, but not limited to, marketed produce at roadside stands or farm markets; noise; odors; dust; fumes; operation of machinery and irrigation pumps; movement, including, but not limited to, use of current county road ditches, streams, rivers, canals, and drains, and use of water for agricultural purposes; ground and aerial application of seed, fertilizers, conditioners, and plant protection products; employment and use of labor; roadway movement of equipment and livestock; protection from damage by wildlife; prevention of trespass; and construction and maintenance of agricultural buildings, fences, roads, bridges, ponds, drains, waterways, and similar features and maintenance of streambanks, watercourses, and wetland ponds.

5.4.2. Agricultural Activities shall also include such "**Accessory Uses**," as defined in RCW 36.70A.177(3)(b), that are related to the permitted Agricultural Activities on the Property, that maintain the primacy of, and are subordinate to, the farmland character and use of the Property, that are compatible with the Agricultural Conservation Values, and that provide supplemental income. Enterprises that adversely impact the Agricultural Conservation Values or Habitat Values or that market petroleum or chemical products are prohibited.

5.4.3. All Agricultural Activities shall be carried out in accordance with applicable law and in compliance with the Purpose and terms of this Easement. Grantor retains discretion over the specific character and content of the management decisions and practices necessary to identify, protect, preserve, maintain, and conserve, in perpetuity, and to enhance, restore, or improve the Agricultural Conservation Values consistent with the Purpose and terms of this Easement.

5.5. **Habitat Activities.** Grantor may engage in, and allow others to engage in, any activity to monitor, protect, improve, and maintain the Habitat Values, including but not limited to habitat restoration, enhancement, and management activities ("**Habitat Activities**"), pursuant to an Approved Stewardship Plan. All Habitat Activities on the Property shall be carried out in compliance with the Purpose and terms of this Easement.

5.5.1. Grantor desires to continue the protection of those Habitat Values protected by plantings, fencing, and other items in place as of the Effective date of this Easement, installed pursuant to the Jefferson County Conservation District program and described in the Baseline Documentation. Accordingly, no uses or activities, including but not limited to livestock grazing and other Agricultural Activities are permitted within the Riparian Conservation Zone except in accordance with an Approved Stewardship Plan. The Riparian Conservation Zone is approximately 3.7 acres. Grantor agrees that fencing shall be set back approximately 35 feet or more from the channel of Jakeway Creek, when installed or replaced in association with Habitat Activities and in accordance with an Approved Stewardship Plan, the delineation of which is to be determined in a manner agreeable to both Grantor and Grantee. Fencing is intended to fully

exclude livestock access to the Riparian Conservation Zone except for watering in accordance with an Approved Stewardship Plan.

5.5.2. Within the Riparian Conservation Zone, Grantor also may engage in, and allow others to engage in, activities to maintain the hydrologic drainage function of Jakeway Creek that benefit the Agricultural Conservation Values of the Property in accordance with an Approved Stewardship Plan.

5.5.3. Within the Riparian Conservation Zone, and in accordance with applicable laws, Grantor may only engage in Agricultural Activities that are compatible with the protection of the Habitat Values in accordance with an Approved Stewardship Plan.

5.6. **Designation and Limitations on Building Envelope Improvements.** There may be no more than three (3) building envelopes within the Property. Portions of the Property, as shown on Exhibit B (Site Map) herein, are numbered and designated as the Building Envelopes for Agricultural and Non-Agricultural uses and structures (the "**Building Envelopes**"). Building Envelope 1 is approximately two acres in area, contains one single-family dwelling unit, and is intended for Agricultural and Non-Agricultural uses and structures. Building Envelope 2 is approximately two acres in area and is intended for Agricultural and Non-Agricultural uses and structures. Building Envelope 3 is approximately 0.8 acres in area and is intended only for Agricultural uses and structures.

5.6.1. Subject to the limitation on Impervious Surfaces and notification as provided for in Section 7.1, wind, solar, or other alternative energy systems may be installed within the Building Envelopes for the primary purpose of generating energy for the agricultural and residential needs of the Property, and may include: foundations, concrete pads and footings; wind turbine units; photovoltaic panels, guy wires, support fixtures, anchors and fences; buildings needed for maintenance of wind turbine or other alternative energy production units and maintenance and storage of related equipment; electrical transformers and energy storage facilities; electric transformers, electric distribution and transmission towers and lines either above ground or underground; substations or switching facilities for the purpose of connecting to transmission system; private roads providing access from public roads to the energy facilities; and any other items necessary to the successful and secure use of any area of the Property within the Building Envelopes for the production of wind, solar, or other alternative source of energy. If the energy produced within the Property by wind, solar, or other alternative source(s) of energy exceeds the energy required for permitted uses on the Property, Grantor may sell or transfer such excess energy; no new easements may be created or utility lines installed in connection with such sale or transfer.

5.6.2. Subject to the limitation on Impervious Surfaces and shall require notice but not require consent of Grantee, telecommunications installations are permitted within the Building Envelopes, which may include a suitable support structure, associated antennas, l beams, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of any area of the Property within the Building Envelopes for telecommunications purposes.

5.8. Maintenance and Construction of Buildings and Other Structures

- 5.8.1. **Building Envelope Improvements for Agricultural Activities.** For all Agricultural Activities, Grantor may, within a Building Envelope, expand or enlarge Improvements existing on the Property as of the Effective Date of this Easement and may install, build or construct, expand, enlarge, maintain, repair, replace, or decommission Improvements not existing as of the Effective Date of this Easement.
- 5.8.2. **Building Envelope Improvements for Nonagricultural Activities.** For personal and domestic uses and activities and other nonagricultural activities within the Building Envelopes, Grantor may expand or enlarge Improvements existing on the Property as of the Effective Date of this Easement and may install, build or construct, expand, enlarge, maintain, repair, replace or decommission Improvements not existing as of the Effective Date of this Easement if Grantor provides Grantee advance written notice of the proposed Improvements as provided for in Section 7.
- 5.8.3. Outside the Building Envelopes, any structure put in place after the effective date of this Easement must be reasonably necessary for Agricultural Activities (excluding Accessory Uses) and must comply with the Purpose and terms of this Easement and with the total impervious surface limit of Section 6.7. Any such structure may not permanently impair the viability of the soil for agricultural production. No structure outside a Building Envelope may utilize a concrete slab, poured concrete foundation, or similar components that would inhibit returning the soil to Agricultural Activities if the structure is removed.
- 5.8.4. **Reservation of Dwelling Unit(s).** Grantor reserves one development right on the Protected Property. According to Jefferson County zoning 18.20.020 in place as of the Effective Date of this Easement, this reserved development right allows the Grantor rights to the use of the single-family dwelling unit (SFDU) existing in Building Envelope 1 as well as an Accessory Dwelling Unit (ADU) to be built at a future date within either Building Envelope 1 or Building Envelope 2 (Exhibit B-Site Map). The existing SFDU shall be utilized for the sole purpose of accommodating the Grantors and their successors in interest to the Land, the farm operator, or the families of such persons, or for accommodating agricultural employees of the owner or operator and their families. The ADU will be limited to a 0.25 acre footprint and shall be subject to the impervious surface limitations and restrictions on new Improvements provided for in Section 6.7. RCO funds are not being used for the 0.25 acre area associated with the future ADU. Therefore, the 0.25 acre area associated with the ADU is not subject to RCO third-party beneficiary rights and any costs associated with the land upon which the ADU is sited shall also not be reimbursed to RCO should this easement be extinguished in part or in whole as described in Section 11 of this Easement.
- 5.8.5. To the extent permitted by applicable law and subject to the limitation on Impervious Surfaces in Section 6.7, Grantor reserves the right to install temporary farmworker housing within Building Envelope 1 or Building Envelope 2 in accordance with an Approved Stewardship Plan.

5.9. **Recreational or Educational Use.** Grantor may engage in, and allow others to engage in, recreational or educational activities on the Property. Recreational uses are limited to uses such as hiking, fishing, horseback riding, and other forms of recreation that do not require site modification to accommodate motorized, mechanical, or electronic accessories. All forms of developed recreation or recreation that adversely impact the Agricultural Conservation Values or Habitat Values are prohibited. All recreational and educational activities on the Property shall be carried out in compliance with the Purpose and terms of this Easement, and in a manner that maintains the primacy of, and remains subordinate to, the farmland character and use of the Property.

5.10. **Forestry Use:** Grantor may remove trees from the Property when required for safety, fire protection, salvage purposes, pest control, disease control, restoration, domestic use, or as necessary to benefit Agricultural Activities ("Forestry Activities"). All Forestry Activities on the Property shall be carried out in compliance with the Purpose and terms of this Easement, and in accordance with an Approved Stewardship Plan. Owner may not engage in or permit any Forestry Activities that would preclude the opportunity for agricultural activity upon the Property. The provisions of this Section 5.10 shall not apply to the commercial production of Christmas trees not subject to the excise tax imposed by Chapter 84.33 RCW.

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

6. PROHIBITED USES AND RESTRICTIONS ON PERMITTED USES

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

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

6.3. **No Subdivision.** Grantor shall keep the property in common ownership. Grantor may not legally or in a "de facto" manner subdivide the Property, which shall include, but not be limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Property is divided into lots.

6.4. Except as specifically provided for in the permitted uses and activities of Section 5, Grantor may not place or construct any buildings, structures, or other Improvements of any kind on the Property outside of a Building Envelope.

6.5. Water Rights.

6.5.1. In furtherance of the Purpose of this Easement, Grantor shall cooperate with Grantee to help assure the maintenance of the Water Rights.

6.5.2. Except as expressly provided in this section, Grantor may not transfer, encumber, sell, lease, or otherwise separate the Water Rights from the Property.

6.5.3. Grantor may not abandon, relinquish, or otherwise lose or forfeit, by action or inaction, any of the Water Rights.

6.5.4. Grantor shall take affirmative actions to avoid such abandonment, relinquishment, loss, or forfeiture, including but not limited to the following: i) exercising the Water Rights by putting them to beneficial use in accordance with Chapter 90.14 RCW; ii) seeking to place or enroll the Water Rights in the Washington State trust water rights program on a temporary basis, provided that any acquisition of the Water Rights by the State shall be expressly conditioned to limit its use to instream purposes and its duration to a term no longer than 10 years; or (iii) seeking to lease the Water Rights for use on land other than the Property for a term no longer than 10 years, with prior written notice to and consent of Grantee, after obtaining approval in accordance with RCW 90.03.380, 90.03.383, 90.03.390, or 90.44.100 for a temporary transfer or change of the Water Rights; provided, however, that any such lease shall require the lessee to make beneficial use of the Water Rights in accordance with Chapter 90.14 RCW and for Agricultural Activities only (collectively "Water Rights Maintenance Actions"). If Grantor is unable to take the Water Rights Maintenance Actions and the Water Rights are under threat of abandonment, relinquishment, loss, or forfeiture, Grantor shall convey ownership of said Water Rights to Grantee for Grantee's use in order to maintain the opportunity for agricultural activity on the Property or elsewhere within the same watershed in Jefferson County.

6.5.5. Any relinquishment, loss, or forfeiture of the Water Rights shall not be deemed or construed to be a waiver of Grantee's rights under this Easement or to defeat the Purpose of this Easement, and shall not otherwise impair the validity of this Easement or limit its enforceability in any way.

6.6. Limitations on Agricultural Use.

6.6.1. The establishment or maintenance of a commercial feedlot is prohibited. For purposes of this Easement, a commercial feedlot is defined as a permanently constructed confined area or facility within which the land is not grazed or cropped annually, and that is used to receive livestock that are confined solely for the purpose of growing or finishing. However, seasonal confinement of animals raised on the Protected Property and year-round confinement for the commercial production of dairy products on the Property are expressly permitted,

and nothing in this Section shall prevent Grantor from leasing pasture for the grazing of livestock owned by others.

6.6.2. Grantor shall not engage in, or permit others to engage in, the commercial production of cultivated marine or freshwater aquatic products on the Property.

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

6.7.1. **Impervious Surfaces Limitation.**

6.7.1.1. As used herein, "Impervious Surfaces" means hard surface areas that either prevent or retard the entry of water into the soil mantle as under natural conditions before development or that cause water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions before development. Impervious Surfaces include, but are not limited to, roofs, walkways, patios, driveways, parking lots, storage areas, areas that are paved, graveled or made of packed or oiled earthen materials, or other surfaces that similarly impede the natural infiltration of surface and storm water. Impervious Surfaces do not include an open uncovered flow control or storage area or water quality treatment facility, provided that the construction and maintenance of such area or facility is consistent with the Purpose and terms of this Easement.

6.7.1.2. The total area of the Property covered by Improvements of any kind and Impervious Surfaces shall be limited to no more than three percent (3%) of the area of the Property; provided, however, that minor unenclosed agricultural improvements such as corrals, hayracks, headgates, fences, ditches, culverts, stock tanks, or other minor agricultural structures ("**Minor Agricultural Improvements**") may be constructed or placed on the Property and not count against this total impervious surface limit. The total area covered by gravel shall be subject to this 3% limitation unless Grantor obtains prior written consent from Grantee as provided in Section 7 to increase the percentage of total surfaces covered by gravel and other impervious surfaces above the 3% limitation; provided however, that the total amount of gravel and other impervious surfaces shall never exceed 6%.

6.7.2. **Limitations on New Improvements Outside a Building Envelope**

6.7.2.1. Outside a Building Envelope, Grantor may not expand or enlarge Improvements existing on the Property as of the Effective Date of this Easement, or install, build, or construct Improvements not existing as of the Effective Date, unless such Improvements are consented to in writing in advance by Grantee as provided for in Section 7 and such Improvements are either (a) Temporary in nature (present on the Property for less than one year); or (b) Reasonably necessary for Agricultural Activities (excluding Accessory Uses) in compliance with the total impervious surface limit of Section 6.7; provided, however, that Grantor may expand or enlarge Minor

Agricultural Improvements without providing such notice or receiving such consent.

6.7.2.2. Nonagricultural Accessory Uses shall not be located outside a Building Envelope and shall not otherwise convert more than one acre of agricultural land to nonagricultural uses.

6.8 **Limitations on Improvements Related to Advertising.** Commercial signs, billboards, or other improvements installed, built, or constructed for the purpose of advertising nonagricultural activities or products are not allowed on the Property, except in connection with the sale or lease of the Property or to state the conditions of access to the Property. Signage consistent with the character of a working farm, and for Agricultural Activities, is allowed on the Property.

6.9. **Limitations on Mining:** Grantor may not conduct, engage in, or permit the commercial mining or commercial extraction of soil, sand, gravel, oil, natural gas, fuel, or any other mineral substance, using any surface mining method. Grantor may conduct or engage in mineral extraction if such extraction is not accomplished by any surface mining method and the method of extraction has a limited, localized impact on the land that does not damage, impair or endanger the Agricultural Conservation Values or Habitat Values of the Property. No extraction permitted pursuant to this Section shall occur without prior written notice to and consent of Grantee as provided for in Section 7. Notice shall include a description of the type of extraction, the areas within which such extraction shall occur, and the anticipated impact thereof.

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

6.10.1. Notwithstanding anything in this Section or Section 6.9 to the contrary, soil, sand, gravel, rock, stone, aggregate, or sod may be extracted without further consent from Grantee so long as such extraction is solely for use on the Property, is in conjunction with permitted Agricultural Activities, is revegetated promptly after extraction is complete, and is accomplished in a manner that is consistent with the Purpose and terms of this Easement.

6.11. **No Significant Erosion or Pollution:** Grantor may not engage in any use or activity that causes or is likely to cause significant soil degradation or erosion or significant contamination or pollution of any soils or surface or subsurface waters on the Property.

6.12. **Limitations on Waste Disposal.**

6.12.1. Grantor may accumulate and store ashes, garbage, or other waste ("Trash") on the Property only if such accumulation occurs in the normal course of domestic or Agricultural Activities on the Property. Long-term accumulation of Trash (i.e., exceeding one calendar year in time) may occur within areas designated by Grantor with prior notice to and written consent of Grantee as long

as such waste is either destined for transfer off-site, or for incineration on-site, or, in the case of biodegradable material, composted on-site.

6.12.2. Grantor shall not otherwise dispose of or Release (or permit the disposal or release of) any Hazardous Substance on the Property. The term "Release" shall mean any release, generation, treatment, disposal, dumping, burying, or abandonment. The term "Hazardous Substance" shall mean 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 which are subject to regulation as hazardous, toxic, dangerous, or harmful or as a pollutant by any federal, state, or local law, regulation, statute, or ordinance, including, but not limited to, petroleum or any petroleum product. The term "Hazardous Substances" shall not include biosolids, herbicides, pesticides, rodenticides, insecticides, and fertilizers applied in accordance with federal, state, and local law. Any storage of Hazardous Substances shall be in accordance with federal, state, and local law.

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

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

6.15. **Limitation on Transfers.**

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

6.15.2. Grantor shall not undertake or permit any Transfer of any rights in the Property without prior notice to and consent of Grantee, and notice to Jefferson County, as provided for in Section 7; provided, however, that such consent shall not be withheld unless Grantee and Jefferson County determine that the proposed Transfer would be inconsistent with the Purpose and terms of this Easement.

6.15.3. The following shall require notice to but shall not require consent of Grantee: i) Any mortgage, deed of trust, or similar document providing security for an indebtedness of Grantor, provided that such security interest shall be subject and subordinate to this Easement; ii) leases for telecommunications installations

or alternative energy installations within a Building Envelope, as provided for in Section 5; iii) temporary transfers or leases of the Water Rights pursuant to Section 6.5.4; or iv) any gift, bargain, sale or devise of fee simple absolute title to the Property.

6.15.4. Owner agrees to: (1) incorporate by express reference the terms of this Easement in any deed or other legal instrument by which Grantor divests Grantor of any interest in all or a portion of the Property; and (2) describe this Easement in and append it to, any executory contract for the transfer of any interest in the Property. Grantor further agrees to give written notice to Grantee and to Jefferson County Department of Environmental Health of the transfer of any interest at least 30 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 such transferee's representative. The failure of Grantor to perform any act required by this Section shall not impair the validity of this Easement or limit its enforceability in any way.

6.15.5. Rights and Obligations Upon Transfer. Grantor's rights and obligations under this Easement terminate upon transfer of Grantor's interest in the Property or this Easement, as the case may be, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

7. NOTICE AND CONSENT

7.1. Notice.

7.1.1. **Grantee.** Certain provisions of this Easement require Grantee to give notice to Grantor prior to undertaking certain activities. Whenever such notice is required, and no other timeline for notice is set forth elsewhere in this Easement, Grantee shall provide such notice in writing not less than thirty (30) days prior to the date Grantee intends to undertake the use or activity in question..

7.1.2. **Grantor.** Certain provisions of this Easement require Grantor to give notice to Grantee prior to undertaking certain permitted uses and activities (e.g., Sections 5.3, 5.6.2, 5.8.2, 6.15.3, 6.15.4). The purpose of requiring Grantor to notify Grantee prior to undertaking these permitted uses and activities is to afford Grantee an adequate opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the Purpose of this Easement. Whenever such notice is required, and no other timeline for notice is set forth elsewhere in this Easement, Grantor shall provide such notice in writing not less than ninety (90) days prior to the date Grantor intends to undertake the use or activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the terms of this Easement and the Purpose thereof. Upon receipt of such notice, Grantee shall immediately forward a copy to RCO.

7.2. Consent

- 7.2.1. **Consent by Beneficiaries Required.** Wherever in this Easement Grantee's consent is required, such consent is also required of RCO.
- 7.2.2. **Consent Not Unreasonably Withheld.** Wherever in this Easement a Party's or a Beneficiary's consent is required, such consent may be withheld only upon a reasonable determination by the consenting party that the action as proposed would be inconsistent with the Purpose or terms of this Easement and cannot be modified to make the proposed action consistent with the Purpose and terms of this Easement. Any consent may include reasonable conditions consistent with the Purpose and terms of this Easement that must be satisfied in undertaking the proposed action, use, or activity.
- 7.2.3. **Timeline for Consent.** Whenever in this Easement Grantor's or Grantee's consent is required, and no other timeline for consent is set forth elsewhere in this Easement, the party whose consent is required shall grant or withhold its consent in writing within the following time periods:
- 7.2.3.1. Grantor. Where consent by Grantor is required under this Easement, Grantor shall grant or withhold its consent within sixty (60) days of receipt of a written request for consent.
- 7.2.3.2. Grantee. Where consent by Grantee is required under this Easement, Grantee shall grant or withhold its consent within sixty (60) days of receipt of a written request for consent.
- 7.2.4. **Failure to Grant or Deny Consent Within the Required Time.** When consent is required under this Easement, and when such consent is not granted or denied within the time period and manner set forth in this Section 7, the party requesting consent may conclusively assume the other party's disapproval of the proposed action, use, or activity in question. The Parties and RCO agree that failure to grant or withhold consent within the required time on any proposed action, use or activity shall not be deemed or construed to be a waiver of Grantee's or RCO's rights under this Easement with respect to any future proposed action, use or activity.
- 7.3. **Optional consultation.** If Grantor is unsure whether a proposed use or activity is prohibited by this Easement, Grantor may consult Grantee by providing written notice to Grantee describing the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose of this Easement and to provide comments thereon to Owner. This Section 7.3 does not itself impose a requirement of prior consent of the activity described in any such notice.
- 7.4. **Addresses for Notices.** Any notice, demand, request, consent, concurrence, approval, or communication that any party desires or is required to give to the other shall be in writing either served personally or sent by registered mail or overnight courier with proof of delivery, addressed as follows (or to such other address as any party from time to time shall designate by written notices to each other party):

To Grantor: Paul and Mary Schmidt

255 Jakeway Road
Quilcene, WA 98376
(360) 765-4599
e-mail: mschmidt47@centurylink.net

To Grantee: Jefferson Land Trust
1033 Lawrence Street
Port Townsend WA 98368
(360) 379-9501
e-mail: info@saveland.org

To RCO: Washington State Recreation and Conservation Office
1111 Washington St SE
PO Box 40917
Olympia, WA 98504-0917
(360) 902-3000
(360) 902-3026

To Jefferson County:
Jefferson County Department of Environmental Health
615 Sheridan Street
Port Townsend, WA 98368

8. DISPUTE RESOLUTION

8.1. Preventive Discussions.

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

8.1.2. Grantee shall invite each Beneficiary to this Easement to such preventive discussion meetings provided for in this Section 8.

8.2. **Mediation.** If the Parties disagree as to the consistency of any proposed use or activity with the Purpose or terms of this Easement and the Parties are unable to resolve such disagreement through unassisted preventive discussions between themselves, and if Grantor agrees not to proceed with the use or activity pending resolution of the dispute, Grantor or Grantee may refer the dispute to mediation by request made in writing upon the other and with notice to RCO (RCO shall have full discretion to participate or not to participate in the mediation). Within ten (10) business days of the receipt of such a request, the parties to the mediation ("Mediation Parties") shall select a single impartial mediator. Mediation shall then proceed in accordance with the following guidelines:

8.2.1. **Purpose.** The purpose of the mediation is to: (a) promote discussion among the Mediation Parties; (b) assist the Mediation Parties to develop and exchange pertinent information concerning the issues in dispute; and (c) assist the Mediation Parties to develop proposals which enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or de facto modification or amendment of the terms, conditions or restrictions of this Easement.

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

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

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

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

8.3. **Arbitration.** The Parties and RCO may by mutual agreement submit disputed matters (other than extinguishment of this Easement which shall occur only in accordance with Section 11 below) to arbitration upon such rules of arbitration as the Parties may agree.

9. GRANTEE'S REMEDIES

9.1. **Notice of Non-Compliance.** If Grantee determines that Owner is in violation of the terms of this Easement or that a violation is likely to occur, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the Purpose or terms of this Easement, to restore the portion of the Property so injured to its prior or potential condition in accordance with a plan to which Grantee has given consent in writing.

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

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

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

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

9.3. **Grantee's Action.** Grantee may bring an action at law or in equity, or both, in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary and as allowed under the applicable civil rules, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any of the Agricultural Conservation Values or Habitat Values protected by this Easement, including damages for the loss of the Agricultural Conservation Values and/or Habitat Values; and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, Grantee, in its sole and absolute discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property provided, however, that Grantee shall obtain RCO's consent before applying any such damages. All such actions for injunctive relief may be taken without Grantee being required to post bond or provide other security.

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

9.5. **Nature of Remedy.** Grantee's rights under this Section 9 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate, and that Grantee shall be entitled to the injunctive relief described in this Section 9 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 proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section 9 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. The provisions of Section 9.6 shall not be interpreted to preclude Grantee from obtaining injunctive relief.

- 9.6. **Damages.** Inasmuch as the actual damages to the Agricultural Conservation Values and/or Habitat Values that could result from a breach of this Easement by Grantor would be impractical or extremely difficult to measure, the Parties agree that the money damages Grantee is entitled to recover from Grantor shall be, at Grantee's election, the higher of : (i) the amount of economic gain realized by Grantor from violating the terms of the Easement; or (ii) the cost of restoring any Agricultural Conservation Values and/or Habitat Values that have been damaged by such violation. In the event Grantee chooses the second of these two measures, Grantor agrees to allow Grantee, its agents or contractors, to enter upon the Property and conduct restoration activities.
- 9.7. **Costs of Enforcement.** In the event Grantor or Grantee finds it necessary to bring an action at law or other proceeding against the other party to enforce or interpret any of the terms, covenants, or conditions of this Easement, the prevailing party in any such action or proceeding shall be paid all costs and reasonable attorneys' and consultants' fees by the other party and all such costs and attorneys' and consultants' fees shall be included in any judgment secured by such prevailing party. This paragraph does not apply to the municipal corporation that is Jefferson County.
- 9.8. **Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. Jefferson County has no obligation to participate in or assist with any enforcement of this Easement.
- 9.9. **Waiver of Certain Defenses.** Grantor acknowledges that this Easement has been carefully reviewed by Grantor and that Grantor has consulted with and been advised by legal counsel regarding its terms and requirements. In full knowledge of the provisions of this Easement, Grantor hereby waives any claim or defense it may have against Grantee or its successors in interest under or pertaining to this Easement based upon abandonment, adverse possession or prescription relating to the Property or this Easement. Except for the foregoing, Grantor specifically retains any and all rights it has under the law as owner of the Property, including, without limitation, the right to bring claims against Grantee for any breach by Grantee of the terms of this Easement.
- 9.10. **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Property or to recover damages for any injury to or change in the Property resulting from actions by a trespasser upon the Property or causes beyond Grantor's control, including, without limitation, natural disaster, fire, flood, storm, pest infestation, earth movement, and climate change, and from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. In the event the terms of this Easement are violated by acts of trespassers, and Grantor has not undertaken suit itself, Grantor agrees, at Grantee's option, to assign its right of action

to Grantee or to appoint Grantee its attorney in fact, for purposes of pursuing enforcement action against the responsible parties. Jefferson County has no obligation to participate or assist with said enforcement.

- 9.11. **Compliance Certificates.** Upon request by Grantor, Grantee shall, as soon as possible and no later than thirty (30) days after receipt of such request, execute and deliver to Grantor any document, including an estoppel certificate, which certifies, to the best of Grantee's knowledge, Grantor's compliance or lack thereof with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as requested by Grantor. Such certification shall be limited to the condition of the Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within forty-five (45) days of receipt of Grantor's written request and payment therefor. Any Beneficiary to this Easement shall not be estopped from claiming or enforcing a violation of this Easement unless such Beneficiary has also executed the Compliance Certificate.

10. LIABILITIES, TAXES, AND ENVIRONMENTAL COMPLIANCE

- 10.1. **Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage. Such insurance shall include Grantee's interest, name Grantee as an additional insured, and provide for at least thirty (30) days' notice to Grantee before cancellation and that the act or omission of one insured will not invalidate the policy as to the other insured party. The Parties release and relieve the other, and waive their entire right to recovery for loss or damage to the extent that the loss or damage is covered by the injured party's insurance. This waiver applies whether or not the loss is due to the negligent acts or omissions of Grantor or Grantee. Grantor remains solely responsible for obtaining any applicable governmental permits and approval for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Property free of any liens arising out of any work performed for, material furnished to, or obligations incurred by Grantor; provided, however, that the Property shall be deemed to be free of such liens if i) Grantor or Grantee, as the case may be, is diligently challenging the application of such liens to the Property; or ii) such liens are subordinated to this Easement and do not require any action or inaction inconsistent with the Purpose and terms of this Easement.
- 10.2. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.
- 10.3. **Liability.** Each party to this Easement shall be responsible for its own acts and/or omissions and those of its members, directors, officers, employees, agents, and

contractors. No party to this Easement shall be responsible for the acts and/or omissions of entities or individuals not a party to this agreement.

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

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

10.4.2. There has been no release, dumping, burying, abandonment or migration from off-site on the Property of any substances, materials, or wastes that are or are designated as, hazardous, toxic, dangerous, or harmful 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;

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

10.4.4. There is no pending or threatened litigation affecting the Property or any portion of the Property that will materially impair the Agricultural Conservation Values or Habitat Values of any portion of the Property. 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 violations 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.

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

10.6. Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee or any Beneficiary to this Easement to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive

Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA").

11. SUBSEQUENT TRANSFER OR EXTINGUISHMENT

11.1. Extinguishment.

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

11.1.2. The amount of the proceeds to which Grantee and any Beneficiary to this Easement shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at the time, in accordance with Section 11.3. Grantee shall use all such proceeds for the acquisition of property interests that are substantially equivalent to those conveyed by this Easement. Grantee shall consult with and receive the approval of RCO in the selection of any replacement property interests. Upon acquisition of such replacement property interests, Grantee shall convey to RCO and Jefferson County the same or substantially equivalent rights as provided for in this Easement.

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

11.2. **Condemnation.** If the Easement is taken, in the whole or in the part, by the exercise of the power of eminent domain, Grantee, RCO, and Jefferson County shall be entitled to compensation in accordance with Section 11.3, for the value of the Easement taken; and Grantor shall be entitled to compensation in accordance with applicable law for the value of the underlying fee title and improvements taken. In the event that Section 11.3. violates applicable law, then the proceeds to Grantor, Grantee, and RCO shall be divided in accordance with applicable law. In the event that Grantee is the recipient of the proceeds from any condemnation, then Grantee shall disburse to RCO and to Jefferson County their respective shares of the proceeds pursuant to Section 11.4 as soon as is practicable.

11.3. Valuation

11.3.1. This Easement constitutes a real property interest immediately vested in Grantee. For purposes of this Section, the Parties stipulate that this Easement has a fair market value determined by multiplying (a) the then fair

market value of the Property unencumbered by the Easement and the Restrictive Easement, at the time of termination or extinguishment, as determined by an appraisal that meets RCO requirements for appraisals, by (b) the ratio of the value of the Easement at the time of this grant to the value of the Property, unencumbered by the Easement and the Restrictive Easement, at the time of this grant.

11.3.2. For purposes of this Section, the Parties agree that the ratio of the value of the Easement to the value of Grantor's property unencumbered by the Easement and the Restrictive Easement is evidenced by that certain real property appraisal prepared by SH&H Valuation and Consulting, dated July 27, 2023, and supplemental letter, dated August 22, 2023, on file with Grantee. This ratio is 0.405 and shall remain constant.

11.4. **Distribution of Proceeds.** In the event of extinguishment of this Easement pursuant to Section 11.1, condemnation of this Easement pursuant to Section 11.2, or damages received by Grantor in an amount equal to the fair market value of this Easement pursuant to Section 9.4, any proceeds attributable to the value of the Easement shall be distributed as follows: RCO is entitled to 44% and Jefferson County is entitled to 7% of any such proceeds. Grantee shall use all such remaining proceeds in a manner consistent with the Purpose of this Easement.

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

12. AMENDMENT

12.1. **Background.** Grantor and Grantee have determined, in good faith, to articulate herein the limitations of any permissible modifications to this Easement. Grantor and Grantee recognize that natural conditions, landscapes, uses, and technologies change over time. Grantee and Grantor recognize that unforeseen or changed future circumstances may arise which makes it beneficial or necessary to take certain action in order to ensure the continued protection of the Agricultural Conservation and Habitat Values of the Property and to guarantee the perpetual nature of this Easement. Additionally, proposed activities may require the exercise of discretion by Grantee, as further described below. This Section 12 therefore ensures that Grantee protects the Agricultural Conservation Values and Habitat Values of the Property in perpetuity.

- 12.2. **Purpose.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, the Parties are free to jointly amend this Easement provided that the Parties first obtain the written consent of RCO. Grantee has no obligation to agree to any modification of this Easement. No modification may adversely affect the perpetual duration of this Easement or the perpetual protection of its Agricultural Conservation Values and Habitat Values.
- 12.3. **Amendment Requirements.** Any such amendment shall be consistent with the Purpose of this Easement, shall not affect the qualification of this Easement or the status of Grantee under any applicable laws, and shall not shorten the duration of this Easement. Grantee may not consent to any amendment of this Easement unless Grantor submits a written request for amendment pursuant to Grantee's existing amendment policy and such amendment otherwise qualifies under Grantee's policy then in effect respecting conservation easement amendments. The effect of such amendment shall be at least neutral with respect to or enhances the Agricultural Conservation and Habitat Values, shall be consistent with the Agricultural Conservation and Habitat Values of this Easement, shall comply with I.R.C. Section 170(h) and any regulations promulgated pursuant to such section, and all applicable federal, state, and local laws, shall be consistent with alterations to the land, then the Baseline Documentation shall be supplemented appropriately to reflect the modification scope, scale, and intensity. The supplemented documentation shall be acknowledged in writing by Grantor and Grantee as memorializing the condition of the Property as of the date of the amendment or discretionary approval.
- 12.4. **Recording.** Grantor and the Grantee shall execute any amendment approved after following the procedures in this section, subject to review, as necessary, and shall be recorded in the official records of Jefferson County, Washington, and any other jurisdiction in which recording may be required.
- 12.5. **Form.** Any modification that Grantee determines in consultation with RCO to be beneficial or necessary, shall be in the form of either (i) an amendment, in the case of a permanent modification of this Easement, including but not by way of limitation, a clerical or technical correction or modification of a reserved right; or (ii) a discretionary approval, waiver, or consent in the case of a temporary activity or impact relating to the maintenance or management of the Property which does not require a permanent modification of the Easement. All amendments and discretionary actions shall be subject to this Section. Nothing in this Section, however, shall require Grantor or Grantee to consult or negotiate regarding, or to agree to any amendment or discretionary approval, consent, or waiver.

13. ASSIGNMENT

- 13.1. **Assignment.** Grantee's Interest. Grantee's interest in this Easement is transferable with prior written notice to and consent of RCO, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified holder at the time of transfer under RCW 64.04.130, as amended, and a qualified recipient of grant funds from the farm and forest account under RCW 79A.15.130. Grantee

shall not assign this Easement without notice in writing to, and consent of RCO and Jefferson County, which consent shall not be unreasonably withheld. As conditions of such transfer, Grantee shall require that assignee (a) continue to carry out the Purpose of this Easement and (b) comply with the terms of the RCO Grant Agreement, as described in Section 14. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment. The assignment shall not be valid without such notice; provided, however, that the failure of Grantee to give such notice shall not impair the validity of this Easement or limit its enforceability in any way.

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

14. **SUCCESSION.** If at any time it becomes impossible for Grantee to ensure compliance with the covenants contained herein then Grantee's rights and duties hereunder shall become vested and fall upon: (a) The Trust for Public Land; or (b) Such other entity, with purposes similar to Grantee's, authorized to acquire and hold conservation easements under RCW 64.04.130 and RCW 84.34.250 (or any successor provisions then applicable), and a qualified organization under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provisions then applicable); provided that if such vesting in any of the entities named above is deemed to be void under the Rule Against Perpetuities, the rights and obligations under this Easement shall vest in such organization as a court having jurisdiction shall direct, pursuant to applicable Washington law and the Internal Revenue Code and with due regard to the Purpose of this Easement.

15. **RCO THIRD PARTY RIGHT OF ENFORCEMENT**

- 15.1. RCO is hereby granted third party right of enforcement of this Easement. As such, RCO may exercise all of the rights and remedies provided to Grantee herein, and is entitled to all of the indemnifications provided to Grantee in this Easement. RCO and Grantee each have independent authority to enforce the terms of this Easement; provided, however, that RCO expects that Grantee shall have primary responsibility for monitoring and enforcement of the Easement. In the event that RCO and Grantee do not agree as to whether Grantor is complying with the terms of the easement, RCO or Grantee may proceed with enforcement actions without the consent of the other. If RCO elects to enforce the terms of this Easement, it shall first follow the dispute resolution process and remedies described in Sections 8 and 9 above; provided, however, that RCO shall not be obligated to repeat any non-judicial dispute resolution steps already taken by Grantee.
- 15.2. This third party right of enforcement does not extend to any other third party and will automatically transfer to another State agency charged with maintaining, preserving and/or restoring agricultural lands in the event RCO is dissolved or reorganized.
- 15.3. In the event that the Easement is transferred or assigned without the consent of RCO, which consent shall not be unreasonably withheld, RCO may require that Grantee pay to RCO, at RCO's election, the higher of (i) an amount equal to the fair

market value of this Easement, which shall be determined as provided in Section 11.3 and distributed as provided in Section 11.4; or (ii) an amount equal to the Total Project Cost as specified in the RCO Grant Agreement with interest due and payable from the date of breach at the rate provided for in RCW 43.17.240, as may be amended from time to time.

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

16. JOINT ENFORCEMENT

- 16.1. Before Grantee or RCO exercises its rights to undertake mediation, arbitration, or legal action as provided for in Sections 8 and 9, the party contemplating such action agrees to confer with the other parties holding enforcement rights under this Easement as to whether they will join the mediation, arbitration or legal action and share costs and expenses related to such action; provided, however, that this agreement to confer shall not be construed as a limitation on the ability of Grantee or RCO to exercise its enforcement and other rights under this Easement. If Grantee and/or RCO decide to join in the action and share costs and expenses related to the action, the parties joining in the action and sharing costs and expenses related to the action shall apply any recovery to reimburse such parties for their costs and expenses; provided, however, that any amount received based on loss of value to the easement, or resulting from condemnation and/or extinguishment of the Easement, shall be distributed to RCO only after reimbursing such parties for their costs and expenses.
- 16.2. If Grantee or RCO chooses not to undertake mediation, arbitration or legal action as provided for in Sections 8 and 9, and/or share costs and expenses related to such action, such party shall not be entitled to any recovery for enforcement costs; provided, however, that any amount received based on loss of value to the easement, or resulting from condemnation and/or extinguishment of the Easement, shall be distributed in accordance with Section 11.4 only after first reimbursing any

party for its costs and expenses that are not otherwise separately paid as part of any arbitration award or judgment.

17. RECORDATION

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

18. NO MERGER

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

19. GENERAL PROVISIONS

19.1. **Effective Date.** The Effective Date of this Easement shall be the date on which Grantor executed this Easement.

19.2. **Governing Law and Venue.** The laws of the State of Washington and applicable federal law shall govern the interpretation and performance of this Easement. By executing this Easement, Grantor acknowledges the jurisdiction of the courts of the State of Washington in this matter. In the event of a lawsuit involving this Easement, venue shall be proper only in Thurston County or in the County where the Property is located.

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

19.4. **Severability.**

19.4.1. Except as provided in Section 19.4.2 below, if any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid or unenforceable by any court of competent jurisdiction or is superseded by state or federal legislation, rules, regulations or decision, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid or unenforceable, as the case may be, shall not be affected thereby.

19.4.2. If any material provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid or unenforceable by any court of

competent jurisdiction or is superseded by state or federal legislation, rules, regulations or decision, so that the intent of these provisions is frustrated, the parties agree to immediately negotiate a replacement provision to fulfill the intent of the superseded provisions consistent with the Purpose of this Easement and applicable law.

- 19.5. **Entire Agreement.** This instrument sets forth the entire agreement of the Parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 12.
- 19.6. **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- 19.7. **"Grantor" – - "Grantee".** The terms "Grantor," and "Grantee," wherever used in this instrument, and any pronouns used in the place thereof, shall be held to mean and include, respectively the above-named Grantor and Grantor's successors and assigns, the above-named Grantee and its successors and assigns. The term "Grantor" shall also include any party taking ownership of the Property, or any portion thereof, subsequent to the foreclosure of any mortgage or deed of trust.
- 19.8. **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the Parties and their respective successors and assigns, and to any party taking ownership of the Property, or any portion thereof, subsequent to the foreclosure of any mortgage or deed of trust, and shall continue as a servitude running in perpetuity with the Property.
- 19.9. **Captions.** The captions in this instrument have been inserted solely for convenience and ease of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- 19.10. **Counterparts.** The Parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both Parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- 19.11. **Authority.** The individuals signing below, if signing on behalf of any entity, represent and warrant that they have the requisite authority to bind the entity on whose behalf they are signing.
- 19.12. **Recitals.** The Parties agree that the terms and recitals set forth in Section 1 (among other terms of this Easement) are material to this Easement, and that each Party has relied on the material nature of such terms and recitals in entering into this Easement. Each term and recital set forth in Section 1 is fully incorporated into this Easement.

20. SCHEDULE OF EXHIBITS

Exhibit A. Legal Description of Property Subject to Easement.

Exhibit B. Site Map.

Exhibit C. Water Rights.

Exhibit D. Permitted Exceptions.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns, forever.

REMAINDER OF PAGE IS INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this _____
day of _____, 2024.

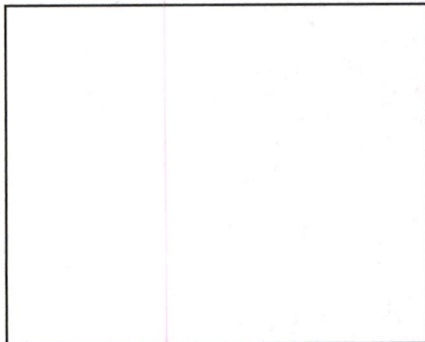
Paul A. Schmidt

Mary E. Schmidt

STATE OF WASHINGTON)
) ss.
COUNTY OF JEFFERSON)

This instrument was acknowledged before me by PAUL A. SCHMIDT and MARY E. SCHMIDT, and said persons acknowledged that they signed this instrument and acknowledged it to be the free and voluntary act of such parties 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

Jefferson Land Trust does hereby accept the above Grant Deed of Agricultural Conservation Easement.

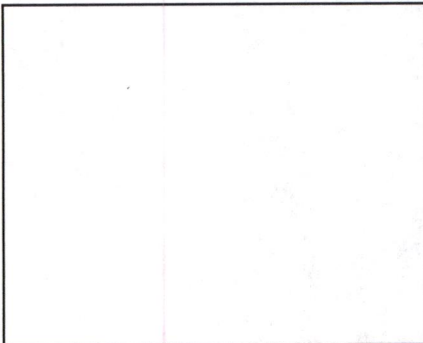
Dated: _____

By _____
Sarah Spaeth
Director of Conservation and Strategic Partnerships

STATE OF WASHINGTON)
) ss.
COUNTY OF JEFFERSON)

I certify that I know or have satisfactory evidence that Sarah Spaeth is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Director of Conservation and Strategic Partnerships of Jefferson Land Trust 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

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EXHIBIT A

Legal Description

Parcel 1:

The Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$, in Section 18, Township 27 North, Range 1 West, W.M. EXCEPTING THEREFROM that portion as conveyed to Padraic Burke, et al, by Real Estate Contract recorded under Jefferson County Auditor's File No. 341886, and that portion conveyed to Jefferson Land Trust, a Washington nonprofit corporation by deed recorded February 07, 2013, under recording No. 573509, both records of Jefferson County, Washington;

Parcel 2:

Government Lot 2 lying northerly of East Quilcene County Road; EXCEPTING THEREFROM the following described Parcel A AND that portion as conveyed to Jefferson Land Trust, a Washington nonprofit corporation by deed recorded February 07, 2013 under recording No. 573509, records of Jefferson County, Washington; Parcel A: Beginning at the West $\frac{1}{4}$ corner of Section 18, Township 27 North, Range 1 West, W.M.: thence East on the East-West centerline, a distance of 2152.0 feet; thence South parallel to the North-South centerline, a distance of 110.0 feet to the True Point of Beginning; thence continuing South, parallel to the North-South centerline, a distance of 200.0 feet; thence West, parallel to the East-West centerline, a distance of 227.0 feet; thence North, parallel to the North-South centerline, a distance of 200.0 feet; thence East, parallel to the East-West centerline, a distance of 277.0 feet to the True Point of Beginning.

All situate in the County of Jefferson, State of Washington.

EXHIBIT B

Site Map(s)

EXHIBIT C

Water Rights

The subject property has a Certificate of Surface Water Right issued by the Department of Water Resources dated May 17, 1955 (Permit Number 10061).

Additionally, on August 1, 1995, the property owners entered into an agreement with the Washington State Department of Fisheries that would limit access points to the stream by livestock to three points.

These documents are not able to be attached as an exhibit to the Conservation Easement due to Jefferson County Auditor's formatting requirements.

A copy of the documents can be found in the Schmidt Farm Baseline Conditions Report and on file at the office of the Grantee.

EXHIBIT D

Permitted Exceptions

11. The lands described herein have been classified as open space and are subject to the provisions of RCW 84.34 which include the requirement of a continuation of restricted use in order to continue to present assessment rate. A change in use can cause an increased assessment rate for present and past years.

Application Recorded: September 15, 1976

Recording No.: 2369110

Any sale or transfer of all or a portion of said property requires execution of a notice of compliance form by the new owner and submission to and approval by the County Assessor prior to such sale.

Note: If the proposed transaction involves a sale of the property so classified or designated, there will be additional requirements regarding the real estate excise tax affidavit. Please contact Jefferson County Assessor or the company for additional information.

12. Easement, including terms and provisions contained therein: Recorded: October 26, 1918

Recording No.: 42866

For: Road and pipe line

The legal description in said easement is not sufficient to determine its exact location within said premises.

13. Easement, including terms and provisions contained therein: Recorded: April 06, 1931

Recording No.: 65919

In favor of: Puget Sound Power and Light Company

For: Electric transmission and/or distribution system

The legal description in said easement is not sufficient to determine its exact location within said premises.

14. Right to make necessary slopes for cuts or fills upon said premises for East Quilcene Road as granted by deed recorded under Recording No. 144436

15. Easement and the terms and conditions thereof:

Disclosed by: Instrument recorded under Recording No. 223834

Purpose: Well and necessary appurtenances

16. Easement and the terms and conditions thereof:

Disclosed by: Instrument recorded under Recording No. 284387

Purpose: Ingress, egress and utilities

17. Reservations contained in deed recorded under Recording No. 284387, a copy of which is hereto attached.

18. Conservation Easement for the maintenance of water quality, including terms and provisions contained therein: Recorded: October 27, 1988
Recording No.: 317830

19. Notice to Title and the Terms and Conditions thereof: Recorded: January 28, 1998
Recording No.: 407321
Regarding: Alternative technology system

20. Easements and First Right of Refusal and the terms and provisions contained therein recorded on February 02, 2002, under Recording No. 452252

Said agreement was amended by instrument recorded July 07, 2020 under Recording No. 634023

21. Conditions, notes, easements, provisions contained and/or delineated on the face of the surveys recorded under
Jefferson County Recording Nos. 560366 and 563826

Exhibit B

2023 Conservation Futures Schmidt Farm Project Application



2023 Jefferson County Conservation Futures Program Property Acquisition Project and/or Operations and Maintenance Project Application

Please complete the following application in its entirety. Be sure to answer "N/A" for questions that don't apply to the project. Incomplete applications will not be accepted for consideration.
Unless directed otherwise, use as much space as needed to answer each question.
Contact program staff at 379-4498 or tpokorny@co.jefferson.wa.us with questions.

Background and Eligibility Information

1. Project Title Schmidt Farm – Schmidt Farm - Phase II of Quilcene Headwaters to Bay project

2. Conservation Futures Acquisition Request: \$55,000

Conservation Futures O&M Request: \$5,000

3. Total Conservation Futures Request: \$60,000

4. Please indicate the type of interest contemplated in the acquisition process.

☐ Warranty Deed

☒ Easement

☐ Other (Please describe below.)

In whose name will the property title be held after acquisition?

Paul and Mary Schmidt with a conservation easement held by Jefferson Land Trust, and a REPI easement held by the US Department of Defense.

5. Applicant Information

Name of Applicant or Organization: Jefferson Land Trust

Contact: Sarah Spaeth

Title: Director of Conservation & Strategic Partnerships

Address: 1033 Lawrence St. Port Townsend, WA 98368

Phone: (360) 379-9501, ext. 101 Fax: () - , ext.

Email: sspaeth@saveland.org

6. Sponsor Information: (if different than applicant) _____

Organization Name: _____

Contact: _____

Title: _____

Address: _____

Phone: () - , ext. Fax: () - , ext.

Email: _____

This application was approved by the sponsor's legally responsible body (e.g., board, council, etc.) on February 21, 2023

7. Project Location

Street Address or Description of Location: 255 Jakeway Rd. Quilcene 98376

Driving Directions from Port Townsend: Take Center Road south to East Quilcene Road. Head east to

Jakeway Road (just past head of Quilcene Bay). Turn left onto Jakeway Road and follow to 255 Jakeway at the end.

Section: 18

Township: 27 N

Range: 1W

Assessor's Parcel Number(s): 701 182 005, 701 183 003

Please differentiate current and proposed ownership of each APN and indicate if the parcel is to be acquired with CF funds or used as match.

Both parcels listed above are to be preserved with a conservation easement held by Jefferson Land Trust, along with a Navy Readiness and Environmental Protection Integration (REPI) easement.

Please list the assessed values for each property or APN, as applicable.

701 182 005 - \$716,423 current market value assessed (includes improvements), and the total current use taxable value at \$554,358

701 183 003 - \$182,175 current market value, with total current use taxable value at \$6,334

8. Existing Conditions

New Site: Yes No ☒

Number of Parcels: 2

Addition to Existing Site: Yes ☒ No

Acres to Be Acquired: 67

Total Project Acreage (if different): ~195-acres (adjacent Jefferson Land Trust Preserve on Donovan Creek + Mahan conservation easement property + Schmidt project)

Current Zoning: AP1:20

Existing Structures/Facilities: One residence, a loafing shed/shop, hay barn, silo, covered bridge and other small outbuildings.

Any current covenants, easements or restrictions on land use: None

Current Use: Residential and agricultural uses

Waterfront (name of body of water): Jakeway Creek

Shoreline (linear feet): Approximately 2068 ft of Jakeway Creek

Owner Tidelands/Shorelands: Directly adjacent to Quilcene Bay estuary and Donovan Creek riparian habitat

9. Current Property Owner **X** is ___ is not a willing seller.

Project Description

10. In 1,000 words or less, provide a summary description of the project, the match, overarching goal, and three top objectives. For each objective, identify the metric(s) that will be measured to determine if the objective is being achieved and the timeframe for meeting the identified metric. Include information about the physical characteristics of the site that is proposed for acquisition with Conservation Futures Program funds including: vegetation, topography, surrounding land use, and relationship to parks, trails, and open space. Describe the use planned for the site, any development plans after acquisition (including passive development), characteristics of the site which demonstrate that it is well-suited to the proposed use, and plans for any structures currently on the site. If applicable, describe how the site project relates to a larger conservation program (please identify), and whether the project has a plan, schedule and funding dedicated to its completion. Please also list any important milestones for the project or critical dates, e.g. grant deadlines. List the dates and explain their importance. Please attach a spreadsheet of the budget.

Jefferson Land Trust is seeking Conservation Futures funding in the amount of \$60,000 for Phase II of the Quilcene Headwaters to Bay project, located at the head of Quilcene Bay. The goal of the project is to protect valuable farmland with prime soils and riparian habitat along Jakeway Creek as it flows from the forested headwaters on the adjacent Mahan property, preserved in 2020, through the Schmidt Farm to the Land Trust's Lower Donovan Creek Preserve and tidal areas of Quilcene Bay (please see attached maps for full project geography). The Schmidt property consists of mostly pastureland, is one of the largest agricultural parcels in the Quilcene area, and the gently sloped topography and prime agricultural soils contribute to its economic viability as a farm, making it a desirable addition to the larger conserved acreage of both farmland and habitat at the head of Quilcene Bay. Quilcene Bay (less than 500ft from the Schmidt Farm) provides rich habitat for salmonids including federally-threatened Hood Canal summer chum salmon, Puget Sound Chinook salmon, steelhead trout and coastal Puget Sound bull trout, as well as Strait of Georgia coho salmon (federal species of concern), pink salmon, and cutthroat trout. The salt marshes and Quilcene Bay also support eelgrass and dune grass beds that provide cover and habitat for spawning forage fish, native shellfish, crabs, beavers, river otter, harbor seals and numerous shore and water birds including at least nine federal or state listed species. The Land Trust and other partners including the Hood Canal Salmon Enhancement Group, Jefferson County Conservation District (JCCD), Jefferson County, and private landowners have been working on preserving and restoring upland forests, wetland, riparian and estuarine habitat of Quilcene Bay for nearly 30 years, and this project represents a unique chance to preserve a missing puzzle piece of prime agricultural land and habitat and expand on those earlier efforts. Phase I of the Quilcene Headwaters to Bay project was the permanent protection of the Mahan conservation easement which closed in 2020 with funding from Jefferson County Conservation Futures Funds.

In Phase II of this Headwaters to Bay project, we have the opportunity to work with the Schmidts to preserve their 67 acres of historic, prime farmland and Jakeway Creek habitat. The property is zoned Agricultural Production 1 development right per 20 acres. The pastureland that comprises most of the Schmidt Farm has been in agricultural use for nearly 100 years, almost exclusively for raising dairy cows and more recently for beef cattle and hay production. In addition to the one residence located in the NE corner of the farm,

agricultural infrastructure includes one hay shed (former dairy barn), one concrete silo, a finished barn "loafing shed" that includes shop space, all of which supports the agricultural viability and production potential of this farm. The pastures are currently set up with 6 large fenced areas, allowing for livestock rotation, each of which provides restricted access for cattle to drink out of Jakeway Creek. According to WDFW, Jakeway Creek hosts coho, cutthroat, waterfowl concentrations, trumpeter swans (plus fall chum and steelhead trout in Donovan Creek) and includes Priority Freshwater Emergent and Freshwater Forested/shrub Habitat and a spotted owl management buffer. This project will also fill a gap in the protection of a continuous corridor from the marine waters of Quilcene Bay to the forested uplands, a connection that enables species movement from day to day and over time as the climate changes, thereby increasing resilience and supporting biodiversity.

Located within the middle of the southern Schmidt parcel, a private inholding of 1.28 acres is owned by another landowner, but the Schmidts (or any future landowners of the Schmidt property) have the first right of refusal to acquire the small inholding when it comes up for sale. The Schmidts are of retirement age and are ready to sell the farm as soon as possible. They are anxious to have their farm permanently protected so that they know that the agricultural and habitat values are protected when they sell the property, which they aim to do within the year.

Jefferson Land Trust was successful in applying for the Recreation and Conservation Office's (RCO) Washington Wildlife and Recreation Program's (WWRP), a State Farmland Preservation Program grant in 2022 for protecting Schmidt Farm with a conservation easement; our strong ranking indicates that we will receive funding in September 2023. This farmland grant program conducts a thorough review of farmland viability including soils, infrastructure, water rights, and threat. This project ranked highly amongst several statewide projects. In 2021 Jefferson Land Trust applied to the County Conservation Futures Fund and while we were not awarded funding that year, the committee vocalized their support for this project and encouraged us to apply again when the project was closer to closing. The Land Trust now aims to have this conservation easement completed before the end of 2023, and CFF funds will provide essential funding toward this goal. Additionally, funding from the Navy REPI program for the REPI easement will also provide a substantial amount of the funding for this project, matching the funds from the CFF program. These state and federal grant dollars contributing to this project have reduced the amount of funding needed from the CFF program.

To date, Jefferson Land Trust protects over 128 acres of riparian, wetland, and estuarine habitat at the head of Quilcene Bay through two conservation easements and fee ownership of two nature preserves. Extensive restoration efforts have been undertaken over the past decade on Jakeway and Donovan Creeks by Jefferson County Conservation District (JCCD), Jefferson County, Jefferson Land Trust, and the Hood Canal Salmon Enhancement Group (HCSEG). Subsequent to the 2007 replacement of a 5-ft. culvert (identified as a fish barrier) under East Quilcene Road with a 70-ft. concrete bridge by Hood Canal Salmon Enhancement Group and Jefferson County Public Works, Jefferson Land Trust worked with project partners on a major restoration project to restore lower Donovan Creek to its historic channel. We replanted the riparian buffer and wetlands with thousands of native plants in 2016 and have been managing the restoration site since. Additionally, project partners are working with nearby landowners to permanently protect an additional 51-acre farm and 33 acres of estuary which will allow for restoration actions on upper Donovan Creek and on the Little Quilcene River as it enters Quilcene Bay.

Other adjacent lands are owned by Pope Resources, Department of Natural Resources and private landowners. Protection of the Jakeway Creek tributary represents an important expansion of these investments and is being developed in close partnership with the Jefferson County Conservation District.

Top objectives:

1. Secure CFF funding to match the State Farmland Preservation Program and Navy REPI funding – summer/autumn 2023
2. Develop the terms of the permanent conservation easement in collaboration with landowners; get the value of the easements appraised by certified appraiser – throughout 2023
3. Purchase and close on the conservation easement and restrictive easement which provides permanent protection of the agricultural and habitat values– late 2023

The overarching goal of this project is to restrict further residential development by retiring the estimated two additional development rights and will protect the pastureland for agricultural uses and the Jakeway Creek buffer area for habitat values by utilizing two permanent easements. The sale of a conservation and REPI easements will help keep this farmland affordable for the next landowners – a goal that the Schmidts and the Land Trust share.

11. Estimate costs below, including the estimated or appraised value of the property(ies) or property right(s) to be acquired, even if Conservation Futures funds will only cover a portion of the total project cost. In the case of projects involving multiple acquisitions, please break out appraisals and estimated acquisition costs by parcel. Estimated or Appraised Value of Property(ies) to be Acquired:

Total Estimated Acquisition-related Cost (*see Conservation Futures Manual for eligible costs*): \$564,600

Total Operation and Maintenance Cost: \$10,000

Total Project Cost: \$574,600

Basis for Estimates (include information about how the property value(s) was determined, anticipated acquisition-related costs, general description of operation and maintenance work to be performed, task list with itemized budget, and anticipated schedule for completion of work):

Quilcene Headwaters to Bay Preserve Phase II Project related costs	Timeline	Est. Total Cost	CFF Request	Match
Easement acquisition	2023	\$500,000	\$55,000	\$445,000
Land acquisition related costs, i.e. appraisal, survey, Baseline document, Stewardship Plans, closing costs	Late 2023	\$44,600	\$0	\$44,600
Project management, admin and legal fees	ongoing	\$20,000	\$0	\$20,000
O&M	ongoing	\$10,000	\$5,000	\$5,000
Total		\$574,600	\$60,000 (10%)	\$514,600 (90%)

The estimate for the value of the easement acquisition is based on the current Jefferson County fair market value assessment of the property, combined with our knowledge of the appraised value of other conservation easements on local farmland recently. Similarly, Jefferson Land Trust completes multiple acquisition projects a year which helps us provide experienced estimates for project management and other administrative costs that will be needed for this project.

O & M only go to question #15:

Scored Questions

1. To what degree does the project leverage contributions for acquisition from groups, agencies or individuals?

1 a. Sponsor or other organizations X will ___ will not contribute to acquisition of proposed site and/or operation and maintenance activities.

1 b. If applicable, please describe below how contributions from groups or agencies will reduce the need to use Conservation Futures program funds.

1 c. Matching Fund Estimate	Acquisition	O&M	%
Conservation Futures Funds Requested	<u>\$55,000</u>	<u>\$5,000</u>	<u>10%</u>
Matching Funds/Resources*	<u>\$504,600</u>	<u>\$5,000</u>	<u>90%</u>
Total Project Acquisition Cost	<u>\$564,600</u>	<u>\$10,000</u>	<u>100%</u>

* If a prior acquisition is being proposed as match, please describe and provide documentation of value, location, date of acquisition and other information that would directly link the match to the property being considered for acquisition.

1 d. Source of matching funds/resources	Amount of contribution	Contribution approved?	If not, when?	Contribution available now?	If not, when?
<u>Navy REPI</u> _____	<u>\$234,600</u> ___	<u>Yes</u> No	_____	<u>Yes</u> No	_____
<u>State Farmland Preservation</u>	<u>\$280,000</u> ___	<u>Yes</u> No	_____	Yes <u>No</u>	<u>9/23</u>
_____	\$ _____	Yes No	_____	Yes No	_____
_____	\$ _____	Yes No	_____	Yes No	_____

NOTE: Matching funds are strongly recommended and a higher rating will be assigned to those projects that guarantee additional resources for acquisition. Donation of property or a property right will be considered as a matching resource. Donation of resources for on-going maintenance or stewardship ("in-kind" contributions) are not eligible as a match.

2. To what degree does the project sponsor commit to provide long-term stewardship for the proposed project?

2 a. Sponsoring agency X is ___ is not prepared to provide long-term stewardship (easement monitoring, maintenance, up-keep, etc.) for the proposed project.

Protection and stewardship actions for this property are designed to protect the agricultural vitality of the region along with the habitat needs for declining salmonid populations and estuary functions in Quilcene Bay, which are aligned with regional salmon recovery priorities. Jefferson Land Trust has developed a rigorous program for stewardship and monitoring of conservation easement terms over the 34 years since we were formed, including at least annual on-the-ground monitoring of the property by professional staff and trained volunteers, extensive data collection and management, help with stewardship, enhancement, and restoration goals, as well as legal defense of the conservation easements should it become necessary. As of 2023, Jefferson Land Trust has a legal defense fund of over \$832,000 and continues to build this fund with each new easement acquisition, recognizing the legal obligation and responsibility of protecting conservation values in perpetuity. In addition, Jefferson Land Trust carries legal defense insurance for conservation easements through a program called Terrafirma, developed through the national Land Trust Alliance (the national umbrella organization for land trusts). This program covers up to \$500,000 in legal enforcement costs per conservation easement that Jefferson Land Trust holds and stewards.

2 b. Describe any existing programs or future plans for stewardship of the property, including the nature and extent of the commitment of resources to carry out the stewardship plan.

In addition to our regular easement monitoring program described above, our close partners, the Jeff. Co. Conservation District (JCCD) and the Hood Canal Salmon Enhancement Group (HCSEG) have worked with landowners in the Quilcene Bay watershed to implement best management practices on agricultural land and to restore salmon, riparian, and wetland habitats. These partners provided technical expertise, support, and on the ground oversight of restoration activities. We expect that the Schmidt project provides a potential future partnership opportunity for the JCCD or HCSEG to conduct additional restoration and enhancement activities on Jakeway Creek, which would reduce sediment buildup and improve salmon habitat.

3. To what degree has the project sponsor demonstrated effective long-term stewardship of a similar project?

3 a. Describe the sponsoring agency's previous or on-going stewardship experience.

Over the 34 years since it was formed, Jefferson Land Trust has managed many acquisition projects with several project partner organizations, including Jefferson County, The Trust for Public Land, Northwest Watershed Institute, North Olympic Salmon Coalition (NOSC), JCCD, HCSEG, the Navy and others, and we have been responsible for conducting or coordinating restoration activities in partnership with many of those same agencies and organizations. We hold 68 conservation easements on 4,526 acres and have helped with the preservation and stewardship of another 12,528 acres in Jefferson County. The Land Trust also holds title to over 864 acres of preserves, including the nearby Donovan Creek preserves as well as the Big Quilcene and Duckabush Rivers south of this project site which directly affect Quilcene Bay and the Hood Canal.

Jefferson Land Trust stewardship and monitoring protocols were developed with the guidance of the national Land Trust Alliance, and adherence to those protocols is one of the requirements for our formal land trust accreditation. Collaboration is at the heart of our approach to conservation. We engage with partners in the "Chumsortium" to bring back vibrant salmon runs on Hood Canal, and in the Jefferson LandWorks Collaborative to support big-picture thinking around the ongoing economic viability of local farms and working forests. We partner with regional government, local and national agencies, Tribes, peer

organizations, and individual citizens to safeguard the places we love and that are crucial to the health of our community, now and into the future.

3 b. Has the project sponsor and/or applicant been involved in other projects previously approved for Conservation Futures funding?

☐ No, neither the sponsor nor applicant has been involved in a project previously approved for Conservation Futures funds.

☒ Yes, the sponsor and/or applicant for this project has been involved in a project previously approved for Conservation Futures funds. Please provide details:

Jefferson Land Trust has worked with many willing landowners and has sponsored 37 CFF applications over the years since Jefferson County approved collection of the conservation futures property tax and developed the program in 2003. These projects are found in almost all areas of East Jefferson County and range from fee simple acquisition of nature preserves that are held by Jefferson Land Trust, or by other entities such as the City of Port Townsend, Jefferson County or the Jamestown S'Klallam Tribe, to permanent conservation easements held by Jefferson Land Trust on privately owned properties.

4. To what degree is the acquisition feasible?

4 a. Property ☒ can ☐ cannot feasibly be acquired in a timely fashion with available resources.

4 b. Necessary commitments and agreements ☐ are ☒ are not in place.

4 c. All parties ☐ are ☒ are not in agreement on the cost of acquisition.

If "not" to any of the above, please explain below.

We have begun drafting the conservation easement and REPI restrictive easement documents in partnership with the landowners. The landowners are eager to complete the preservation effort and are in general agreement with the Land Trust on the provisions of the easements. We will work out the details, followed by the appraisal process and we will hire a surveyor to delineate building envelope(s). The Land Trust will offer the Schmidts the fair market value purchase price of the higher-valued conservation easement.

The Schmidt Farm and neighboring Humbleberry Farm ranked fourth out of 18 applications statewide for the State Farmland Preservation Program funding and we expect to be awarded funding through that program in July 2023. We hope to close on the Schmidt project in late 2023.

5. To what degree is the project a part of an adopted open space, conservation, or resource preservation program or plan that was open to public review and comment, or identified in a community conservation effort that provided opportunities for public input?

The proposed acquisition ☒ is specifically identified in an adopted open space, conservation, or resource preservation program or plan, or community conservation effort, that is publicly available. *Please describe below, including this project's importance to the plan. Please also reference the website of the plan if available or include the plan with this application.*

☒ complements an adopted open space or conservation plan, but is not specifically identified. *Please describe below, and describe how the proposed acquisition is consistent with the plan.*
☐ is a stand-alone project.

The Jefferson Co. Comprehensive Plan says that "It is Jefferson County's intent to protect and foster opportunities for the successful practice of agriculture. Land with prime agricultural soils clearly must be preserved" and a soil productivity classification of 12 Animal Month Units puts the soils of Schmidt Farm in

the highest-ranking class. The Agricultural Production zoning of the property also reflects the County's goals for this land.

The American Farmland Trust's 2012 report *Losing Ground: Farmland Protection in the Puget Sound Region* includes a Jefferson County Scorecard which identifies the need for additional farmland protection and acknowledges the important role of the Conservation Futures Fund in that effort.

A 2009 State Office of Farmland Protection Report notes "The legislature finds that the retention of agricultural land is desirable, not only to produce food, livestock, and other agricultural products, but also to maintain our state economy and preferable environmental conditions." and this report also documents decreasing farmland acreage and land prices rising with development pressure.

The Olympic Peninsula Resource Conservation & Development proposed Adaptation Strategies in their "Climate Change Preparedness Plan for the North Olympic Peninsula" (2015). In this plan, they suggest to "acquire and preserve existing vegetated, unprotected areas adjacent to river systems" and to "designate and prioritize funding for additional land designated for agriculture".

Jefferson Land Trust's community-vetted Conservation Plan articulates the importance of preserving agricultural lands with the community vision - *A thriving, sustainable agricultural industry is prominent in the local economy, culture, and landscape and is supported by a greater demand for local food.*" (pg. 29, Jefferson Land Trust Conservation Plan, 2010). It also identifies "prime farmland soils and/or proven productivity" and "proximity to population centers" as priorities for agricultural lands to be protected.

The Land Trust's Conservation Plan also states the importance of healthy rivers and streams that enter into Hood Canal - "Many salmonid species spend a large part of their early life stages in the estuaries, and water quality conditions in Hood Canal are essential to their continued survival" (pg.14 and pg.17). It also states that we should "integrate aquatic corridor and watershed scale conservation tactics".

One of the most significant and unique features of this project is the opportunity to protect a waterbody that directly feeds into Quilcene Bay, where clean water is critical for ecosystem health. Because of substantial intact tidal marsh habitat, Quilcene Bay has been recognized as a priority ecosystem for protection and restoration by many groups. It is a priority nearshore conservation area according to The Nature Conservancy's *Willamette Valley-Puget Trough-Georgia Basin Ecoregional Assessment* (Floberg et al. 2004) because of its importance for conservation targets such as surf smelt (an important forage fish) and Olympia oysters. Priority Conservation Areas are defined as areas of biodiversity concentration that contain target species, communities and ecosystems and are considered the highest priorities for conservation. It is also a priority zone for the recovery of threatened Hood Canal summer chum salmon (*Summer Chum Recovery Plan* 2007) and Puget Sound bull trout (USFWS *Draft Recovery Plan for the Coastal-Puget Sound Distinct Population Segment of Bull Trout* 2004).

Furthermore, Quilcene Bay and its estuarine and palustrine wetlands nearby provide many habitat and foraging values that are recognized by national and regional plans aimed at conserving shorebirds, waterfowl and water birds.

Finally, the Schmidt property is specifically identified on Jefferson Land Trust's Climate Resiliency Spatial Conservation Planning maps that were recently created with resiliency data gathered and analyzed by an independent consultant.

6. To what degree does the project conserve opportunities which are otherwise lost or threatened?

6 a. The proposed acquisition site X does ___ does not provide a conservation or preservation opportunity which would otherwise be lost or threatened.

6 b. If applicable, please carefully describe the nature and immediacy of the opportunity or threat, and any unique qualities about the site.

Farmland in Jefferson County continues to be a desirable commodity and property values are escalating to a point that farmer/buyers are priced out of access to available farmland. We have a window of opportunity to work with willing sellers to preserve and steward their 67 acres of working land and habitat conservation values on site; the conservation easement will help make the property more affordable for the next landowner. This is key, as the Schmidts plan to sell the farm as soon as the easements are in place. They are anxious to sell the property as soon as they can, giving this project a high sense of immediacy.

The Schmidts demonstrated a commitment to conservation with the sale of over 20 acres of their lower pasture to the Land Trust in 2011 for habitat values. With its central location and dramatic views of mountains and bay, future subdivision and development seem highly likely if this property is not protected, since we are seeing the development pressure growing in this scenic area nearby the large urban areas of Puget Sound.

7. Are the conservation values of the project commensurate with or greater than the amount of CF funds requested, and will both the timeframes for meeting project objectives and associated metrics demonstrate achievement of the conservation objectives?

7 a. Summarize the project's conservation values and how the CF funds requested support these values.

Conservation values of the Phase II Quilcene Headwaters to Bay project include an integrated approach to protection of a continuous corridor between the marine waters of Quilcene Bay and forested uplands, and the prime farmland soil acreage of the Schmidt property is a critical piece of that effort. Moreover, the project will support reducing sedimentation of salmon and shellfish habitat, and herring spawning grounds, as well as connecting estuarine shoreline and low-lying agricultural lands with forested uplands in the Jakeway Creek watershed. Conservation Futures Funds will contribute to the purchase of a conservation easement that will protect this significant agricultural parcel from subdivision and further development, allow for continued agricultural production and potential future restoration and enhancement activities on Jakeway Creek.

7b. Summarize how the project's conservation values are related to the project's specific objectives.

The primary conservation values of the property include the prime agricultural soils, Jakeway Creek and riparian buffer habitat, and scenic vistas. The primary objectives of this project are to purchase two easements that will protect the availability of the farm for agricultural uses into the future and ensure that Jakeway Creek habitat is permanently protected for salmon and other wildlife and for water quality coming into Quilcene Bay. The objectives listed in Project Description above were created to ensure the success of protecting the project's conservation values.

The conservation easement (which will be drafted based on the State Farmland Preservation Program template) and the REPI easement will include provisions that help preserve the prime soils of the farm by reducing development potential and limiting the area of impervious surfaces. The conservation easement will also specify the area available for current and future residential infrastructure and will restrict future industrial, commercial and recreational uses. It will also include provisions that designate a permanent buffer along Jakeway Creek and allow for future restoration potential of the riparian area.

8. To what degree does the project preserve habitat for flora and fauna other than habitat for anadromous fish species?

8 a. ☒ provides habitat for State of Washington Priority Habitat specific to the project and/or State or Federal (NOAA and USFWS) Candidate, Endangered, Threatened or Sensitive species (provide list and references).

8 b. ☒ provides habitat for a variety of native flora or fauna species.

8 c. ☒ contributes to an existing or future wildlife corridor or migration route.

If affirmative in any of the above, please describe and list the Priority Habitat(s) and Threatened, Endangered, or Sensitive species below, and cite or provide documentation of species' use.¹

According to WDFW Priority Habitat and Species Report, Jakeway Creek hosts coho and cutthroat trout, and the project area includes WDFW Priority Freshwater Emergent and Freshwater Forested/shrub Habitats, and spotted owl management buffer. Water quality from the property is important to the health of Quilcene Bay and the conservation values of this tidal estuarine habitat as indicated in #5 above.

Ecological values identified by the Land Trust include a riparian habitat corridor connecting upland forest to Quilcene Bay through the Mahan CE (to the east) and the Land Trust's Lower Donovan Creek Preserve (to the west and south). This property presents an important opportunity to fill in the gap of protection that the Land Trust and other partners have been working on at the head of Quilcene Bay for decades. Diverse species are found here including nesting wood ducks, black bear families, coho, cutthroat trout, nesting bald eagles, and proximity to spotted owl and trumpeter swan habitats.

8 d. Does the current owner participate in conservation programs that enhance wildlife habitat? If so, please provide details.

In 1995, the Schmidts worked with the JCCD to enhance the Jakeway Creek riparian corridor. It was improved (in its current adjusted location) by the JCCD through a cost-share program with the Schmidts. Buffer plantings, a silt pond, and weirs were installed to retard down cutting in the creek as an effort to improve water quality and the Jakeway Creek habitat for salmonid species and other wildlife use. Additionally, in 2002 the Schmidts worked with Jefferson Land Trust to sell us 20 acres of their farmland that they realized was better fit was estuarine and riparian restoration, rather than farming.

9. To what degree does the project protect habitat for anadromous fish species?

9 a. Describe to what degree the project protects habitat for anadromous fish species (for example: marine shorelines, stream or river corridors including meander zones, and riparian buffers). Please provide documentation and maps that demonstrate the location, quality and extent of the existing buffer and adjoining habitat.

Approximately 2,000 feet of Jakeway Creek transects the property traveling from the NE corner of the property to the SW corner as it feeds into Donovan Creek and the Quilcene Bay estuary. The JCCD restoration project in 1995 included planting a 10-15 foot buffer with conifer species to provide shade for salmonid species. The restoration efforts also included a remeander of the creek in the lower reaches near Donovan Creek and out into the salt marsh area from the E Quilcene Rd bridge on property that was previously owned by the Schmidts but is now in permanent protection as a Jefferson Land Trust Preserve.

While the buffer plantings have increased shading of the creek, one section of trees has mostly died, Jakeway Creek has become more incised in some stretches, and the silt pond is filling up. The landowners have been frustrated with required permitting and delays to remove silt that has accumulated in the pond and to

¹ See, for example, http://www.dnr.wa.gov/researchscience/topics/naturalheritage/pages/amp_nh.aspx
<http://www.wdfw.wa.gov/conservation/phs/list/>
<http://www1.dnr.wa.gov/nhp/refdesk/plants.html>
http://www1.dnr.wa.gov/nhp/refdesk/pubs/wa_ecological_systems.pdf

perform other maintenance which they believe may be responsible for making it more difficult for salmonids to get very far up Jakeway Creek in the last few years. There is the potential for further riparian restoration to address the described issues, but only with a subsequent landowner who is willing to work with local conservation experts such as JCCD, HCSEG, and WDFW again.

10. To what degree does the project preserve farmland for agricultural use OR forestland for silvicultural use?

10 a. Describe the extent and nature of current and planned agricultural or silviculture use of the proposed acquisition, including any anticipated changes to that use once the property, or property right, is acquired with Conservation Futures funds.

The Schmidt Farm is currently producing hay crops and is also used for grazing cattle. The landowners have leased the desirable farmland to various local farmers including Keith Kisler, Martin Mills and the Mahan neighbors, who currently hay the property and partner with Martin Mills to graze cattle. The soils include Wapato silty clay loam and Casey silt loam, both classified by NRCS as Prime Farmland soils if drained (and "if protected from flooding" for Wapato silty clay loam). The pasture is currently set up with 6 large, fenced pastures, each of which provides restricted access for cattle to drink out of Jakeway Creek. There is a 15 gpm well for domestic and garden use.

The larger size of this property contributes to its economic viability as a farm, and the Phase 2 aspect of this project provides further benefits to the Mahan neighbor's 80-acre protected property that was protected as Phase I in 2020. It is anticipated that animal production will likely be the primary agricultural use in the future, but other crop potential, such as grain, orchard, and vegetable production has been considered by lessees of the property and would likely be explored by any future farmer/owner.

As older family farms get subdivided and sold off, fewer and fewer larger agricultural properties are available, and the 67 acres here provides more options for working farmers. Jefferson LandWorks partners and the Washington Farmland Trust could play a role in linking the Schmidt Farm opportunity with a potential farmer/buyer.

10 b. Describe the current owner's record of implementing management practices that preserves and/or enhances soil, water quality, watershed function and wildlife habitat.

The JCCD and landowner restoration partnership on Jakeway Creek as described in question #8d above was focused on improving water quality, watershed function and wildlife habitat. At the time that the restoration took place the best management practices for animal husbandry was for controlled access for creek watering. These are now several other watering options that future landowners can explore to keep livestock out of the Creek, with technical assistance from the JCCD on current best management practices.

10 c. Describe how the acquisition or proposed easement will likely preserve and/or enhance soil, water quality, watershed function and wildlife habitat.

The acquisition of the conservation easement and REPI easement on the entire farm will provide protection against any subdivision of the property and limit the number of residences to the current one along with ADUs allowed under county code within a designated building envelope. Additionally, the conservation easement will include impervious surface limitations designed to preserve the prime soils and agricultural viability. The continuation of BMPs on the farm and continued protection and enhancement of the buffers on Jakeway Creek will preserve soil, water and habitat quality. Continued agricultural use will also reduce the likelihood of

increased impermeable surfaces that often accompany development—surfaces that increase runoff and reduce groundwater recharge.

All of this will enhance the watershed function and contribute to the larger effort to connect the headwaters of Jakeway Creek to Quilcene Bay. Continued responsible farming will help control runoff that could erode soils and add sediment to the Creek and be detrimental to habitat.

10 d. Does this project preserve a mix of quality farmland and forestland?

The Schmidt property does not include forestland, but the overall Headwaters to Bay project and protection effort is designed to connect the forested headwaters on the adjacent property through the Schmidt's acreage down to Quilcene Bay.

11. Climate change:

11 a. To what degree does this project increase resiliency to and/or mitigate climate change, and is the project's scale significant in regards to increasing climate resiliency?

Jefferson Land Trust and the North Olympic Land Trust has continued to assess and implement the climate resiliency spatial data and planning effort for the North Olympic Peninsula since 2020. This study included working with a GIS consultant to develop a set of shared climate resilience metrics that can help structure programming in both partner organizations, shape future collaboration and These metrics were focused on the four pillars of our work, including working farmland, working forestland, habitat and biodiversity, and community opportunity areas. The Schmidt Farm and neighboring properties were identified as have agricultural resiliency indicators, including prime soils that retain water.

12. What area does the project serve?

12 a. Describe how the proposed acquisition benefits primarily a local area X broad county area including the area served, the nature of the benefit, the jurisdictions involved, and the populations served.

Preservation of the Schmidt Farm through purchase of a conservation easement and REPI easement benefits our community on many levels. The scenic Schmidt Farm property is visually accessible from East Quilcene and Center Roads and is a missing link in the larger efforts spearheaded by local agencies and organizations to protect important agricultural lands in Washington State and specifically this Headwaters to Bay project. Preservation is the first significant step, as this is one of the largest agricultural parcels containing prime soils in the Quilcene area. Once protected and acquired by the next farmer, the project partners will then have an opportunity to help the next landowners operate successful and viable businesses that will contribute to the local economy and secure food systems. Partners have worked on significant agricultural landscapes in the Center and Beaver Valleys as well as with farms on the Highway 101 corridor like the Boulton, Kawamoto, Midori and Serendipity Farms. Jefferson County is fortunate in having farmers whose average age is below that of the national average, which bodes well for our future, and this could be tied to efforts like conservation to keep farmland relatively affordable.

Quilcene Bay is recognized nationally as a critical estuary for commercial shellfish production, and good water quality from the watersheds above is paramount for this industry. Salmonid populations also benefit from preservation of pastureland (and potential restoration) of Jakeway Creek, and are critical species of concern in the Hood Canal and Puget Sound regions. The REPI (Readiness and Environmental Protection Integration) program is a national land-conservation funding source available through the Department of Defense. The Hood Canal region is of great strategic importance to the Department of Defense. As such, the Navy works with conservation partners to identify areas with common interest for preservation of working forests, farmland, and high-value wildlife habitat. The Schmidt Farm project represents an

opportunity for the Navy and the Land Trust to work with willing landowners to conserve land, thus protecting and buffering military installations and operating areas from development.

12 b. Is the project located in an area that is under-represented by CF funded Projects? *Areas that Conservation Futures has not been able to support to date include, Toandos Peninsula, Dosewallips Valley, Bolton Peninsula, and the West End.*

Yes - the project is located at the top of the Bolton Peninsula.

13. To what degree will the acquisition provide educational opportunities, interpretive opportunities, and/or serve as a general community resource that does not reduce the conservation value(s) of the project?

13 a. Describe the educational or interpretive opportunities that exist for providing public access, educational or interpretive displays (signage, kiosks, etc.) on the proposed site, including any plans to provide those improvements and any plans for public accessibility that will not reduce the conservation value(s) of the project.²

The Schmidt Farm represents an excellent opportunity to educate the public on a variety of sustainable land management practices in the Quilcene Bay watershed. Subsequent owners may be willing to allow access for educational programs, supervised tours, field science surveys, and research. The conservation easement reserves the right for the land trust to conduct such educational and scientific research with landowner permission.

14. To what degree does the project preserve historic or culturally significant resources³?

14 a. The proposed acquisition ___ includes historic or culturally significant resources⁴ and

___ is registered with the National Register of Historic Places, or an equivalent program.

X is recognized locally as having historic or cultural resources.

___ is adjacent to and provides a buffer for a historic or cultural site.

___ none of the above.

If affirmative in any of the above, please describe below, and cite or provide documentation of the historical cultural resources.

The Schmidt Farm has not been archaeologically surveyed by the local tribes, but it's location is referenced on an 1856 map prepared by a member of Isaac Stevens treaty party as the site of a S'Klallam Indian village. Jefferson Land Trust was informed that there is a recognized cultural site nearby that dates back 8,000- 10,000 years. The cultural site is located along a travel route in the Donovan Creek watershed as it moves from the Center Road area down to the head of Quilcene Bay. Jamestown S'Klallam staff indicated that the Schmidt Farm was very likely included in that travel route.

O & M Stand Alone Projects

² The words "education" and "interpretation" are interpreted broadly by the CF Committee.

³ Cultural resources means archeological and historic sites and artifacts, and traditional religious ceremonial and social uses and activities of affected Indian Tribes and mandatory protections of resources under chapters 27.44 and 27.53 RCW.

15. Applications for Operation and Maintenance funding only to be scored on a scale of 1-100 based on information provided. Consider the CF Manual and the topics below, for example:

15 a. Please describe in detail, the reason O & M funds are needed, proposed O & M activities, and how they protect resources cited in the original acquisition project. Attach additional information such as up-to-date stewardship plan, maps, field reports, work plan, budget, timeline, etc., to support the application, if appropriate. O & M projects must address a compelling, immediate need. Specifically include whether the project has an up-to-date stewardship plan. If there is such a plan, is it being implemented and is the proposed O & M work specifically included in the plan? Also, describe any unforeseen or urgent threats to the resource conservation values of the site and whether the proposed O & M activities will mitigate those threats and/or prevent potential future threats.

Annual monitoring is a standard practice to ensure conservation easements are honored, and O&M support for the first few years of stewardship helps ensure the integrity of CFF investments. Ongoing monitoring after the O&M funds have been fully expended is covered by other sources of funds raised by the Land Trust. O&M funds will be dedicated to annual monitoring, riparian habitat improvements consultation and planning, Stewardship Plan implementation, and consultation including connecting landowner with agency partners.

We have not developed a specific stewardship plan for this property, but if we are awarded funds and if negotiations are successful with the landowner, we will provide the Stewardship Plan for the CE once completed.

Infestation of invasive plants is a primary concern for pastureland such as this, and the Stewardship Plan will specifically address this threat. Stream improvements for salmon recovery are also an urgent concern that will be addressed in the Stewardship Plan and associated O & M work.

Verification

16. Sponsor commitments:

16 a. Sponsors of projects that are approved for funding by the Board of County Commissioners are required to submit a brief progress report by October 30 every year for three years after the award is approved, or three years after the acquisition funds are disbursed to the applicant, whichever is later. The progress report must address any changes in the project focus or purpose, progress in obtaining matching funding, and stewardship and maintenance. Sponsors receiving O & M funds will also submit an annual report for each year that O&M funds are expended. The Committee will use the information to develop a project "report card" that will be submitted annually to the Board of County Commissioners.

16 b. If this project is approved for funding, I understand the sponsor is required to submit progress reports for three years and for any year in which O & M funds are expended. SS Initials 3/23/23 Date

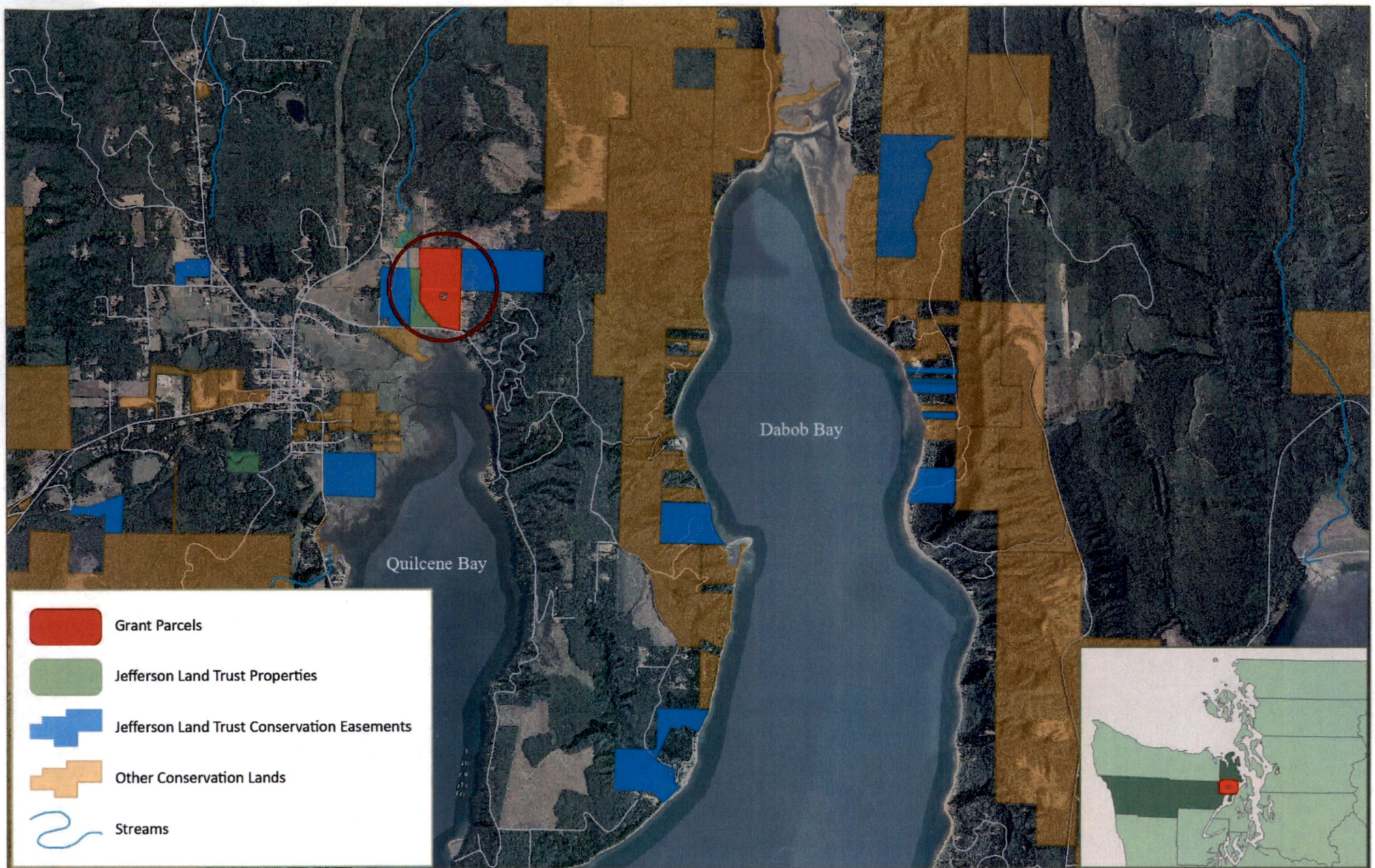
16 c. If, three years after the date funding is approved by the Board of County Commissioners, the project sponsor has not obtained the required matching funds, the Committee may request the Board of County Commissioners to nullify their approval of funds, and may require the project to re-apply.

If this project is approved for funding, I understand that we may be required to re-submit the application if the project sponsor does not obtain the necessary matching funding within three years.

SS Initials 3/23/23 Date

16 d. The applicant has reviewed all project requirements and all information in the application is accurate to the best of their knowledge. SS Initials 3/23/23 Date

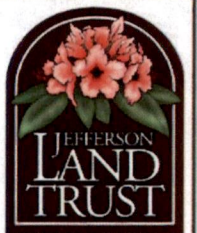
16 e. The sponsor commits to providing long-term stewardship to achieve the conservation and protection goals of the project as proposed in this application or as may be modified with recommendation of the CF Committee and approval of the BoCC. SS Initials 3/23/23 Date

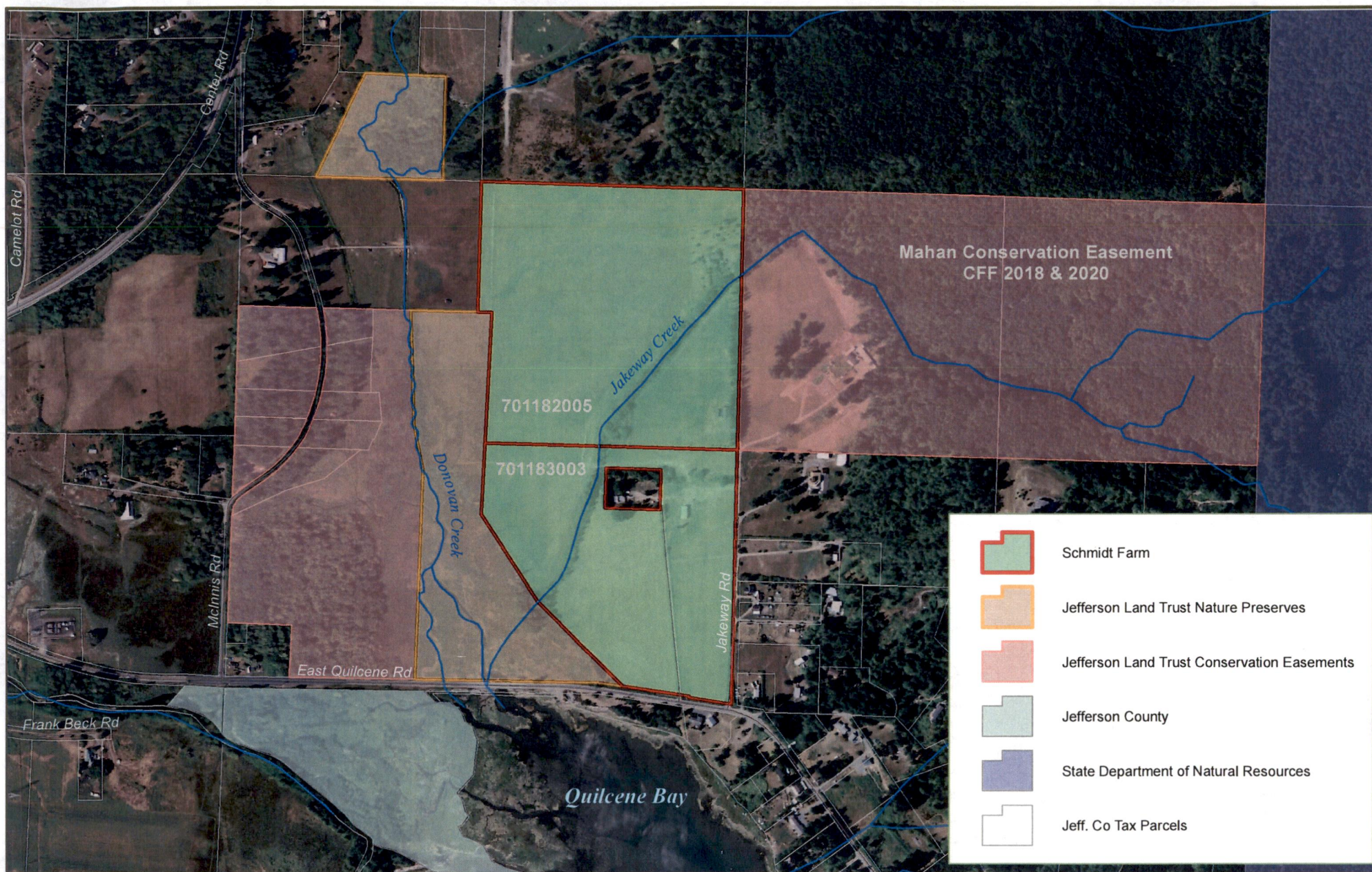


Schmidt Farm Site Locator

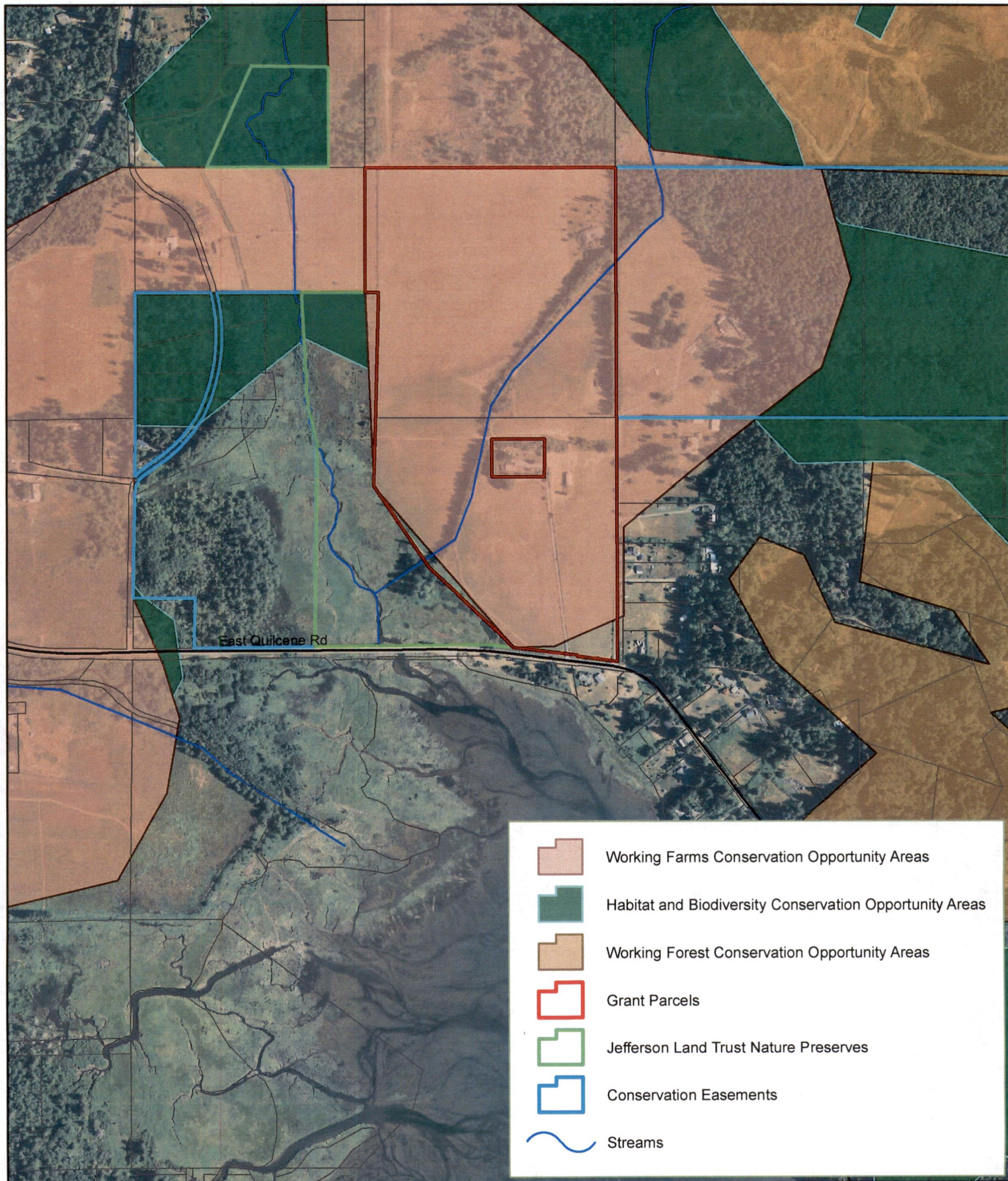
0 2,000 4,000 8,000
Feet

2021 Aerial Image (NAIP)
For informational purposes only. All
data represented are from varying
sources and approximate.
Map created in March 2023





Schmidt Farm Project Boundary



Schmidt Farm - Climate Resiliency Opportunity Area

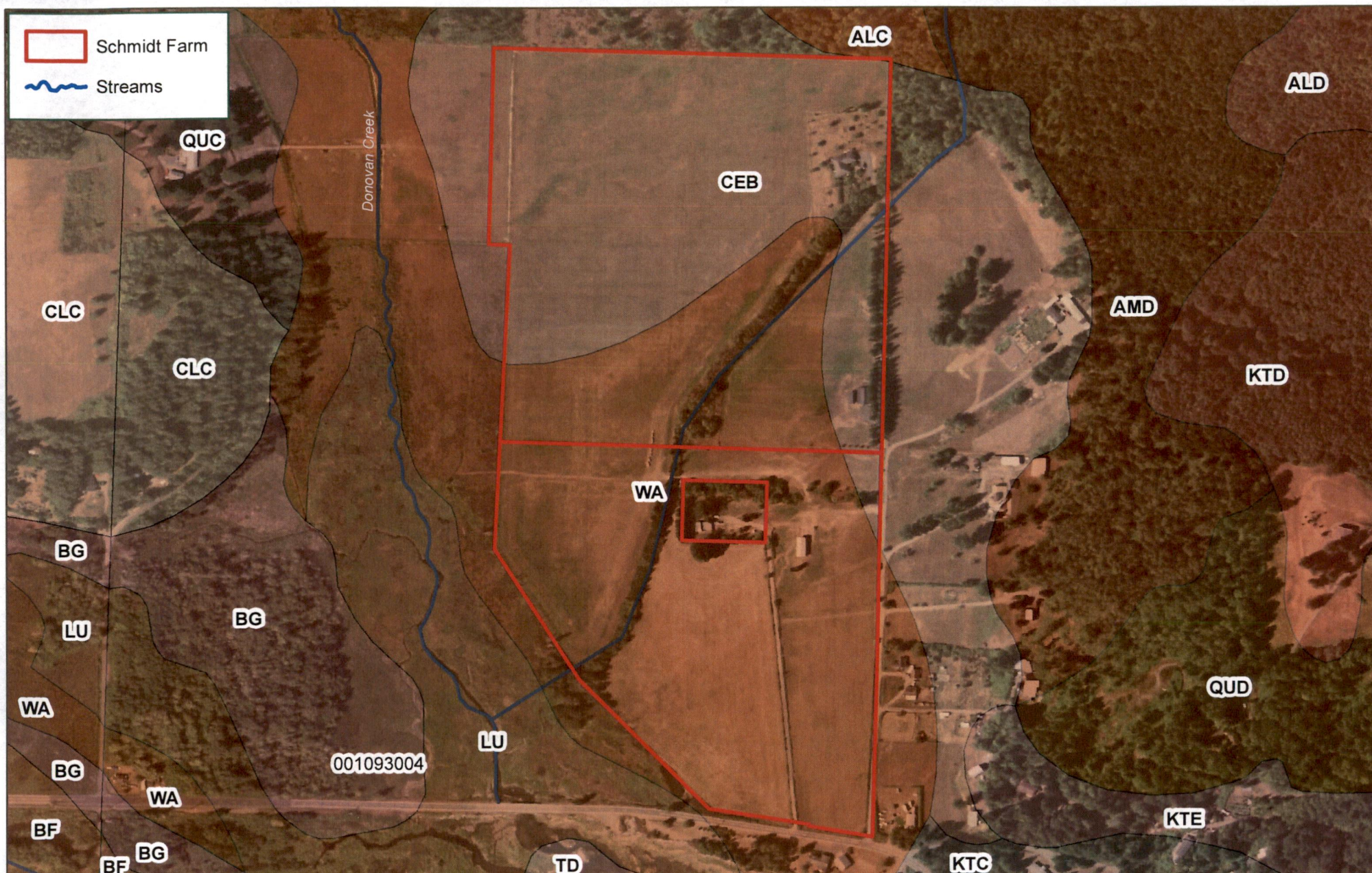
0 320 640 1,280 Feet

2021 Aerial Image (NAIP)

For informational purposes only. All data represented are from varying sources and approximate.

Map created in March 2023



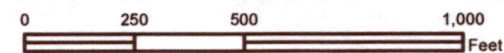


Schmidt Farm Soils

NRCS Classification:

CeB = Prime farmland soils if drained

Wa = Prime farmland soils if drained & protected from flooding



2017 Aerial Image (NAIP)

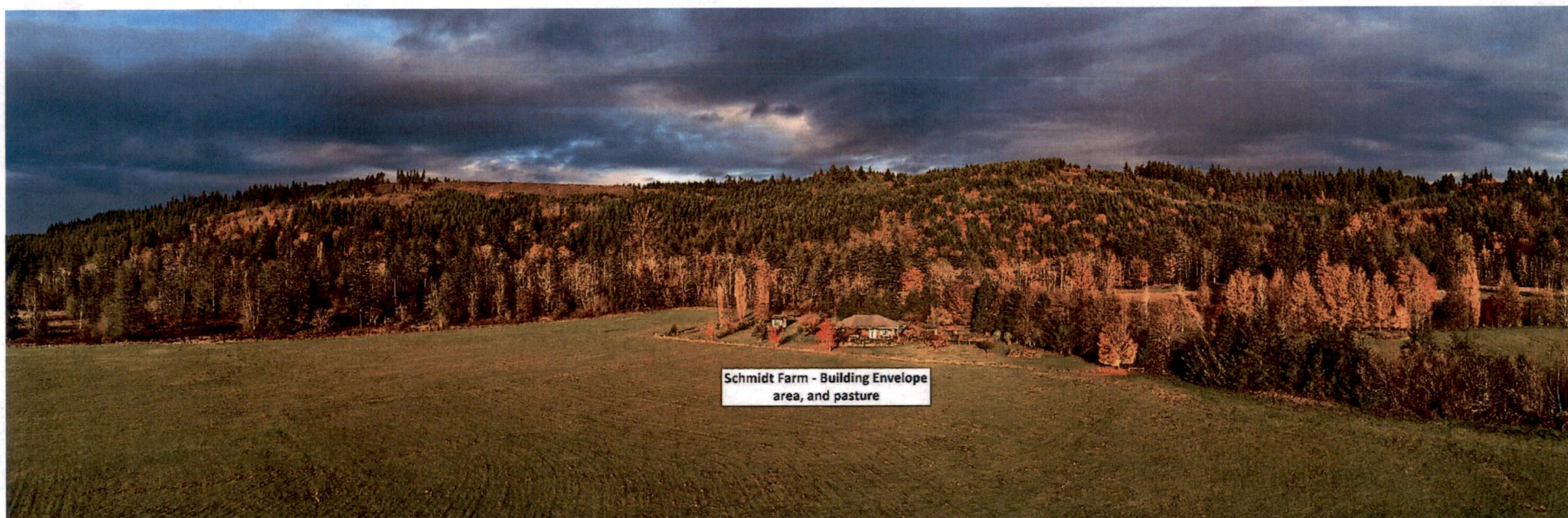
For informational purposes only. All data represented are from varying sources and approximate.

Map created in July 2022



Schmidt Farm
Application Photos





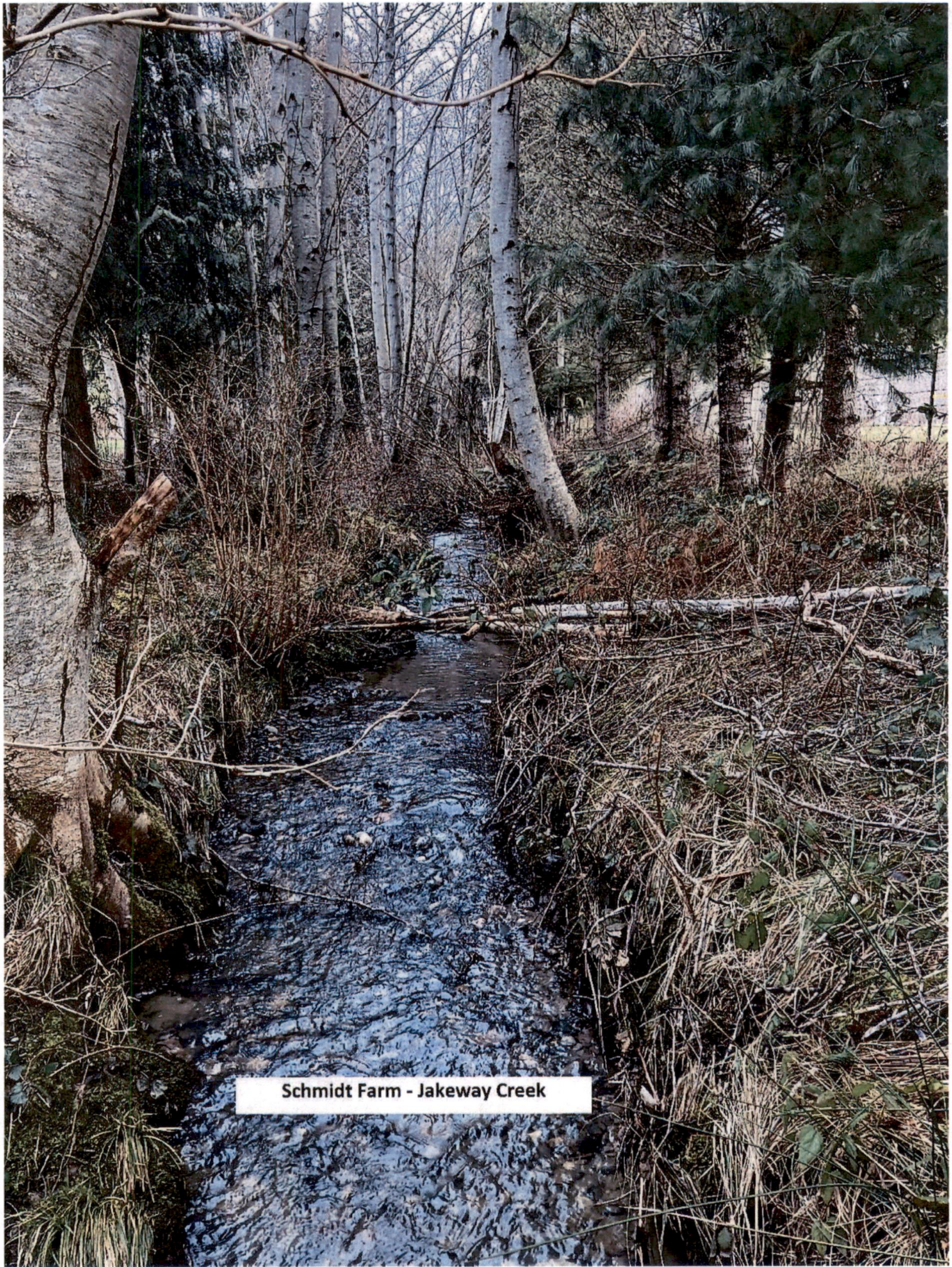
Schmidt Farm - Building Envelope
area, and pasture

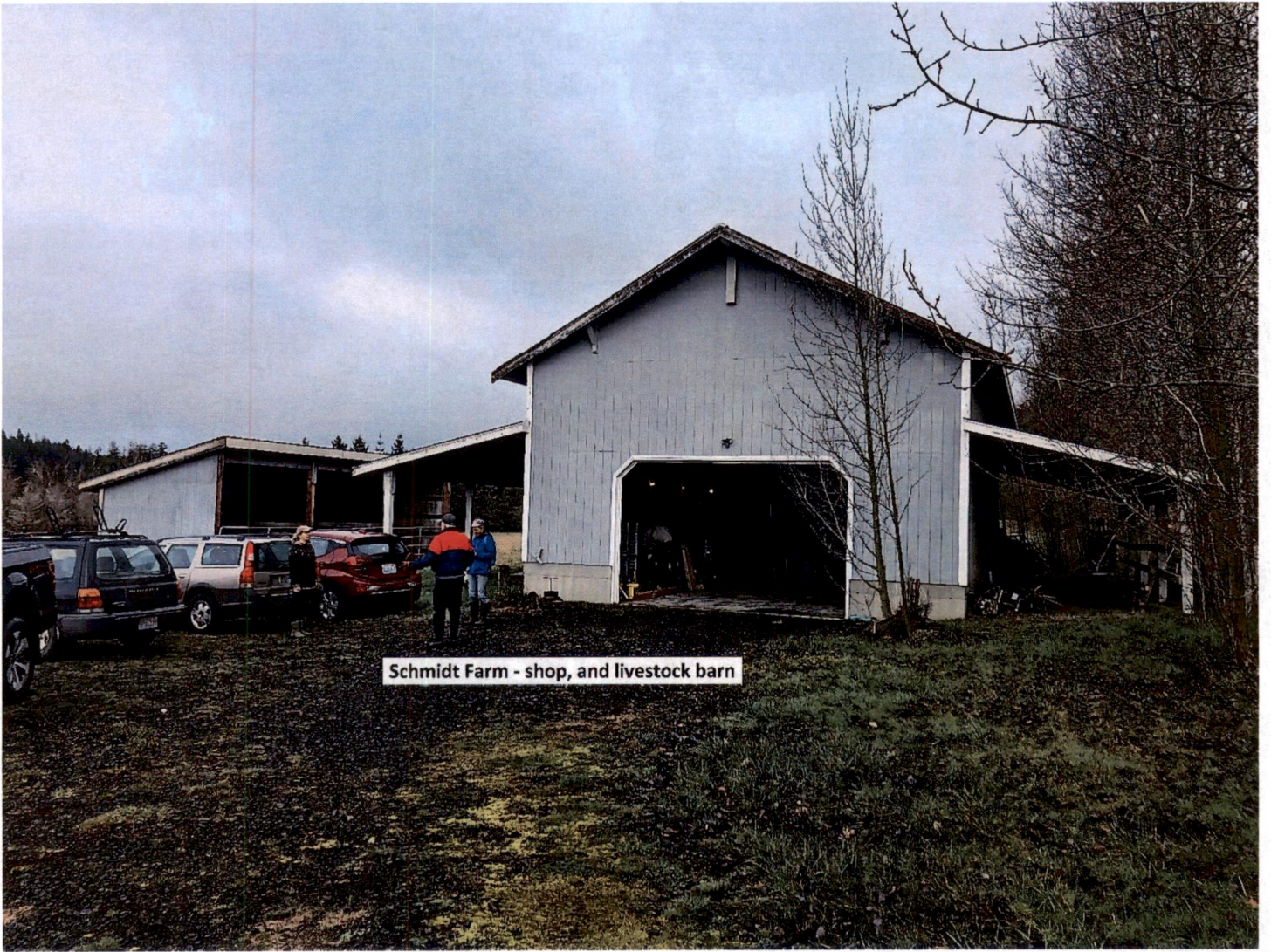
Schmidt Farm silo and haybarn





Schmidt Farm - pasture





Schmidt Farm - shop, and livestock barn



JEFFERSON COUNTY CONSERVATION DISTRICT

205 W. Patison St., Port Hadlock, WA 98339 - Phone (360) 385-4105

March 15, 2021

Jefferson County Conservation Futures Program

Dear Jefferson County Conservation Futures Citizens Advisory Committee and County Commissioners:

I am happy to endorse the efforts by the Jefferson Land Trust to work with the Schmidt Farm landowners to protect their Quilcene farmland for long-term agricultural production and valuable wildlife habitat. The Schmidts are interested in a selling conservation easement on their farm that will help preservation of the prime soils and habitat of nearly 67-acres of prime farmland near the head of Quilcene Bay. Grant support for purchase of the easement will reduce future development and allow for a successful transfer of the farm on to the next generation at a reduced price.

The Schmidt Farm property is one of the largest remaining agricultural parcels in the Quilcene area. It was a dairy farm for many years and more recently has been leased for cattle grazing and hay production.

While working for the Jefferson Co. Conservation District I worked with the Schmidts on several occasions. Using the Wild Olympic Salmon crew of displaced loggers in 1995 we helped them stabilize the stream channel and plant a riparian buffer. Though narrow, the buffer had immediate positive effects on water quality – see page 2. We also worked with them and the Jefferson Land Trust to make salmon habitat improvements on Donovan Creek, on the west side of their property. Preservation of this farm will add to previously protected property nearby and continue to help protect the water quality in Quilcene Bay.

Jefferson Co. Conservation District non-regulatory sub-division of state government created in 1946 to help land users conserve natural resources. JCCD provides technical and financial assistance to help all landowners meet sustainable land use goals. Funding for our services is provided primarily through county, state and federal grants.

The Schmidt Farm conservation project provides a great opportunity to preserve 67 acres of prime farmland and build on previous successes in support of our agricultural landscape, economy and culture in Jefferson County. With 16 agricultural easements protecting nearly 1200 acres of local, prime farmland and agricultural projects in the works that will protect another 400 acres, Jefferson Land Trust has a history of successful efforts to protect our agricultural heritage. Federal, State and County farmland preservation funding has been critical to that success, and we hope your approval of this project expands efforts to preserve the best farmland left in Jefferson County. We strongly urge you to consider and approve Jefferson Land Trust's conservation easement grant request.

Sincerely,

Al Latham

Board member, Jefferson Co. Conservation District

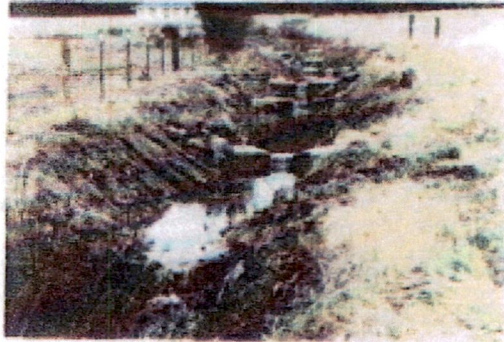
Technical Assistance + Cost Share = Water Quality & Habitat Improvements

By Al Latham, Jefferson Co. Conservation District

Water quality data collected in 1987-88 documented high bacteria counts (436 FC/100mL) in Donovan Cr. In 1989 Donovan Cr. was fenced in the lower reach and in 1995 a tributary, Jakeway Cr., was fenced. Both creeks were fenced at the "top of bank" creating a narrow (10' from water) buffer. Instream and riparian habitat improvements were also made. The chart below shows water quality improvements (fecal coliform) related to the fence construction. Other benefits are reduced sediment input, improved water temperature and dissolved oxygen levels.

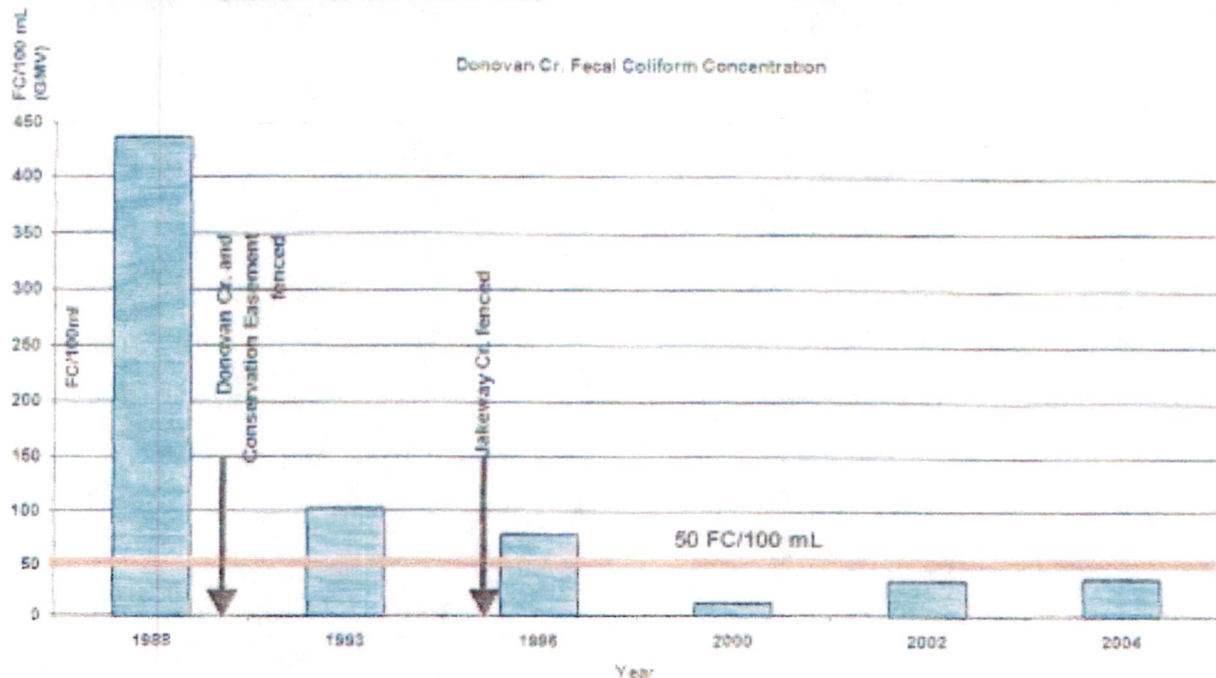


Jakeway Cr. before (1993) & after fencing (1995)



Jakeway Cr. 2006

Jefferson Co. Conservation District provided technical assistance and water quality monitoring for these projects. Funding was provided by Dept. of Ecology, USDA, Jefferson Co. and the DNR "Jobs for the Environment" program. This demonstrates the improvements to water quality and fish/wildlife habitat that results from a combination of technical assistance and project funding (grants, cost-share, etc.)



Landowner Acknowledgement Form¹

Project Applicant Information

Applicant Name: **Jefferson Land Trust**

Project Number/Name: **Schmidt Farm**

Contact: ☐ Mr. ☒ Ms. First Name: **Sarah** Last Name: **Spaeth**

Title: **Director of Conservation and Strategic Partnerships**

Mailing Address: **1033 Lawrence St. Port Townsend, WA 98368**

E-Mail Address: **sspaeth@saveland.org**

Property Information

Address or Location: **255 Jakeway Road, Quilcene WA 98376**

County/Parcel Number: **701182005, 701183003**

Landowner Information

Landowner Name: **Paul A. and Mary Schmidt**

Representative: ☐ Mr. ☐ Ms. First Name: Last Name:

Title:

Mailing Address: **PO Box 440 Quilcene, WA 98376-0400**

E-Mail Address:

1. Schmidt (landowner name) is the legal owner of property described in the grant application being submitted to the Recreation and Conservation Office by the project applicant.
2. I am aware that the project being proposed in the grant application is on my property.
3. If a grant is successfully awarded, I will be contacted and asked to engage in negotiations.
4. My signature does not represent authorization of project implementation.
5. If I am affiliated with the project applicant, I will recuse myself from decisions made by the project applicant to work on or purchase my property.
6. There are are not (circle one) tenants on the property. Tenants displaced as a result of this project may be eligible for relocation assistance.

Mary Schmidt
Landowner/Representative Signature

2/15/21
Date

Exhibit C

2023 Conservation Futures Program Manual



Jefferson County Conservation Futures Program Manual

2023 Funding Cycle

Jefferson County Conservation Futures Program Manual

2023 Funding Cycle

Mission of the Conservation Futures Program

The mission of the Jefferson County Conservation Futures Program is to provide a system of public open spaces, those open spaces being necessary for the health, welfare, benefit and safety of the residents of Jefferson County and the maintenance of Jefferson County as a desirable place to live, visit and locate businesses.

Conservation Futures Fund Citizen's Oversight Committee Membership (as of December 12, 2022)

Mary Biskup, Citizen, District 1
Guy Dobyns, Citizen, District 3
Rob Harbour, Interest – Working Lands
Richard Jahnke, Interest – Coastal Areas
Cameron Jones, Interest – Equity
Kalyn Marab, District 3
Joanne Pontrello, Citizen, District 2
Ron Rempel, Interest – Wildlife Conservation Biology
Craig Schrader, Interest – Climate Change
Jessica Randall, Interest – Ecosystem Services
David Wilkinson, Citizen, District 1
Vacant, Citizen, District 2
Vacant, Interest

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Overview

Jefferson County welcomes your application to the Conservation Futures Program (CF Program). Please do not hesitate to contact the program coordinator at Jefferson County Public Health with questions at Ph: 360/379-4498 or tpokorny@co.jefferson.wa.us. The Conservation Futures Program website address is <http://www.co.jefferson.wa.us/commissioners/Conservation/conservation.asp>.

In July 2002, the county commissioners approved the Conservation Futures Ordinance, Jefferson County Code Section 3.08, in accordance with the Revised Code of Washington (RCW) Chapter 84.34. The ordinance establishes goals for the county's Conservation Futures Program and an allocation process for the conservation futures tax levy.

The purpose of the CF Program is to acquire open space lands, including green spaces, greenbelts, fish and wildlife habitat, trail rights-of-ways, agricultural land and forest land (as those terms are defined in Ch. 84.34 RCW). Projects may include fee-simple or any lesser interest or development right with respect to real property as well as operation and maintenance (O & M) activities. O & M projects must be linked to a past, or proposed, CF-funded acquisition.

A minimum 50% match is required for all project types. Match must be cash, land trades, the value of land to be traded, or other open spaces linked to the property under application. Lands primarily for their open space, wildlife habitat, agriculture and forest values and their associated non-monetized ecosystem service values are all eligible. The project sponsor must sign a grant agreement with the county (see **Appendix A**). County code (JCC 03.08.030(10)) requires that properties or easements be held by public entities or others as defined in RCW 84.34.210. Government entities may choose to share title of a property with a non-profit nature conservancy corporation or association. Public open spaces must be available on the same conditions to all residents of the county for the benefit of Jefferson County residents and visitors. Applicants for projects may include the county, municipalities, park districts, state or federal agencies, private non-profit corporations or associations, and private individuals.

Project applicants must be represented by a local sponsoring organization based in Jefferson County. Potential sponsors include local governments, special purpose districts and non-profit corporations. A list of potential sponsors is available by contacting program staff. A project sponsor is responsible for the content and submission of the application, organizing and hosting a site visit, making a formal project presentation to the CF Committee, the stewardship plan and its implementation, and all County contracting, reporting, and reimbursement requirements.

Available funding is announced early in the calendar year and applications are provided by Jefferson County Public Health. Conservation Futures Fund monies can be the collateral, revenue stream or security for long-term financing (typically bonds) in a manner consistent with law. Public workshop(s) may be held prior to the start of the funding round and are available by request throughout the year. The program coordinator is always available to answer questions from sponsors, applicants, and interested parties.

This funding cycle, applications will be due Friday, March 24th, 2023 and sponsors host site visits and present projects to the CF Committee in late March and/or early April. Information about the application period is posted on the program website, announced in local newspapers and via email, and available by contacting the program coordinator. In April or May, the CF Committee meets to rank projects, determine recommended funding levels, and compose its overall recommendations to the Board of County Commissioners (BoCC). The BoCC typically makes award determinations in July. Approved project funds are not generally available to project sponsors until August or later. At least every other year, the BoCC reviews the priorities of the CF Program and the project ranking process. All meetings of the CFF Committee are open to the public. Citizens are encouraged to attend.

Conservation Futures Fund Citizen Oversight Committee

The CFF Committee membership is intended to reflect a broad spectrum of interests and expertise. It includes at least two individuals from each commissioner district and at least nine citizens total. Anyone interested in applying for a seat on the committee is encouraged to contact the Board of County Commissioners Office (jeffbocc@co.jefferson.wa.us) and/or the program coordinator at Public Health.

Project Selection

The CFF Committee scores and ranks project applications according to criteria designed to reflect the priorities expressed in the Jefferson County Code Section 03.08.040. This evaluation process has five (5) distinct phases as follows:

1. Written project application: Each CFF Committee member (CFFCM) independently reads and assesses each application and prepares any necessary clarification questions.
2. Site visits: Each CFFCM **must** attend the project site visits (or view a video of the site visit). Questions may be posed by committee members and answered during this site visit or they may be held until the project presentations meeting.
3. Oral presentation of the project: Each sponsor and CFFCM **must** attend this meeting during which the project sponsor(s) present their project(s) and answer questions posed by the committee members. Following the oral presentations, a deadline will be established for CFFCMs to submit additional questions to applicants (via county staff). After this set deadline for additional questions, a second deadline will be established for the receipt of all answers from applicants. After this second deadline no further additional information may be requested, received or considered by the committee.
4. Submission of project score sheets: Each CFFCM submits to the program coordinator a form for each project consisting of questions that ask how well, in the committee member's judgement, an applicant meets the criteria for approval and funding. The committee member assigns a numerical "score" (within a range predetermined by the CFF Committee) for each of the questions and it is weighted by a predetermined multiplier. Individual scores for each project are recorded in a spreadsheet by the program coordinator. This spreadsheet is emailed to CFFCMs as soon as all the scores are available and entered as soon as possible ahead of the meeting to rank projects.
5. During the meeting to rank projects, CFFCMs will have an opportunity to ask questions of each other about scoring choices and interpretations of specific questions and may adjust their scores as desired. Afterwards, a committee composite "score", for each project application is obtained by taking the average of the "scores". If a project application's composite "score" is 70% of the total possible numerical value for a project "score" or greater, the project is considered worthy of funding (i.e. eligible for). Projects "scoring" below 70% of the total possible numerical value for a project "score" are not considered for funding unless **compelling** reasons for funding arise in the final evaluation phase.
6. Ranking and recommendation for funding of project applications: Each project application judged eligible in phase #4 is discussed, bringing into focus information garnered from phases 1 through 4 and in light of current funds available to the cycle. All project applications are compared and a final ranking and funding recommendation may be determined for each of the project applications and submitted to the Board of County Commissioners in a memo from the CFF Committee chair or vice chair. The Committee must provide justification to the Commissioners for any and all changes from the numerical ranked order.

Information Sources

The CF Program is administered by the Commissioners' Office with assistance from Public Health. Please note that the information contained in this manual does not supersede the statutes governing the Jefferson County Conservation Futures Fund and Program, and should be read in conjunction with them.

Relevant sections of law are found in Revised Code of Washington, Chapter 84.34 (RCW 84.34) and the Jefferson County Code (JCC 03.08).

To access RCW 84.34 online, visit <https://app.leg.wa.gov/rcw>. The Jefferson County Code is available online at <http://www.codepublishing.com/WA/JeffersonCounty>.

Contact the program coordinator at ph: 360/379-4498 or email tpokorny@co.jefferson.wa.us.

Reimbursement

All grants are funded by the Jefferson County Conservation Futures tax levy. After a public hearing is held, one or more project award resolutions may be passed by the Board of County Commissioners, usually in June or July. Project agreement(s) (**Appendix A**) between the County and the project sponsor are then developed to include the full scope of work as described in the original or updated application. A final draft grant deed of conservation easement or statutory warranty deed is requested to serve as an attachment to the agreement along with the project application and that year's program manual.

Except in the case of escrow payments, sponsors must expend their own funds on eligible and allowable expenditures prior to requesting reimbursement. With sufficient lead time, an approved settlement statement, the qualifying property appraisal, and the required documentation of the matching contribution, CF funds may be made available to the title company shortly before closing for the direct costs of property acquisition. Please discuss dates for closings with the program coordinator to help ensure that grant funds are ready and available when needed.

The project sponsor will commit to providing a matching contribution consistent with the project application, and no less than the amount of conservation futures funds awarded to the project, before conservation futures tax funds are reimbursed to that sponsor. This contribution may consist of:

- cash
- land trades if the valuation of the land to be traded is established by a valuation arising from an appraisal generated by a Washington State Certified Licensed Appraiser (Member of the Appraisal Institute MAI);
- the cash value of the land to be traded, excluding Jefferson County conservation futures contributions; or
- other open spaces acquired within the previous two years that is situated either directly adjacent to or could, in the sole discretion of the county, be directly linked to the property under application.
- cost of appraisal, title insurance, closing costs, and other miscellaneous fees (*See JCC 3.08.030(5).*)

Deeds and conservation easement documents must be recorded by the Jefferson County Auditor's Office within 30 days of closing.

If matching funds are not secured within three years, the project may be required to re-apply.

Language pre-approved by Jefferson County is required to be included in conservation easement documents or statutory warranty deeds in order to ensure adequate protections for project and match properties, and the public interest, in perpetuity.

Compliance with All Laws

Project sponsors shall comply fully with the project agreement, grant program policies, County policies and all applicable federal, state and local laws, orders, regulations and permits.

Record Retention/Public Records Act

The project sponsor shall retain all books, records, documents, data and other materials relevant to the agreement for a minimum of ten (10) years after the completion of the project. Documents related to the expenditure of CF funds, by way of example only, purchase and sale agreements, settlement documents, invoices, e-mails, expert reports and/or appraisals, are Public Records subject to disclosure in accordance with the Public Records Act, Ch. 42.56 RCW, if requested by a citizen or entity. All meetings and activities of the CFF Committee are subject to the Open Public Meetings Act, Ch. 42.30 RCW. The public is always invited and encouraged to attend. Two observer comment periods are included in each agenda.

Acquisition Projects

Project applications for the acquisition of property must meet the following threshold criteria in order to be considered for funding. Each application will receive an initial screening to make sure that it is in compliance. Applicants are encouraged to submit pertinent materials and documents, as appropriate, in addition to those items required. Multi-year acquisition projects are permitted but require additional justification.

Project Eligibility

- Proposed acquisitions must have a willing seller.
- The property, or property right, must be eligible for purchase as defined by state law, RCW 84.34.210 (i.e. "...protect, preserve, maintain, improve, restore, limit the future use of, or otherwise conserve, selected open space land, farm and agricultural land, and timber land...").
- Conservation Futures funds **cannot** be used to acquire property, or a property right, that will be used for active recreation purposes (including but not limited to sports fields, playgrounds, recreation centers, swimming beaches or pools, motorized boat launches).
- Conservation Futures funds **cannot** be used for passive development of a site. For the purposes of this application, passive improvements include, but are not limited to, trails, interpretive centers, viewpoints, picnic areas, access, restrooms, landscaping and parking.

Applicant Eligibility

Eligible applicants include the County, municipalities, Park Districts, State or federal agencies, private non-profit corporations or associations, and private individuals.

Sponsor Eligibility

All applicants must have a local sponsor. Eligible sponsors include county, municipalities, park districts, or private non-profit corporations based in Jefferson County. A current, but not necessarily comprehensive, list of eligible local sponsors may be requested from program staff.

Eligible Capital Project Expenditures: (See also JCC 3.080.030(7))

Capital project expenditures or match may include:

- ☐ Costs of acquiring real property, including interests in real property
- ☐ Cost of related relocation of eligible occupants (includes administration)
- ☐ Cost of appraisal
- ☐ Cost of appraisal review
- ☐ Cost of title insurance
- ☐ Closing costs
- ☐ Pro rata real estate taxes
- ☐ Recording fees
- ☐ Compensating tax
- ☐ Hazardous waste substances reports
- ☐ Directly related staff and administrative costs (These are limited to 5% of the total cost of the project.)
- ☐ Related legal costs excluding the cost of preparing application for conservation futures funds.
- ☐ Baseline documentation
- ☐ Boundary survey
- ☐ Cultural resources review (survey, excavation, on-site monitoring and data recovery)

Conservation futures tax levy funds may not be used to acquire any real property or interest in real property therein through the exercise of the power of eminent domain.

Stewardship Plan

Prior to reimbursement, sponsors must provide a stewardship plan to the CFF Committee that describes how the property, or property right, will be maintained over time. Costs for stewardship plans are eligible for operations and maintenance reimbursement only under "Special Reports" (not as a capital acquisition expense).

Title Report and Title Insurance

Please make county staff aware of issues that could affect the title report and provide updates as they are generated. A title report and title insurance are to be issued in conjunction with the property transaction.

Appraisals

Successful applicants must provide an independent appraisal (standard, narrative or M.A.I.) from a Washington State Certified Licensed Appraiser if the estimate of value exceeds the assessed value at the time that reimbursement is requested. In no case shall conservation futures funds dispersed exceed the grant amount awarded by the BoCC. No appraisal is required for properties assessed at \$20,000 or less.

The appraisal must:

— be no more than 1 year old. A Supplemental Update by the original appraiser may be required, at the discretion of the county, if the appraisal is more than six months old.

— include a current Title Report provided at the time of the most current appraisal or update.

— if timber, mineral or aquatic resources are to be included as value to the appraisal, then the appraisal shall include a separate timber, mineral or aquatic resources evaluation of value,

— *or*

— an opinion of value from a qualified representative of the real estate industry or recent valuation from the Jefferson County Assessor's Office may be used when the total assessed value does not exceed \$20,000.

Review Appraisals

No appraisal review is required of the sponsor by the CF program. However, the CFF Committee and/or the county may choose to select an appraisal for independent review for any reason.

Project Implementation

At the time of purchase or the signing of a "purchase and sale agreement", the appraisal must be no more than a year old unless an extended period is requested and approved by the county, up to a total of 18 months.

Application and Attachment Requirements for Acquisition Projects

All materials must be submitted electronically as one or more PDF files to tpokorny@co.jefferson.wa.us:

- Proof of Willing Seller: A "Willing Seller" letter confirming that the current owner of the property proposed for acquisition is willing to sell.
- Estimate of Value: A county assessment, certified appraisal of value, and/or an estimate of value from the project sponsor.
- Site Location Map: On a Jefferson County base map, or on a map of the sponsoring agency's jurisdictional boundaries, clearly identify the location of the proposed acquisition.
- Project Boundary Map: On a quarter-section map or other map of sufficiently large scale, identify the boundaries of the proposed project.
- Color Images: Provide six (6) different views of the property proposed for acquisition. The images should show vegetation, terrain, waterfront, man-made features, access roads, wetlands, unique characteristics, etc. Please include captions and an aerial view, if available.
- Development Plan or Narrative: Provide a schematic or master plan map of the project site showing proposed uses and improvements, if applicable.
- In addition, if the application sponsor is a private non-profit organization, attachments must also include:
 - Proof of 501(c)(3) Status
 - Current Budget
 - Board Roster
 - Organization Chart or Staff Roster
 - Most Recent Financial Statements (audited if possible)

__ Copy of minutes or resolution documenting official action to submit application for proposed acquisition. If more than one project is submitted from the same sponsor, the minutes or resolution should indicate the project priority and how it was determined.

Combination Acquisition/O & M Projects

Projects that involve acquisition and O & M expenses are allowed and require that both sets of application materials be submitted

Operations and Maintenance Projects (combination or standalone)

Statement of Priority with regard to standalone O & M projects

Due to the urgent need to protect farm, forest, habitat, and open space lands, the current priority of the Conservation Futures program is to fund high quality acquisition projects. Operations and Maintenance funding for completed acquisition projects may be approved in exceptional cases, when funding is available.

Availability of Funds for O & M

Only projects that are acquired using conservation futures funds are eligible for O & M funding. Requests for O & M funding should not exceed the available limit (consult with program staff). Approved disbursements for operation and maintenance of interests in real property purchased with conservation futures tax levy monies shall not in any particular year be greater than fifteen percent (15%) of the conservation futures tax levy monies raised in the preceding year.

Project Eligibility

Operation and maintenance funding may be used for any property to be acquired, or previously acquired, with Conservation Futures funds. Conservation futures tax levy funds appropriated for O & M or interests in real property shall not supplant or replace any existing funding for maintenance and operation of parks and recreational lands.

Applicant Eligibility

Eligible applicants include the County, municipalities, Park Districts, State or federal agencies, private non-profit corporations or associations, and private individuals.

Sponsor Eligibility

All applicants must have a local sponsor. Eligible sponsors include the County, municipalities, Park Districts, or private non-profit corporations based in Jefferson County.

Eligible Operations & Maintenance Expenditures – Please note: (with acquisition request or standalone for past projects) – Please note: Total O & M awards are limited to 15% of the revenue to the Conservation Futures Fund in the previous year.

Operations & Maintenance expenditures or match may include, but are not limited to:

- __ Cultural resources review (survey, excavation, on-site monitoring and data recovery)
- __ Demolition
- __ Fencing (if needed for public safety or resource protection)

- ___ Noxious weed control
- ___ Signage
- ___ Special site-specific reports (e.g. stewardship reports)
- ___ Wetland identification and/or delineation

Application and Attachment Requirements for O & M Projects

All requested materials must accompany the application upon submission. If an item is irrelevant to the project at hand, please explain why this is so.

- ___ Narrative description of how the requested funds will support specific O & M activities; what problems or stewardship needs will be addressed by the project; how the proposed O & M activities will help implement the current Stewardship Plan for the site; probable phasing of project activities; and other information that will help describe the need for and scope of the project.
- ___ Simple budget describing how requested funds will be used and the source of matching funds.
- ___ Site Location Map: On a Jefferson County base map, or on a map of the sponsoring agency's jurisdictional boundaries, clearly identify the location of the proposed activities.
- ___ Project Boundary Map: On a Quarter-section map or other map of sufficiently large scale, identify the boundaries of the proposed project.
- ___ Color Images: Provide images of portions of the property proposed for O & M activities. Please include captions, if available.
- ___ Plan, map, or aerial photo of the project site showing proposed areas of maintenance or improvements, if applicable.
- ___ Copy of minutes or resolution documenting official action of project sponsor to submit application for project funding. If more than one project is submitted from the same sponsor, the minutes or resolution should indicate the project priority and how it was determined.

Documentation of Match

A match contribution that equals the percentage of the project promised in the project application (no less than 50%) must be documented with each invoice. Match guidelines are identical for acquisition and O & M proposals. In-kind labor cannot be used as match. An expenditure summary that provides the following information must accompany billing:

- 1) Date the payment was made.
- 2) The vendor and/or employee to whom the payment was made.
- 3) A description of what was purchased or what work and/or services were performed; provide a description of what service or work was performed for the payroll costs or by the sub-contractor.

Reporting

Any project sponsor receiving O & M funds is required to submit a report each December until those funds are expended.

Application and Attachment Requirements for O&M Projects

To apply for O & M funding for a project previously purchased using CF Funds, use the standard application form. In question #1, refer to the original project title and year that the project was approved followed by "O & M Request Only". If you feel that a question is irrelevant to the project at hand, please answer "N/A".

Required Site Visit

Project sponsors are asked to host the CFF Committee on project site visit(s) and, beforehand, to obtain written permission from the landowner for a county employee to take photographs and make an unrestricted video recording of the project area. These materials are used to inform any CFFCMs not in attendance at the site visit(s) due to health considerations or other needs. The images will be kept on file and discoverable under the Open Public Records Act. If necessary, due to health and safety or other considerations, the project sponsor will arrange for one or two County employees to tape the video in the absence of any CFFCMs.

Required Meeting

The sponsor must request and reserve the date that the CFF Committee will meet to hear project presentations. The sponsor should attend the meeting in person, if possible, and make a presentation that begins with an introductory project description and ideally is organized according to the sequence of questions listed on the Score Sheet. CFFCMs are required to participate in both the project presentation and ranking meetings as well as the site visit (or view the site visit video) in order to be eligible to participate in funding recommendations.

Annual Reports

Sponsors are required to submit an annual report by December 31st every year from the date of award until three years after the CF funds are disbursed. Sponsors receiving O & M funds will also submit an annual report for each year that O & M funds are expended. An annual report template is included with this manual and will be provided to the project sponsor electronically. The progress report must address changes in the project focus or purpose, progress in obtaining matching funding, and stewardship and maintenance, as applicable. Project sponsors may demonstrate their long-term stewardship success or management of projects by submitting their site inspection reports annually.

Additional Reporting

Five years after the final requisite annual report is submitted, sponsors should provide an update on their stewardship and monitoring of the project. At any time subsequent to this, the CFFC or program staff may also inquire as to project status.

Project Changes

Project sponsors are expected to implement funded projects as described in their application to the CFF. However, occasional changes may be necessary. This section describes the process by which a project sponsor can initiate a request for change. A change occurs whenever the language contained in the application to the Conservation Futures Fund no longer accurately or fully describes the project.

A proposed project change, such as a cost increase, parcel substitution or removal, or change in funding category (acquisition or O & M) or match ratio, typically requires that the CFF Committee first develop a recommendation for the BoCC to consider.

The CFF Committee prefers that project change requests be presented as follows:

1. Send a “letter”, addressed to the CF Committee and Board of County Commissioners, in an email to the program coordinator describing the desired change(s) and need for it/them in as much detail as possible. Also, characterize the level of urgency for addressing the possible change. If at all possible, provide this information at least two weeks ahead of the next scheduled full committee meeting for possible inclusion on the draft agenda.
2. Reflect the proposed change in a Microsoft Word version of the original conservation futures application, and the County/Sponsor resolution or agreement (as applicable), using Track Changes. Label new attachments with the current date. Attach the document(s) to the email described above.
3. When the change request is included on an agenda, the sponsor should make every effort to attend that meeting in person or by phone/internet.
4. If the need for change is urgent, the Chair may call a special, ad hoc, meeting. However, such a meeting requires that a quorum of CFFCMs is available to approve any recommendation to the BoCC.
5. The following change requests are considered particularly significant, and always requires CFF Committee review and recommendation to the BoCC:
 - a. Parcel substitution or removal
 - b. Increase in funding amount
 - c. Reduction in percentage match
 - d. Loss of conservation value
 - e. Change in funding category (acquisition and/or O & M)

The CFF Committee shall:

1. Review the request for change and ask questions of the project sponsor, as needed.
2. Engage in discussion about the proposed change.
3. Formulate and vote, consistent with the bylaws, on a motion to accomplish one or more of the following:
 - a. Draft a statement to recommend the change for approval by the BoCC in its current form
 - b. Ask the project sponsor to revise and resubmit the change request for a future meeting
 - c. Reject the change and submit a statement to the BoCC to accompany the request

Staff shall:

1. Work with the project sponsor and CFF Committee chair to refine or clarify the change request ahead of its presentation at the next CFF Committee meeting, as needed.
2. Forward the change request and CFF Committee recommendations to the BoCC for final determination at a regularly scheduled meeting.
3. Work with the CFF Committee, and subcommittee(s) as applicable, to learn from the change and determine if related updates to program materials are needed.

Program Suggestions

Suggestions for program improvements are always welcome and may be provided to the CFF Committee by letter or email via the program coordinator at the contact information on page 3. Every CFF Committee meeting also includes two public comment periods. Meeting agendas are posted on the program website.

Appendix A
GRANT AGREEMENT TEMPLATES (INFORMATIONAL ONLY)

Fee Simple Acquisitions:

JEFFERSON COUNTY CONSERVATION FUTURES PROGRAM
PROJECT GRANT AGREEMENT

Project Sponsor: [SPONSOR (UBI Number: xxx xxx xxx)]

Project Title: [PROJECT]

Contract Number: [xxxxxxx]

Approval: [Resolution No.]

1. Parties to this Agreement

This Jefferson County Conservation Futures Program Project Grant Agreement (this Agreement) is entered into between Jefferson County (County), PO Box 1220, Port Townsend, Washington 98368 and [NAME] (Sponsor), [ADDRESS].

2. Purpose of this Agreement

This Agreement sets out the terms and conditions by which a grant is made through the Jefferson County Conservation Futures Fund, Chapter 3.08 of the Jefferson County Code (JCC), as approved by Resolution No. [NUMBER].

3. Grant Administration

The grant is administered by Jefferson County Public Health Department on behalf of the project Sponsor.

4. Description of Project

The subject project is described in the Scope of Work (Appendix A).

5. Project Requirements

[SPONSOR] shall implement a Conservation Futures Program project to acquire in fee simple title [NUMBER] via a statutory warranty deed of the parcels of land known in the records of the Jefferson County Assessor as APN#(s) [NUMBERS] (the Property), and as described in the [YEAR] Conservation Futures project application for [NAME] (**Exhibit B**) and [YEAR] Conservation Futures Program Manual (**Exhibit C**), and as authorized by Resolution [NUMBER] (**Exhibit D**). The statutory warranty deed shall prevent subdivision while allowing for native forest management and habitat protections, or as described in the project application. Language must be included in the statutory warranty deed to protect the County's interests and conservation values, including, at a minimum, the following:

Grantee's costs of acquiring the Property were provided in part by grant funding from the Jefferson County Conservation Futures property tax authorized by Washington law. Grantee hereby agrees to be bound by Jefferson County Code (JCC) 3.08.030(9), the uses authorized under RCW 84.34.230, including the obligation to ensure the long-term conservation of the Property in accordance with the terms and conditions of the statutory warranty deed, and to obtain the consent of Jefferson County prior to any conveyance of any interest acquired hereby. Consistent with JCC 3.08.030(9), the Property shall not be converted to a different use unless

and only if other equivalent lands or interest in lands within Jefferson County are received by Grantee in exchange.

6. Period of Performance

The Project reimbursement period for acquisition expenses shall begin on February 15, 2021 and end on February 15, 2024 unless proof of match is provided prior to this date. Work performed consistent with this Agreement during its term, but prior to the adoption of this Agreement, is hereby ratified.

7. Annual Reporting Required.

Annual reporting by the Sponsor to the County is required every year on or before December 31st until three years after the acquisition funds are dispersed.

8. Project Funding

The total grant award provided by the Conservation Futures Fund for the Project shall not exceed \$69,500. The Conservation Futures Fund shall not pay any amount beyond that approved in this Agreement for funding of the Project. The Sponsor shall be responsible for no less than sixty-three (63%) percent of the total Project cost and all Project costs in excess of \$187,838. The contribution by the Sponsor toward work on the Project shall be as indicated below. The contribution by the Conservation Futures Fund toward work on the Project is described immediately above and in "C" above.

	Acquisition	O & M	Totals	% Match
[PROJECT NAME] – Conservation Futures	\$(AMOUNT)	\$(AMOUNT)	\$(AMOUNT)	% (AMOUNT)
Estimated Project Sponsor Contribution	\$(AMOUNT)	\$(AMOUNT)	\$(AMOUNT)	% (AMOUNT)
Estimated Total Project Cost	\$(AMOUNT)	\$(AMOUNT)	\$(AMOUNT)	% (AMOUNT)

9. Unexpended Project Allocations

Should unexpected Project allocations, including (but not limited to) project completion at less than the estimated cost or (alternatively) the abandonment of the Project occur, then the Sponsor shall notify the County within 30 days.

10. Modification of this Agreement

All rights and obligations of the parties to this Agreement are subject to this Agreement and its attachments. Except as provided in this Agreement, no alteration of any of the terms or conditions of this Agreement shall be effective unless provided in writing. All such alterations, except those concerning the period of performance, must be signed by both parties. Period of performance extensions need only be signed by Jefferson Board of County Commissioners.

11. Indemnification

- a. For its comparative liability, each party agrees to indemnify, defend and hold the other party, its officers, officials, employees, agents and volunteers (and their marital communities), harmless from and against any claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its officers, officials, employees, agents or volunteers (and their marital communities).
- b. A party shall not be required to indemnify, defend, or hold the other party or its officers, officials, employees, agents and volunteers (and their marital communities) harmless if the claim, damage, loss or expense for personal injury, for any bodily injury, sickness, disease or death or for any damage to or destruction of any property (including the loss of use resulting therefrom) is caused by the sole act or omission of the other party or its officers, officials, employees, agents or volunteers.
- c. If any concurrent act occurs or omission of the parties and their officers, officials, employees, agents and volunteers, negligent or otherwise, these indemnity provisions shall be valid and enforceable only for the comparative liability of each party and its officers, officials, employees, agents or volunteers.
- d. The parties agree to maintain a consolidated defense to claims made against them and to reserve all indemnity claims against each other until after liability to the claimant and damages are adjudicated. If any claim is resolved by voluntary settlement and the parties cannot agree upon apportionment of damages and defense costs, they shall submit apportionment to binding arbitration.
- e. The indemnification obligations of the parties shall not be limited by the Washington State Industrial Insurance Act, Title 51 RCW, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act. Each party expressly waives any immunity afforded by such acts to the extent required by a party's obligations to indemnify, defend and hold harmless the other party, its officers, officials, employees, agents and volunteers (and their marital communities). A party's waiver of immunity does not extend to claims made by its own employees directly against that party as employer. The indemnity provisions of this section are a material inducement to enter into this Agreement and have been mutually negotiated. This section shall survive the expiration or termination of this Agreement.

12. Insurance

Prior to commencing work, the Contractor shall obtain at its own cost and expense the following insurance coverage specified below and shall keep such coverage in force during the terms of the Agreement.

- a. Commercial Automobile Liability Insurance providing bodily injury and property damage liability coverage for all owned and non-owned vehicles assigned to or used in the performance of the work for a combined single limit of not less than \$500,000 each occurrence with the County named as an additional insured in connection with the Contractor's performance of this Agreement. This insurance shall indicate on the certificate of insurance the following coverage: (a) Owned automobiles; (b) Hired automobiles; and, (3) Non-owned automobiles.
- b. Commercial General Liability Insurance in an amount not less than a single limit of one million dollars (\$1,000,000) per occurrence and an aggregate of not less than two (2) times the occurrence amount (\$2,000,000.00 minimum) for bodily injury, including death and property damage, unless a greater amount is specified in the contract specifications. The insurance coverage shall contain no limitations on the scope of the protection provided and include the following minimum coverage:
 - i. Broad Form Property Damage, with no employee exclusion;
 - ii. Personal Injury Liability, including extended bodily injury;
 - iii. Broad Form Contractual/Commercial Liability – including coverage for products and completed operations;
 - iv. Premises – Operations Liability (M&C);
 - v. Independent Contractors and subcontractors;
 - vi. Blanket Contractual Liability.
- c. Professional Liability Insurance. The Contractor shall maintain professional liability insurance against legal liability arising out of activity related to the performance of this Agreement, on a form acceptable to Jefferson County Risk Management in the amounts of not less than \$1,000,000 Each Claim and \$2,000,000 Aggregate. The professional liability insurance policy should be on an "occurrence" form. If the professional liability policy is "claims made," then an extended reporting periods coverage (tail coverage) shall be purchased for three (3) years after the end of this Agreement, at the Contractor's sole expense. The Contractor agrees the Contractor's insurance obligation to provide professional liability insurance shall survive the completion or termination of this Agreement for a minimum period of three (3) years.
- d. The County shall be named as an "additional named insured" under all insurance policies required by this Agreement, except Professional Liability Insurance when not allowed by the insurer.
- e. Such insurance coverage shall be evidenced by one of the following methods: (a) Certificate of Insurance; or, (b) Self-insurance through an irrevocable Letter of Credit from a qualified financial institution.
- f. The Contractor shall furnish the County with properly executed certificates of insurance that, at a minimum, shall include: (a) The limits of coverage; (b) The project name to which it applies; (c) The certificate holder as Jefferson County, Washington and its elected officials, officers, and employees with the address of Jefferson County Public

Health 615 Sheridan Street, Port Townsend, WA 98368, and, (d) A statement that the insurance policy shall not be canceled or allowed to expire except on thirty (30) days prior written notice to the County. If the proof of insurance or certificate indicating the County is an “additional insured” to a policy obtained by the Contractor refers to an endorsement (by number or name) but does not provide the full text of that endorsement, then it shall be the obligation of the Contractor to obtain the full text of that endorsement and forward that full text to the County. Certificates of coverage as required by this section shall be delivered to the County within fifteen (15) days of execution of this Agreement.

- g. Failure of the Contractor to take out or maintain any required insurance shall not relieve the Contractor from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification of the County.
- h. The Contractor’s insurers shall have no right of recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies, with the exception of Professional Liability Insurance, so affected shall protect both parties and be primary coverage for all losses covered by the above described insurance.
- i. Insurance companies issuing the policy or policies shall have no recourse against the County (including its employees and other agents and agencies) for payment of any premiums or for assessments under any form of policy.
- j. All deductibles in the above described insurance policies shall be assumed by and be at the sole risk of the Contractor.
- k. Any deductibles or self-insured retention shall be declared to and approved by the County prior to the approval of this Agreement by the County. At the option of the County, the insurer shall reduce or eliminate deductibles or self-insured retention, or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- l. Insurance companies issuing the Contractor’s insurance policy or policies shall have no recourse against the County (including its employees and other agents and agencies) for payment of any premiums or for assessments under any form of insurance policy.
- m. Any judgments for which the County may be liable, in excess of insured amounts required by this Agreement, or any portion thereof, may be withheld from payment due, or to become due, to the Contractor until the Contractor shall furnish additional security covering such judgment as may be determined by the County.
- n. Any coverage for third party liability claims provided to the County by a “Risk Pool” created pursuant to Ch. 48.62 RCW shall be non-contributory with respect to any policy of insurance the Contractor must provide in order to comply with this Agreement.

- o. The County may, upon the Contractor's failure to comply with all provisions of this Agreement relating to insurance, withhold payment or compensation that would otherwise be due to the Contractor.
- p. The Contractor's liability insurance provisions shall be primary and noncontributory with respect to any insurance or self-insurance programs covering the County, its elected and appointed officers, officials, employees, and agents.
- q. Any failure to comply with reporting provisions of the insurance policies shall not affect coverage provided to the County, its officers, officials, employees, or agents.
- r. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- s. The Contractor shall include all subcontractors as insured under its insurance policies or shall furnish separate certificates and endorsements for each subcontractor. All insurance provisions for subcontractors shall be subject to all the requirements stated herein.
- t. The insurance limits mandated for any insurance coverage required by this Agreement are not intended to be an indication of exposure nor are they limitations on indemnification.
- u. The Contractor shall maintain all required insurance policies in force from the time services commence until services are completed. Certificates, insurance policies, and endorsements expiring before completion of services shall be promptly replaced. All the insurance policies required by this Agreement shall provide that thirty (30) days prior to cancellation, suspension, reduction or material change in the policy, notice of same shall be given to the Jefferson County Public Health Contracts Manager by registered mail, return receipt requested.
- v. The Contractor shall place insurance with insurers licensed to do business in the State of Washington and having A.M. Best Company ratings of no less than A-, with the exception that excess and umbrella coverage used to meet the requirements for limits of liability or gaps in coverage need not be placed with insurers or re-insurers licensed in the State of Washington.
- w. The County reserves the right to request additional insurance on an individual basis for extra hazardous contracts and specific service agreements.

13. Workers Compensation (Industrial Insurance)

- a. If and only if the Contractor employs any person(s) in the status of employee or employees separate from or in addition to any equity owners, sole proprietor, partners, owners or shareholders of the Contractor, the Contractor shall maintain workers compensation insurance at its own expense, as required by Title 51 RCW, for the term of this Agreement and shall provide evidence of coverage to Jefferson County Public Health, upon request.

- b. Workers compensation insurance covering all employees with limits meeting all applicable state and federal laws. This coverage shall include Employer's Liability with limits meeting all applicable state and federal laws.
- c. This coverage shall extend to any subcontractor that does not have their own worker's compensation and employer's liability insurance.
- d. The Contractor expressly waives by mutual negotiation all immunity and limitations on liability, with respect to the County, under any industrial insurance act, disability benefit act, or other employee benefit act of any jurisdiction that would otherwise be applicable in the case of such claim.
- e. If the County incurs any costs to enforce the provisions of this subsection, all cost and fees shall be recoverable from the Contractor.

14. Independent Contractor

The Sponsor is an independent contractor with respect to the services provided pursuant to this Agreement. The Sponsor is not as an agent, an employee or a servant of the County. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties. The Sponsor specifically has the right to direct and control Contractor's own activities and over all of its subcontractors, employees, agents and representatives in providing the agreed services in accordance with the specifications set out in this Agreement. Neither Sponsor nor any employee of Sponsor shall be entitled to any benefits accorded County employees by virtue of the services provided under this Agreement. The County shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to Sponsor, or any employee of Sponsor. The Sponsor agrees to file all necessary governmental documents, including appropriate tax returns, reflecting income status as an independent contractor for services rendered to the County under this Agreement.

15. No Assignment

The Sponsor shall not sublet or assign any of the services covered by this Agreement without the express written consent of the County or its authorized representative. Assignment does not include printing or other customary reimbursable expenses that may be provided in an agreement.

16. Ownership and Use of Documents

All documents, drawings, specifications and other materials produced by the Sponsor in connection with the services rendered under this Agreement shall be the property of the Sponsor whether the project for which they are made is executed or not. The County shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference, and use in connection with the Sponsor's endeavors.

17. Compliance with Applicable Statutes, Rules, and Jefferson County Policies

This Agreement is governed by, and the Sponsor shall comply with, all applicable state and federal laws and regulations, including RCW 84.34.210, and published agency policies, which are incorporated into this Agreement by this reference as if fully set forth.

18. No Harassment of Discrimination

Any form of harassment, discrimination, or improper fraternization with any County employee is strictly prohibited. The Sponsor shall not discriminate on the grounds of race, color, national origin, religion, creed, age, sex, sexual orientation, or the presence of any physical or sensory disability in the selection and retention of employees or procurement of materials or supplies.

19. Sponsor's Accounting Books and Records

The Sponsor shall maintain complete financial records relating to this Agreement and the services rendered including all books, records, documents, receipts, invoices, and all other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect cost of any nature expended in the performance of this Agreement. The Sponsor's records and accounts pertaining to this Agreement are to be kept available for inspection by the Office of the State Auditor, federal auditors, the Jefferson County Auditor, and any persons duly authorized by the County shall have full access and the right to examine any of these materials during this period for a period of ten (10) years after the date of the final payment to Sponsor. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. Copies shall be made available upon request. Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed.

20. Licensing, Accreditation and Registration

The Sponsor shall comply with all applicable local, state and federal licensing, accreditation, permitting, and registration requirement/standards necessary for the performance of this Agreement.

21. Disputes

Except as otherwise provided in this Agreement, when a bona fide dispute arises between Jefferson County and the Sponsor and it cannot be resolved, either party may request a dispute hearing with a mediator agreed upon by the parties, or if agreement cannot be made, the mediator shall be selected by the Jefferson County Superior Court. Either party's request for a dispute hearing must be in writing and clearly state:

- a. the disputed issue(s);
- b. the relative positions of the parties; and,
- c. the Sponsor's name, address and agency contact number.

Requests for dispute hearings must be mailed to the Project Manager, Jefferson County Environmental Public Health Department, 615 Sheridan St., Port Townsend, WA 98368, within fifteen (15) days after either party received notice of the disputed issue(s). The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal. The parties shall split evenly the cost of mediation or whatever form of dispute resolution is used. The parties shall bear their own costs and attorney's fees in any dispute.

The venue for any legal action shall be solely in the appropriate state court in Jefferson County, Washington, subject to the venue provisions for actions against counties in RCW 36.01.050.

Each party to this Agreement shall be responsible for their own dispute and litigation costs, including attorney's fees.

22. Termination for Funding

Jefferson County may unilaterally terminate this Agreement in the event funding from state, federal, or other sources are withdrawn, reduced, or limited in any way after the effective date of this Agreement.

23. Termination for Convenience

The County reserves the right to terminate this Agreement at any time by giving ten (10) days written notice to the Sponsor.

24. Assignment

The Sponsor shall not sublet or assign any interest in this Agreement, and shall not transfer any interest in this Agreement without the express written consent of the County.

25. No Waiver

Waiver by any party of any provision of this Agreement or any time limitation provided for in this Agreement shall not constitute a waiver of any other provision.

No consent by either party to, or waiver of, a breach by either party, whether express or implied, shall constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either party.

No term or provision of this Agreement shall be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. Failure of a party to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default.

26. County Does Not Assume Additional Duties

The County does not assume any obligation or duty, except as required by federal or state law, to determine if Sponsor is complying with all applicable statutes, rules, codes ordinances or permits.

27. Agreement Representatives

All written communications sent to the Sponsor under this Agreement shall be addressed and delivered to:

Sponsor Contact

Conservation Futures Program Contact

Tami Pokorny
Jefferson County Environmental Public Health –
Conservation Futures
615 Sheridan Street
Port Townsend, WA 98368

These addresses shall be effective until receipt by one party from the other of a written notice of any change.

28. Entire Agreement

This Agreement, along with all attachments, constitutes the entire agreement of the parties. No other understandings, oral or otherwise, regarding this Agreement shall exist or bind any of the parties.

29. Severability

Provided it does not result in a material change in the terms of this Agreement, if any provision of this Agreement or the application of this Agreement to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application this Agreement shall not be affected and shall be enforceable to the fullest extent permitted by law.

30. Survival

Those provisions of this Agreement that by their sense and purpose should survive the term of this Agreement shall survive the term of this Agreement. Without limiting the generality of the preceding sentence, and for the avoidance of doubt, the provisions that survive the term of this agreement include: (a) controlling law; (b) insurance; and, (c) indemnification.

31. Binding on Successors, Heirs and Assigns

This Agreement shall be binding upon and inure to the benefit of the parties' successors in interest, heirs and assigns.

32. No Third-party Beneficiaries

The parties do not intend, and nothing in this Agreement shall be construed to mean, that any provision in this Agreement is for the benefit of any person or entity who is not a party.

33. Signature in Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Agreement at different times and places by the parties shall not affect the validity of this Agreement, so long as all the parties execute a counterpart of this Agreement.

34. Facsimile and Electronic Signatures

The parties agree that facsimile and electronic signatures shall have the same force and effect as original signatures.

35. Public Records Act

Notwithstanding any provisions of this Agreement to the contrary, to the extent any record, including any electronic, audio, paper or other media, is required to be kept or indexed as a public record in accordance with the Washington Public Records Act, Chapter 42.56 RCW (as may be amended), the Sponsor agrees to maintain all records constituting public records and to produce or assist the County in producing such records, within the time frames and parameters set forth in state law.

The Sponsor also agrees that upon receipt of any written public record request, the Sponsor shall, within two business days, notify the County by providing a copy of the request per the notice provisions of this Agreement.

This Agreement, once executed, shall be a "public record" subject to production to a third party if it is requested pursuant to the Washington Public Records Act.

36. Effective Date of this Agreement

This Agreement shall be effective upon signing by all parties.

37. Controlling Law

It is understood and agreed that this Agreement is entered into in the State of Washington. This Agreement shall be governed by and construed in accordance with the laws of the United States, the State of Washington and the County of Jefferson, as if applied to transactions entered into and to be performed wholly within Jefferson County, Washington between Jefferson County residents. No party shall argue or assert that any state law other than Washington law applies to the governance or construction of this Agreement.

38. Order of Precedence.

If there is an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order: (a) Applicable state statutes and rules; (b) local laws and rules; and, (c) case law.

39. Force Majeure

Neither party shall be in default by reason of any failure in performance of this Agreement, if such failure arises out of causes beyond a party's control and without fault or negligence of such party, including but not limited to; (a) acts of God; (b) terrorism or other acts of a public enemy; (c) war; or, (d) epidemics, pandemics or quarantine restrictions.

40. Attachments

Any attachment to this Agreement is part of this Agreement and is incorporated by reference into this Agreement.

41. Representations and Warranties

The parties represent and warrant that: (a) Each person signing this Agreement is fully authorized to enter into this Agreement on behalf of the party for whom signature is being made; (b) Each party that is a corporate entity is duly organized and validly existing in good standing under the laws of one of the states of the United States of America; (c) The making and performance of this Agreement will not violate any provision of law or of any party's articles of incorporation, charter, or by-laws; (d) Each corporate party has taken all necessary corporate and internal legal actions to duly approve the making and performance of this Agreement and that no further corporate or other internal approval is necessary; and, (e) Each party has read this Agreement in its entirety and know the contents of this Agreement, that the terms of this Agreement are contractual and not merely recitals, and that they have signed this Agreement, having obtained the advice of legal counsel.

DATED this _____ day of _____, 20_____.

(SIGNATURES FOLLOW ON THE NEXT PAGE)

JEFFERSON COUNTY WASHINGTON

Board of County Commissioners
Jefferson County, Washington

By: _____
Heidi Eisenhour, Chair Date

By: _____
Greg Brotherton, Commissioner Date

By: _____
Kate Dean, Commissioner Date

SEAL:

ATTEST:

Carolyn Galloway Date
Clerk of the Board

Approved as to form only:

Philip C. Hunsucker Date
Chief Civil Deputy Prosecuting Attorney

[SPONSOR]

By: _____
Signature

Name: _____

Title: _____

Date: _____

APPENDIX A

Scope of Work

[SPONSOR], as project sponsor “Sponsor”, will perform the following tasks in order to implement the [PROJECT]:

Task 1: Acquire Matching Contribution

Sponsor shall secure the necessary matching contribution of no less than [xx percent (xx%)] of the total project cost. The match must be in an eligible form consistent with JCC 3.08.030(5).

Deliverable 1a: Matching contribution(s) of no less than [xx%] of the total project cost.

Task 2: Acquire Statutory Warranty Deed

Sponsor shall acquire a statutory warranty deed grant deed on the Property that incorporates approved Conservation Futures Program language, including the language in item “C” of this Agreement.

Deliverable 2a: Final draft statutory warranty deed.

Deliverable 2b: Qualifying appraisal and estimated settlement statement (HUD-1).

Deliverable 2c: Recorded statutory warranty deed for subject parcels.

Deliverable 2d: Recorded statutory warranty deed(s) for match parcel(s), as applicable.

Task 3: Stewardship Plan

Sponsor shall provide a plan for stewardship.

Deliverable 3a: Electronic copy of stewardship plan

Task 4: Annual Reporting

Sponsor shall monitor and report on the property as described in item “D” of this Agreement and submit required reports to the Conservation Futures Citizen Oversight Committee (through staff) in the format provided for each year that it is required.

Deliverable 4a: Completed annual reports.

Exhibit A

Final Draft Statutory Warranty Deeds

Exhibit B

[202x] Conservation Futures [PROJECT]

Exhibit C

[202x] Conservation Futures Program Manual

Exhibit D

Resolution No. [NUMBER]

End Fee Simple Informational Template

Conservation Easement Template:

JEFFERSON COUNTY CONSERVATION FUTURES PROGRAM PROJECT GRANT AGREEMENT

Project Sponsor: [NAME & UBI NUMBER]

Project Title: [NAME]

Contract Number: [xxxx]

Approval: Resolution No. [NUMBER]

1. Parties to this Agreement

This Jefferson County Conservation Futures Program Project Grant Agreement (this Agreement) is entered into between Jefferson County (County), PO Box 1220, Port Townsend, Washington 98368 and [NAME] (Sponsor), [ADDRESS].

2. Purpose of this Agreement

This Agreement sets out the terms and conditions by which a grant is made through the Jefferson County Conservation Futures Fund, Chapter 3.08 of the Jefferson County Code (JCC), as approved by Resolution No. [NUMBER].

3. Grant Administration

The grant is administered by Jefferson County Public Health Department on behalf of the project Sponsor.

4. Description of Project

The subject project is described in the Scope of Work (Appendix A).

5. Project Requirements

Jefferson Land Trust shall implement a Conservation Futures Program project to acquire a grant deed of conservation easement (**Exhibit A**) for the 28-acre property known in the records of the Jefferson County Assessor as APN#(s) [NUMBERS] and as described in the [DATE] Conservation Futures project application for the [NAME] Project (**Exhibit B**) and [DATE] Conservation Futures Program Manual (**Exhibit C**), and as authorized by Resolution No. [NUMBER] (**Exhibit D**). The grant deed of conservation easement shall prevent subdivision while allowing for forest management and habitat protections. Language must be included in the deed of conservation easement to protect the County's interests and conservation values, including, at a minimum, the following:

Grantee's costs of acquiring this Easement were provided in part by grant funding from the Jefferson County Conservation Futures property tax authorized by Washington law. Grantee hereby agrees to be bound by Jefferson County Code (JCC) 3.08.030(9), the uses authorized under RCW 84.34.230, including the obligation to ensure the long-term conservation of the Property in accordance with the terms and conditions of this Easement, and to obtain the consent of Jefferson County prior to any conveyance of any interest acquired hereby. Consistent with JCC 3.08.030(9), this Easement shall not be converted to a different use unless and only if other equivalent lands or interest in lands within Jefferson County are received by Grantee in exchange.

6. Period of Performance

The Project reimbursement period for acquisition expenses shall begin on [DATE] and end on [DATE], unless proof of match is provided prior to this date. Work performed consistent with this Agreement during its term, but prior to the adoption of this Agreement, is hereby ratified.

7. Annual Reporting Required

Annual reporting by the Sponsor to the County is required every year on or before December 31st until three years after the acquisition funds are dispersed.

8. Project Funding

The total grant award provided by the Conservation Futures Fund for the Project shall not exceed \$[AMOUNT]. The Conservation Futures Fund shall not pay any amount beyond that approved in this Agreement for funding of the Project. The Sponsor shall be responsible for no less than [AMOUNT] ([AMOUNT]%) percent of the total Project cost and all Project costs in excess of \$[AMOUNT]. The contribution by the Sponsor toward work on the Project shall be as indicated below. The contribution by the Conservation Futures Fund toward work on the Project is described immediately above and in "C" above.

	Acquisition	O & M	Totals	% Match
[PROJECT NAME] – Conservation Futures	\$[AMOUNT]	\$[AMOUNT]	\$[AMOUNT]	%[AMOUNT]
Estimated Project Sponsor Contribution	\$[AMOUNT]	\$[AMOUNT]	\$[AMOUNT]	%[AMOUNT]
Estimated Total Project Cost	\$[AMOUNT]	\$[AMOUNT]	\$[AMOUNT]	%[AMOUNT]

9. Unexpended Project Allocations

Should unexpected Project allocations, including (but not limited to) project completion at less than the estimated cost or (alternatively) the abandonment of the Project occur, then the Sponsor shall notify the County within 30 days.

10. Modification of this Agreement

All rights and obligations of the parties to this Agreement are subject to this Agreement and its attachments. Except as provided in this Agreement, no alteration of any of the terms or conditions of this Agreement shall be effective unless provided in writing. All such alterations, except those concerning the period of performance, must be signed by both parties. Period of performance extensions need only be signed by Jefferson Board of County Commissioners.

11. Indemnification

- a. For its comparative liability, each party agrees to indemnify, defend and hold the other party, its officers, officials, employees, agents and volunteers (and their marital communities), harmless from and against any claims, damages, losses and expenses,

including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its officers, officials, employees, agents or volunteers (and their marital communities).

- b. A party shall not be required to indemnify, defend, or hold the other party or its officers, officials, employees, agents and volunteers (and their marital communities) harmless if the claim, damage, loss or expense for personal injury, for any bodily injury, sickness, disease or death or for any damage to or destruction of any property (including the loss of use resulting therefrom) is caused by the sole act or omission of the other party or its officers, officials, employees, agents or volunteers.
- c. If any concurrent act occurs or omission of the parties and their officers, officials, employees, agents and volunteers, negligent or otherwise, these indemnity provisions shall be valid and enforceable only for the comparative liability of each party and its officers, officials, employees, agents or volunteers.
- d. The parties agree to maintain a consolidated defense to claims made against them and to reserve all indemnity claims against each other until after liability to the claimant and damages are adjudicated. If any claim is resolved by voluntary settlement and the parties cannot agree upon apportionment of damages and defense costs, they shall submit apportionment to binding arbitration.
- e. The indemnification obligations of the parties shall not be limited by the Washington State Industrial Insurance Act, Title 51 RCW, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act. Each party expressly waives any immunity afforded by such acts to the extent required by a party's obligations to indemnify, defend and hold harmless the other party, its officers, officials, employees, agents and volunteers (and their marital communities). A party's waiver of immunity does not extend to claims made by its own employees directly against that party as employer. The indemnity provisions of this section are a material inducement to enter into this Agreement and have been mutually negotiated. This section shall survive the expiration or termination of this Agreement.

12. Insurance

Prior to commencing work, the Contractor shall obtain at its own cost and expense the following insurance coverage specified below and shall keep such coverage in force during the terms of the Agreement.

- a. Commercial Automobile Liability Insurance providing bodily injury and property damage liability coverage for all owned and non-owned vehicles assigned to or used in the performance of the work for a combined single limit of not less than \$500,000 each occurrence with the County named as an additional insured in connection with the

Contractor's performance of this Agreement. This insurance shall indicate on the certificate of insurance the following coverage: (a) Owned automobiles; (b) Hired automobiles; and, (3) Non-owned automobiles.

- b. Commercial General Liability Insurance in an amount not less than a single limit of one million dollars (\$1,000,000) per occurrence and an aggregate of not less than two (2) times the occurrence amount (\$2,000,000.00 minimum) for bodily injury, including death and property damage, unless a greater amount is specified in the contract specifications. The insurance coverage shall contain no limitations on the scope of the protection provided and include the following minimum coverage:
 - i. Broad Form Property Damage, with no employee exclusion;
 - ii. Personal Injury Liability, including extended bodily injury;
 - iii. Broad Form Contractual/Commercial Liability – including coverage for products and completed operations;
 - iv. Premises – Operations Liability (M&C);
 - v. Independent Contractors and subcontractors;
 - vi. Blanket Contractual Liability.
- c. Professional Liability Insurance. The Contractor shall maintain professional liability insurance against legal liability arising out of activity related to the performance of this Agreement, on a form acceptable to Jefferson County Risk Management in the amounts of not less than \$1,000,000 Each Claim and \$2,000,000 Aggregate. The professional liability insurance policy should be on an “occurrence” form. If the professional liability policy is “claims made,” then an extended reporting periods coverage (tail coverage) shall be purchased for three (3) years after the end of this Agreement, at the Contractor's sole expense. The Contractor agrees the Contractor's insurance obligation to provide professional liability insurance shall survive the completion or termination of this Agreement for a minimum period of three (3) years.
- d. The County shall be named as an “additional named insured” under all insurance policies required by this Agreement, except Professional Liability Insurance when not allowed by the insurer.
- e. Such insurance coverage shall be evidenced by one of the following methods: (a) Certificate of Insurance; or, (b) Self-insurance through an irrevocable Letter of Credit from a qualified financial institution.
- f. The Contractor shall furnish the County with properly executed certificates of insurance that, at a minimum, shall include: (a) The limits of coverage; (b) The project name to which it applies; (c) The certificate holder as Jefferson County, Washington and its elected officials, officers, and employees with the address of Jefferson County Public Health 615 Sheridan Street, Port Townsend, WA 98368, and, (d) A statement that the insurance policy shall not be canceled or allowed to expire except on thirty (30) days prior written notice to the County. If the proof of insurance or certificate indicating the County is an “additional

insured” to a policy obtained by the Contractor refers to an endorsement (by number or name) but does not provide the full text of that endorsement, then it shall be the obligation of the Contractor to obtain the full text of that endorsement and forward that full text to the County. Certificates of coverage as required by this section shall be delivered to the County within fifteen (15) days of execution of this Agreement.

- g. Failure of the Contractor to take out or maintain any required insurance shall not relieve the Contractor from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification of the County.
- h. The Contractor’s insurers shall have no right of recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies, with the exception of Professional Liability Insurance, so affected shall protect both parties and be primary coverage for all losses covered by the above described insurance.
- i. Insurance companies issuing the policy or policies shall have no recourse against the County (including its employees and other agents and agencies) for payment of any premiums or for assessments under any form of policy.
- j. All deductibles in the above described insurance policies shall be assumed by and be at the sole risk of the Contractor.
- k. Any deductibles or self-insured retention shall be declared to and approved by the County prior to the approval of this Agreement by the County. At the option of the County, the insurer shall reduce or eliminate deductibles or self-insured retention, or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- l. Insurance companies issuing the Contractor’s insurance policy or policies shall have no recourse against the County (including its employees and other agents and agencies) for payment of any premiums or for assessments under any form of insurance policy.
- m. Any judgments for which the County may be liable, in excess of insured amounts required by this Agreement, or any portion thereof, may be withheld from payment due, or to become due, to the Contractor until the Contractor shall furnish additional security covering such judgment as may be determined by the County.
- n. Any coverage for third party liability claims provided to the County by a “Risk Pool” created pursuant to Ch. 48.62 RCW shall be non-contributory with respect to any policy of insurance the Contractor must provide in order to comply with this Agreement.
- o. The County may, upon the Contractor’s failure to comply with all provisions of this Agreement relating to insurance, withhold payment or compensation that would otherwise be due to the Contractor.

- p. The Contractor's liability insurance provisions shall be primary and noncontributory with respect to any insurance or self-insurance programs covering the County, its elected and appointed officers, officials, employees, and agents.
- q. Any failure to comply with reporting provisions of the insurance policies shall not affect coverage provided to the County, its officers, officials, employees, or agents.
- r. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- s. The Contractor shall include all subcontractors as insured under its insurance policies or shall furnish separate certificates and endorsements for each subcontractor. All insurance provisions for subcontractors shall be subject to all the requirements stated herein.
- t. The insurance limits mandated for any insurance coverage required by this Agreement are not intended to be an indication of exposure nor are they limitations on indemnification.
- u. The Contractor shall maintain all required insurance policies in force from the time services commence until services are completed. Certificates, insurance policies, and endorsements expiring before completion of services shall be promptly replaced. All the insurance policies required by this Agreement shall provide that thirty (30) days prior to cancellation, suspension, reduction or material change in the policy, notice of same shall be given to the Jefferson County Public Health Contracts Manager by registered mail, return receipt requested.
- v. The Contractor shall place insurance with insurers licensed to do business in the State of Washington and having A.M. Best Company ratings of no less than A-, with the exception that excess and umbrella coverage used to meet the requirements for limits of liability or gaps in coverage need not be placed with insurers or re-insurers licensed in the State of Washington.
- w. The County reserves the right to request additional insurance on an individual basis for extra hazardous contracts and specific service agreements.

13. Workers Compensation (Industrial Insurance)

- a. If and only if the Contractor employs any person(s) in the status of employee or employees separate from or in addition to any equity owners, sole proprietor, partners, owners or shareholders of the Contractor, the Contractor shall maintain workers compensation insurance at its own expense, as required by Title 51 RCW, for the term of this Agreement and shall provide evidence of coverage to Jefferson County Public Health, upon request.
- b. Workers compensation insurance covering all employees with limits meeting all applicable state and federal laws. This coverage shall include Employer's Liability with limits meeting all applicable state and federal laws.
- c. This coverage shall extend to any subcontractor that does not have their own worker's compensation and employer's liability insurance.

- d. The Contractor expressly waives by mutual negotiation all immunity and limitations on liability, with respect to the County, under any industrial insurance act, disability benefit act, or other employee benefit act of any jurisdiction that would otherwise be applicable in the case of such claim.
- e. If the County incurs any costs to enforce the provisions of this subsection, all cost and fees shall be recoverable from the Contractor.

14. Independent Contractor

The Sponsor is an independent contractor with respect to the services provided pursuant to this Agreement. The Sponsor is not as an agent, an employee or a servant of the County. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties. The Sponsor specifically has the right to direct and control Contractor's own activities and over all of its subcontractors, employees, agents and representatives in providing the agreed services in accordance with the specifications set out in this Agreement. Neither Sponsor nor any employee of Sponsor shall be entitled to any benefits accorded County employees by virtue of the services provided under this Agreement. The County shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to Sponsor, or any employee of Sponsor. The Sponsor agrees to file all necessary governmental documents, including appropriate tax returns, reflecting income status as an independent contractor for services rendered to the County under this Agreement.

15. No Assignment

The Sponsor shall not sublet or assign any of the services covered by this Agreement without the express written consent of the County or its authorized representative. Assignment does not include printing or other customary reimbursable expenses that may be provided in an agreement.

16. Ownership and Use of Documents

All documents, drawings, specifications and other materials produced by the Sponsor in connection with the services rendered under this Agreement shall be the property of the Sponsor whether the project for which they are made is executed or not. The County shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference, and use in connection with the Sponsor's endeavors.

17. Compliance with Applicable Statutes, Rules, and Jefferson County Policies

This Agreement is governed by, and the Sponsor shall comply with, all applicable state and federal laws and regulations, including RCW 84.34.210, and published agency policies, which are incorporated into this Agreement by this reference as if fully set forth.

18. No Harassment of Discrimination

Any form of harassment, discrimination, or improper fraternization with any County employee is strictly prohibited. The Sponsor shall not discriminate on the grounds of race, color, national origin, religion, creed, age, sex, sexual orientation, or the presence of any physical or sensory disability in the selection and retention of employees or procurement of materials or supplies.

19. Sponsor's Accounting Books and Records

The Sponsor shall maintain complete financial records relating to this Agreement and the services rendered including all books, records, documents, receipts, invoices, and all other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect cost of any nature expended in the performance of this Agreement. The Sponsor's records and accounts pertaining to this Agreement are to be kept available for inspection by the Office of the State Auditor, federal auditors, the Jefferson County Auditor, and any persons duly authorized by the County shall have full access and the right to examine any of these materials during this period for a period of ten (10) years after the date of the final payment to Sponsor. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. Copies shall be made available upon request. Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed.

20. Licensing, Accreditation and Registration

The Sponsor shall comply with all applicable local, state and federal licensing, accreditation, permitting, and registration requirement/standards necessary for the performance of this Agreement.

21. Disputes

Except as otherwise provided in this Agreement, when a bona fide dispute arises between Jefferson County and the Sponsor and it cannot be resolved, either party may request a dispute hearing with a mediator agreed upon by the parties, or if agreement cannot be made, the mediator shall be selected by the Jefferson County Superior Court. Either party's request for a dispute hearing must be in writing and clearly state:

- a. the disputed issue(s);
- b. the relative positions of the parties; and,
- c. the Sponsor's name, address and agency contact number.

Requests for dispute hearings must be mailed to the Project Manager, Jefferson County Environmental Public Health Department, 615 Sheridan St., Port Townsend, WA 98368, within fifteen (15) days after either party received notice of the disputed issue(s). The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal. The parties shall split evenly the cost of mediation or whatever form of dispute resolution is used. The parties shall bear their own costs and attorney's fees in any dispute.

The venue for any legal action shall be solely in the appropriate state court in Jefferson County, Washington, subject to the venue provisions for actions against counties in RCW 36.01.050.

Each party to this Agreement shall be responsible for their own dispute and litigation costs, including attorney's fees.

22. Termination for Funding

Jefferson County may unilaterally terminate this Agreement in the event funding from state, federal, or other sources are withdrawn, reduced, or limited in any way after the effective date of this Agreement.

23. Termination for Convenience

The County reserves the right to terminate this Agreement at any time by giving ten (10) days written notice to the Sponsor.

24. Assignment

The Sponsor shall not sublet or assign any interest in this Agreement, and shall not transfer any interest in this Agreement without the express written consent of the County.

25. No Waiver

Waiver by any party of any provision of this Agreement or any time limitation provided for in this Agreement shall not constitute a waiver of any other provision.

No consent by either party to, or waiver of, a breach by either party, whether express or implied, shall constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either party.

No term or provision of this Agreement shall be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. Failure of a party to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default.

26. County Does Not Assume Additional Duties

The County does not assume any obligation or duty, except as required by federal or state law, to determine if Sponsor is complying with all applicable statutes, rules, codes ordinances or permits.

27. Agreement Representatives

All written communications sent to the Sponsor under this Agreement shall be addressed and delivered to:

Sponsor Contact
[NAME]

[ADDRESS]

Conservation Futures Program Contact
Tami Pokorny
Jefferson County Environmental Public
Health – Conservation Futures
615 Sheridan Street
Port Townsend, WA 98368

These addresses shall be effective until receipt by one party from the other of a written notice of any change.

28. Entire Agreement

This Agreement, along with all attachments, constitutes the entire agreement of the parties. No other understandings, oral or otherwise, regarding this Agreement shall exist or bind any of the parties.

29. Severability

Provided it does not result in a material change in the terms of this Agreement, if any provision of this Agreement or the application of this Agreement to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application this Agreement shall not be affected and shall be enforceable to the fullest extent permitted by law.

30. Survival

Those provisions of this Agreement that by their sense and purpose should survive the term of this Agreement shall survive the term of this Agreement. Without limiting the generality of the preceding sentence, and for the avoidance of doubt, the provisions that survive the term of this agreement include: (a) controlling law; (b) insurance; and, (c) indemnification.

31. Binding on Successors, Heirs and Assigns

This Agreement shall be binding upon and inure to the benefit of the parties' successors in interest, heirs and assigns.

32. No Third-party Beneficiaries

The parties do not intend, and nothing in this Agreement shall be construed to mean, that any provision in this Agreement is for the benefit of any person or entity who is not a party.

33. Signature in Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Agreement at different times and places by the parties shall not affect the validity of this Agreement, so long as all the parties execute a counterpart of this Agreement.

34. Facsimile and Electronic Signatures

The parties agree that facsimile and electronic signatures shall have the same force and effect as original signatures.

35. Public Records Act

Notwithstanding any provisions of this Agreement to the contrary, to the extent any record, including any electronic, audio, paper or other media, is required to be kept or indexed as a public record in accordance with the Washington Public Records Act, Chapter 42.56 RCW (as may be amended), the Sponsor agrees to maintain all records constituting public records and to produce or assist the County in producing such records, within the time frames and parameters set forth in state law.

The Sponsor also agrees that upon receipt of any written public record request, the Sponsor shall, within two business days, notify the County by providing a copy of the request per the notice provisions of this Agreement.

This Agreement, once executed, shall be a "public record" subject to production to a third party if it is requested pursuant to the Washington Public Records Act.

36. Effective Date of this Agreement

This Agreement shall be effective upon signing by all parties.

37. Controlling Law

It is understood and agreed that this Agreement is entered into in the State of Washington. This Agreement shall be governed by and construed in accordance with the laws of the United States, the State of Washington and the County of Jefferson, as if applied to transactions entered into and to be performed wholly within Jefferson County, Washington between Jefferson County residents. No party shall argue or assert that any state law other than Washington law applies to the governance or construction of this Agreement.

38. Order of Precedence

If there is an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order: (a) Applicable state statutes and rules; (b) local laws and rules; and, (c) case law.

39. Force Majeure

Neither party shall be in default by reason of any failure in performance of this Agreement, if such failure arises out of causes beyond a party's control and without fault or negligence of such party, including but not limited to; (a) acts of God; (b) terrorism or other acts of a public enemy; (c) war; or, (d) epidemics, pandemics or quarantine restrictions.

40. Attachments

Any attachment to this Agreement is part of this Agreement and is incorporated by reference into this Agreement.

41. Representations and Warranties

The parties represent and warrant that: (a) Each person signing this Agreement is fully authorized to enter into this Agreement on behalf of the party for whom signature is being made; (b) Each party that is a corporate entity is duly organized and validly existing in good standing under the laws of one of the states of the United States of America; (c) The making and performance of this Agreement will not violate any provision of law or of any party's articles of incorporation, charter, or by-laws; (d) Each corporate party has taken all necessary corporate and internal legal actions to duly approve the making and performance of this Agreement and that no further corporate or other internal approval is necessary; and, (e) Each party has read this Agreement in its entirety and know the contents of this Agreement, that the terms of this Agreement are contractual and not merely recitals, and that they have signed this Agreement, having obtained the advice of legal counsel.

DATED this _____ day of _____, 20_____.

(SIGNATURES FOLLOW ON THE NEXT PAGE)

JEFFERSON COUNTY WASHINGTON

Board of County Commissioners
Jefferson County, Washington

[NAME]

By: _____
Heidi Eisenhour Date

By: _____
Signature

By: _____
Greg Brotherton, Commissioner Date

Name: _____

Title: _____

By: _____
Kate Dean, Commissioner Date

Date: _____

SEAL:

ATTEST:

Carolyn Galloway Date
Clerk of the Board

Approved as to form only:

Philip C. Hunsucker Date
Chief Civil Deputy Prosecuting Attorney

APPENDIX A

Scope of Work

[NAME], as project sponsor “Sponsor,” shall perform the following tasks in order to implement the [NAME] Project:

Task 1: Acquire Matching Contribution

Sponsor shall secure the necessary matching contribution of no less than seventy-five percent ([AMOUNT]%) of the total project cost. The match must be in an eligible form consistent with JCC 3.08.030(5).

Deliverable 1a: Matching contribution(s) of no less than [AMOUNT]% of the total project cost.

Task 2: Acquire Grant Deed of Conservation Easement

Sponsor shall acquire a grant deed of conservation easement on the subject property, APN#(s) [APN NUMBERS] that incorporates approved Conservation Futures Program language, including the language in item “C” of this Agreement.

Deliverable 2a: Final draft grant deed of conservation easement

Deliverable 2b: Qualifying appraisal and estimated settlement statement (HUD-1)

Deliverable 2c: Recorded grant of conservation easement deed

Task 3: Stewardship Plan

Sponsor shall provide a plan for stewardship

Deliverable 3a: Electronic copy of stewardship plan

Task 4: Annual Reporting

Sponsor shall monitor and report on the property as described in item “D” of this Agreement and submit required reports to the Conservation Futures Citizen Oversight Committee (through staff) in the format provided for each year that it is required.

Deliverable 4a: Completed annual reports.

Exhibit A

Grant Deed of Conservation Easement

Exhibit B

202x Conservation Futures [PROJECT] Application

Exhibit C

202x Conservation Futures Program Manual

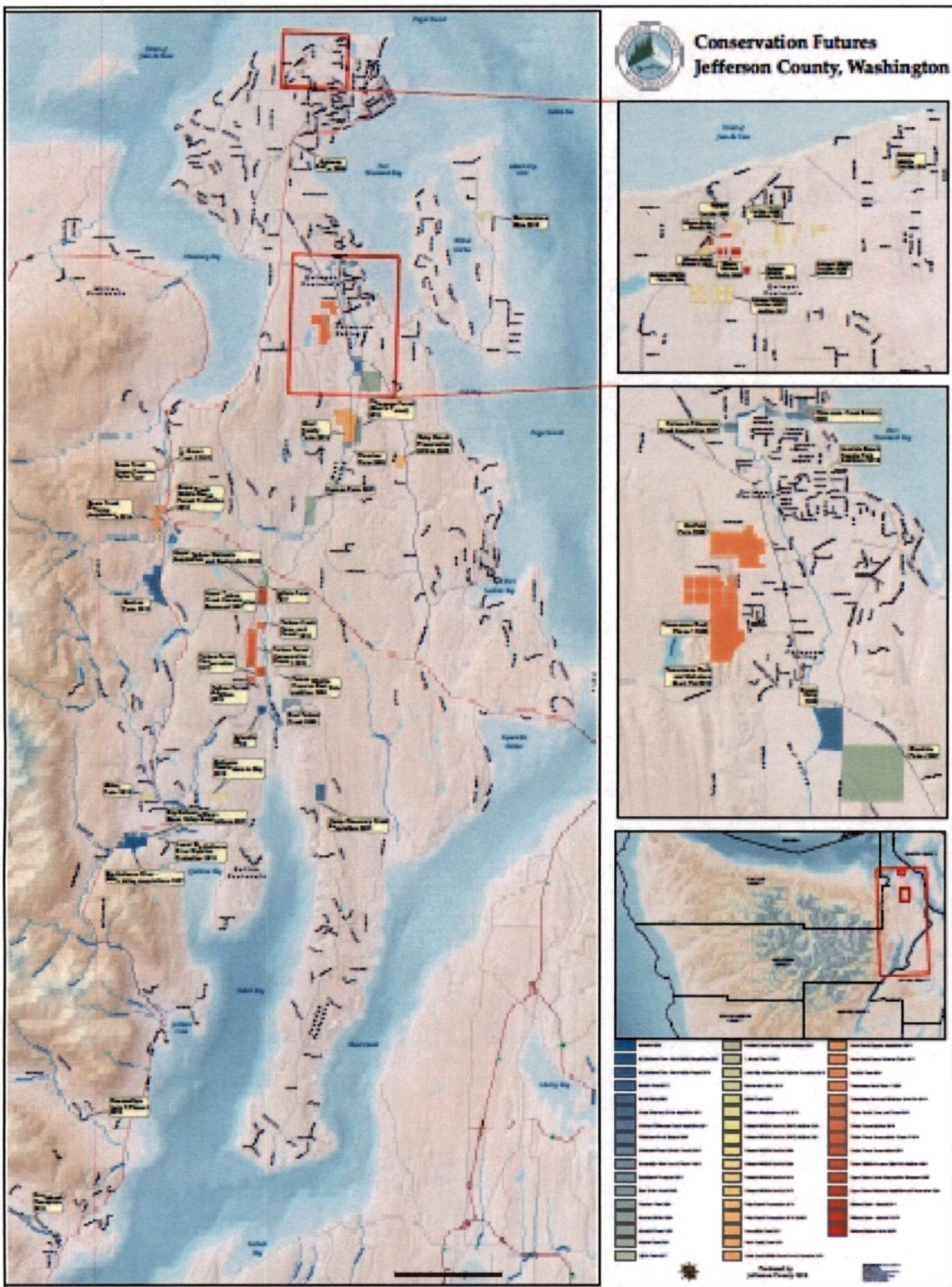
Exhibit D

Resolution No. [NUMBER]

End Conservation Easement Informational Template

Appendix B

APPROVED PROJECTS MAP



ANNUAL REPORT FORM TEMPLATE

Jefferson County Conservation Futures Program Annual Project Reporting Form TEMPLATE

Project Name:
Project Objectives:
Parcel Number(s):
Total Acreage:
Month and year that CF funding was awarded:
Amount of CF award:

☐ Easement

Title:
Grantor:
Grantee:
Date of Acquisition:
Purchase price:

☐ Fee Simple

Seller:
Date of Acquisition:
Purchase price:

Entity responsible for stewardship:

Plans or agreements pertaining to this acquisition:

O & M funds received since acquisition (list by year):

Existing and on-going activities and projects (for each O & M activity that has occurred since October 1 of the previous year, please provide supporting documentation):

New events, activities, projects (for each O & M activity that has occurred since October 1 of the previous year, please provide supporting documentation):

Needs and challenges:
General progress towards project's objectives:

Completed by:
Title:
Organization:

Signature

Date

Appendix C

DEFINITIONS

“Conservation futures citizen oversight committee” means the Jefferson County conservation futures citizen oversight committee established under this chapter.

“Conservation futures fund” means the Jefferson County conservation futures fund established under this chapter.

“Conservation futures tax levy” means that Jefferson County tax levy upon all taxable property in Jefferson County authorized by RCW [84.34.230](#).

“County” means Jefferson County and/or its conservation futures citizen oversight committee.

“Cultural resources” means archeological and historic sites and artifacts, and traditional religious ceremonial and social uses and activities of affected Indian Tribes and mandatory protections of resources under chapters 27.44 and 27.53 RCW. “Open space land” means the fee simple or any lesser interest or development right with respect to real property including, but not limited to, conservation futures, easements, covenants or other contractual rights necessary to protect, preserve, maintain, improve, restore, limit the future use of or conserve selected open space land, farm and agricultural land and timber land (as those terms are defined in Chapter [84.34](#) RCW).

“Project” means open space land, or any lesser interest or development right in specific real property, to which Jefferson County conservation futures tax levy funds are allocated for acquisition under the procedure outlined under this chapter. [Ord. 1-14 § 1; Ord. 6-02 § 1]

“Silviculture” means the practice of controlling the establishment, growth, composition, health, and quality of forests for the production of forest products.

Appendix D
DRAFT 2023 PROGRAM CALENDAR

v. 11 30 2022

TU October 4, 2022 4pm-6pm Online – Agenda: Review Program and Materials Recommendations for 2022

TU November 8, 2022 4pm-6pm Hybrid - JCPH Pacific Room – Agenda: Finalize Program Materials

MO December 19, 2022 1:30 pm (tentative) – Presentation of Recommended Program Changes to BoCC

Early January – Distribute RFP

FR March 24, 2023 by midnight – Project applications due to staff from applicants (email only)

TU March 28, 2023 9am-5pm – Site Visits (alternatively by video)

TU April 4, 2023 2pm-5pm (new timeframe – shorter if fewer projects) – Project Presentations Meeting – Hybrid - JCPH Pacific Room

MO April 10, 2023 Deadline for additional questions for applicants (through staff)

FR April 14, 2023 Deadline for applicants to respond to questions (through staff)

FR April 21, 2023 (somewhat flexible deadline) Provide scores to staff

TU April 25, 2023 2pm-5pm (shorter if fewer projects) –Score, Rank and Recommend Meeting – Hybrid - JCPH Pacific Room, Port Townsend

May/June – Public Hearing and Presentation of Recommendations to BoCC

September/October – Review Funding Round Subcommittee Meeting

September/October – Meeting to finalize changes for 2023 funding round

Exhibit D

Resolution No. 03 - 24

STATE OF WASHINGTON
County of Jefferson

Dedication of Conservation Futures Funds to the }
Schmidt Farm Project as Authorized by and in }
Accordance with Jefferson County Code Section }
3.08.030(7) to Provide a System of Public Open }
Spaces }

RESOLUTION NC 03-24

WHEREAS, conservation futures tax levy collections, authorized under RCW 84.34.230, are an important means of retaining community character and accomplishing the open space policies and objectives of the Jefferson County Comprehensive Plan that encourage the coordinated acquisition of key open space lands for long-term protection; and

WHEREAS, Jefferson County is authorized by RCW 84.34.210 and 84.34.220 to acquire open space land, agricultural and timber lands as defined in RCW 84.34.220; and

WHEREAS, the Conservation Futures Fund Citizen Oversight Committee has reviewed project applications for 2023 and made its funding recommendations to the Board of County Commissioners in accordance with Jefferson County Code Chapter 3.08; and

WHEREAS, under the provisions of the Jefferson County Conservation Futures Program, Jefferson Land Trust, as project sponsor, requests funding towards the acquisition of a conservation easement on two parcels of land in S18 T27N R1W with Assessor's Parcel Numbers 701182005 and 701183003; and

WHEREAS, the County retains enough developable land to accommodate the Schmidt Farm project as well as the housing and employment growth that it is expected to receive, thus satisfying the requirements of Chapter 449, Laws of 2005; and

WHEREAS, Jefferson County considers it in the best public interest to contribute financially to this open space project.

NOW, THEREFORE BE IT RESOLVED that:

1. Jefferson County hereby dedicates up to \$55,000 in conservation futures funds in the 2023 funding cycle for acquisition expenses contingent on a matching contribution of at least ninety percent (90%) of the total project cost.
2. Jefferson County hereby dedicates up to \$5,000 in conservation futures funds to reimburse for operations and maintenance expenses incurred within ten years of the signing of this resolution contingent upon a matching contribution of ninety percent (90%) of the total project cost.
3. This dedication of funding may be nullified if a submittal for reimbursement, accompanied by documentation of matching funds sufficient to complete the

Resolution No. _____ re: Dedication of Conservation Futures Funds to the Schmidt Farm project

acquisition, is not received from the sponsor within three years of the signing of this resolution.

APPROVED AND ADOPTED this 2nd day of January, 2024 in Port Townsend, Washington.

SEAL:



ATTEST:

Carolyn Gallaway
Carolyn Gallaway CMC
Clerk of the Board

JEFFERSON COUNTY
BOARD OF COMMISSIONERS

Kate Dean
Kate Dean, Chair

Greg Brotherton
Greg Brotherton, Member

Heidi Eisenhour
Heidi Eisenhour, Member



HEARING FORM

JEFFERSON COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA REQUEST

TO: Board of County Commissioners
Mark McCauley, County Administrator

FROM: Pinky Mingo, Environmental Public Health and Water Quality
Director
Tami Pokorny, Natural Resources Program Coordinator

DATE: January 2, 2024

SUBJECT: **Agenda Request:** Public Hearing and Possible Decision
Regarding Applications for Conservation Futures Funding in
2023

STATEMENT OF ISSUE:

On December 4th, 2023, the BoCC approved a Public Hearing Notice to hold a public hearing on the Conservation Futures Fund Program project applications received in 2023 on January 2nd, 2024 at 10:15 a.m. The notice was published in the *Port Townsend & Jefferson County Leader* on December 20th and December 27th, 2023. The Conservation Futures Fund Program (JCC 3.08) requires a duly noticed public hearing to be held as part of the public process of allocating conservation futures funding to worthy projects that protect public open spaces. After the hearing, the BoCC may decide which project(s) to fund by passing resolution(s) to include a factual finding as to whether each project would reduce the county's capacity to accommodate growth.

ANALYSIS/STRATEGIC GOALS:

The three applications to the Conservation Futures Fund in 2023 were:

1. Lower Chimacum Creek Mainstem Acquisitions, \$47,00 towards fee simple acquisition of two parcels and a conservation easement, or combination of conservation easement and fee simple, acquisition of two additional parcels, all totaling 3.14 acres. The properties are located in the Chimacum Creek watershed in the Irondale neighborhood of Port Hadlock. Open space protections will support improvements to fish and wildlife habitat, landslide risk reduction, and recreational use. The application also requests \$5,000 towards reimbursement of operations and maintenance costs. The proposed match is a \$165,750 grant from the Salmon Recovery Funding Board. The project applicant and sponsor is Jefferson Land Trust; Project locations: S34 T30N R1W.

2. North Barry Snow Creek, \$69,000 towards the fees simple acquisition of two parcels totaling 20.45 acres in the Snow Creek watershed south of Discovery Bay. The properties will support improvements to Strait of Juan De Fuca Summer Chum salmon and winter steelhead habitat, reduce sediment inputs, and improve water quality. The application also requests \$5,000 towards reimbursement of operations and maintenance costs. The proposed match is a \$85,000 grant from the Salmon Recovery Funding Board. The project applicant and sponsor is Jefferson Land Trust; Project locations: S35 T29N R2W.

3. Schmidt Farm, \$55,000 towards the acquisition of a conservation easement on two parcels totaling 67 acres in the Jakeway Creek watershed north of Quilcene Bay. Open space protections will support continued agricultural activities and sustain an existing treed corridor for Jakeway Creek. The application also requests \$5,000 towards reimbursement of operations and maintenance costs. The proposed match is \$514,600 in grants from the State Farmland Preservation and Navy's Readiness and Environmental Protection Integration (REPI) programs. The project applicant and sponsor is Jefferson Land Trust; Project locations: S18 T27N R1W.

At its April 25th meeting, the Conservation Futures Fund Citizen Oversight Committee (CFFCOC) voted all in favor that the projects are worthy of funding. It also voted unanimously to recommend full funding for each project including the operations and maintenance requests. The amount of funds available is \$230,000 and the total request for funding is \$186,000.

This briefing packet contains:

- Draft funding resolutions consistent with the recommendations of the CFFCOC
- CFFCOC recommendations memo that was presented to the BoCC on May 31, 2023 by then Committee Chair Cameron Jones.
- Final summary of the April 25th CFFCOC meeting
- Analysis from Joel Peterson, Jefferson County Department of Community Development
- Map of conservation futures projects 2003-2022
- Three conservation futures project applications and the relevant sponsor information.

The purpose of the CF Program is to address the "general and increasing need to provide a system of public open spaces...for the health, welfare, benefit and safety of the residents of Jefferson County," and to maintain "Jefferson County as a desirable place to live, visit and locate businesses." Conservation futures tax levy collections, authorized under RCW 84.34.230 are an important means of retaining community character and accomplishing open space policies and objectives of the Jefferson County Comprehensive Plan. The goal of the program is to preserve and protect the county's open space resources from development, and from being "negatively and permanently affected."

On January 3, 2006, the BOCC approved Ordinance No. 01-0103-06 in response to Chapter 449 of that year which allowed up to 15% of the conservation future levy monies raised in the preceding year to be used for operations and maintenance needs. Fifteen percent of the revenue collected in 2022 (\$282,836) is \$42,425. The total request for operations and maintenance funding in 2023 is \$15,000. Chapter 449 also states that local governments must consider and develop findings on whether or not new projects would reduce the County's capacity to accommodate planned growth.

Grant agreements for approved projects between Jefferson Land Trust and the County will be developed by Environmental Public Health and submitted to the BoCC for approval.

FISCAL IMPACT:

The explicit purpose of the Conservation Futures Program is to fund acquisition projects to support a system of public open spaces. There is no impact to the General Fund for this effort.

The following projects are anticipated to close in 2024:

Quimper Trust Land Transfer: \$205,000

Dosewallips River Lazy C: \$7,649

Pending approval, two of the Lower Chimacum Creek Mainstem Acquisitions parcels

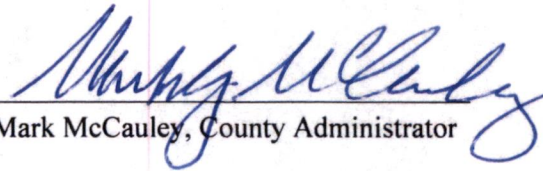
Pending approval, North Barry Snow Creek

Pending approval, Schmidt Farm

RECOMMENDATION:

- 1) Review the three project proposals brought forth by the CF Committee.
- 2) Hold a public hearing on January 2nd, 2024 at 10:15 a.m. Consider the written and oral testimony at the public hearing and adopt any of the enclosed funding resolutions (with or without revisions) for project proposals and funding amounts that the Commissioners may wish to approve.

REVIEWED BY:

 12/26/23
Mark McCauley, County Administrator Date