



2015-0423 TALL CHIEF: Striking Amendment and Amendments

18194

Number	Amendment	Title	Sponsor	Description
S1	S1	Striker w/ New CE & MOA	Lambert	<p>This amendment inserts a new Memorandum of Agreement which shall become an Exhibit to the Purchase and Sale Agreement memorializing that King County and the Keller Family Dairy have reached an agreement (summarized below) subject to the terms of the Conservation Easement, appropriate zoning, issuance of any required permits and availability of utilities:</p> <ol style="list-style-type: none">1. Farmable land in the Agriculture Area, outside the Building Site Area, will be actively farmed.2. Within a reasonable period of time the Keller Family Dairy will make available greenhouses for area farmer(s) under a lease or other arrangement.3. Within a reasonable period of time the Keller Family Dairy will make available a portion of the Building Site Area to King County farmers for farm equipment storage during the flood season under a lease or other arrangement.4. If deemed salvageable and is restored, within a reasonable period of time the Keller Family Dairy will utilize the pro-shop for uses permitted in Section 3.5 of the Conservation Easement and also make it available, for a fee or otherwise, for a reasonable number of local farm community meetings to be determined at the discretion of the Keller Family Dairy and subject to the Keller Family Dairy approval.5. Subject to ability to make arrangements with qualified equipment repair technicians, within a reasonable period of time the Keller Family Dairy will provide a farm equipment repair shop, which will be available to King County farmers. Customers of the farm equipment repair shop will be required to pay for repair work at customary rates to be determined.6. The Keller Family Dairy will work with King County Historical Society to provide signage near the Property entrance to state the name, reflect the history of the Property (and adjoining property owned by the Keller Family Dairy) and to denote its status as Protected Property under the Conservation Easement.7. King County and the Keller Family Dairy will meet on an annual basis, for a period at least up to five years, to discuss progress toward fulfilling the above objectives.8. The Keller Family Dairy acknowledges and will support King County's proposal for the Property to be added to the agriculture production district and rezoned to agriculture zoning.
1 to S1	DU-1	Livestock Treatment	Upthegrove	<p>This amendment would amend the Memorandum of Agreement between the County and the Kellers to add language, requiring specific standards related to the treatment of livestock on the property.</p>
2 to S1	RD-1	Dwelling Units	Dembowski	<p>The Conservation Easement as transmitted would permit the purchaser to acquire two additional dwelling units over the next 10 years, in addition to the dwelling unit that comes with the original purchase, for a total of three dwelling units.</p> <p>This amendment would require the Executive to make changes to Section 1.4 of the Purchase and Sale Agreement and Section 6 of the Conservation Easement to remove the ability to acquire the two additional dwelling unit. This would limit the purchaser to one dwelling unit.</p>

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3 to S1	RD-2	Accessory Dwelling Units	Dembowski	<p>The Conservation Easement as transmitted would permit one accessory dwelling unit for each of the three dwelling units, for a total of six units.</p> <p>This amendment would require the Executive to make changes to subsections 7.1 and 7.2 of the Conservation Easement to prohibit accessory dwelling units.</p>
4 to S1	RD-3	Agricultural Employee Housing	Dembowski	<p>The Conservation Easement as transmitted would allow housing for agricultural employees who work at any farm in King County.</p> <p>This amendment would require the Executive to make changes to subsection 8.1 of the Conservation Easement to limit agricultural employee dwelling units to workers on this property, and limit the number and location of the units to the footprint of the existing buildings on the site.</p>
5 to S1	RD-4	Require Agriculture	Dembowski	<p>The Conservation Easement as transmitted would "encourage" the property to be used for agriculture.</p> <p>This amendment would require the Executive to make changes to subsection 4.2 of the Conservation Easement stating that farmable land on the property will be actively farmed and giving the County the right to re-acquire the property at fair market value if the agricultural area of the property is not predominantly used for farming.</p>
6 to S1	RD-5	Farm Management Plan	Dembowski	<p>The Conservation Easement as transmitted requires development of a Farm Management Plan for the property.</p> <p>This amendment would require the Executive to make changes to subsection 4.2 of the Conservation Easement to strengthen the language in the Farm Management Plan in regards to protecting wetlands and critical areas.</p>
7 to S1	RD-6	Commercial Uses	Dembowski	<p>The Conservation Easement as transmitted would allow the purchaser to host up to ten group events – including local community events, local farm community celebrations or gatherings, or weddings – each year.</p> <p>This amendment would require the Executive to make changes to subsection 3.5 of the Conservation Easement to require that these group events be non-commercial in nature, and not designed as commercial or profit-making ventures.</p>
8 to S1	RD-7	Public Benefits	Dembowski	<p>The Conservation Easement as transmitted does not contain any requirement that the purchaser provide the public benefits that were informally agreed to during the Request for Proposals process and in the September 8, 2015, offer letter from King County to sell the property.</p> <p>This amendment would incorporate the public benefits listed in the County's offer letter into the Conservation Easement, requiring the purchaser to make commercially reasonable efforts within five years to provide greenhouses, farm equipment flood storage, a restored pro-shop, farm equipment repair, and historical markers. It would also require an annual meeting with the County to review progress in achieving these benefits.</p>
9 to S1	RD-8	Price Escalator	Dembowski	<p>The transmitted Conservation Easement (Exhibit B to the Purchase and Sales Agreement, which is Attachment A to the Proposed Ordinance) would permit the purchaser to purchase the rights for two additional dwelling units: one for \$160,000 and one for \$105,000.</p> <p>This amendment would lock in those prices for two years and then require an annual price escalation of 3% after that, or, alternatively, allow the price to be set through a new appraisal that is funded by the purchaser.</p>



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10 to S1	RD-9	Clustering	Dembowski	<p>The transmitted Conservation Easement (Exhibit B to the Purchase and Sales Agreement, which is Attachment A to the Proposed Ordinance) would permit the purchaser to purchase the rights for a total of three dwelling units.</p> <p>This amendment would require that those dwelling units, if constructed, must be clustered as is required for TDR sending sites zoned RA under K.C.C. 21A.37.050. (Note that this amendment is being proposed because the property is proposed to be rezoned to A as part of the 2016 Comp Plan, and A zoning does not require that type of clustering on TDR sending sites.)</p>
11 to S1	RD-10	Recreational Uses	Dembowski	<p>The transmitted Conservation Easement (Exhibit B to the Purchase and Sales Agreement, which is Attachment A to the Proposed Ordinance) would permit the purchaser to allow recreational uses, such as hiking, camping, hunting and fishing, on the property.</p> <p>This amendment would specify that these recreational uses are allowed only if the property is predominantly being used for agriculture.</p>
12 to S1	RD-11	Five Percent Non-Tillable	Dembowski	<p>The transmitted Conservation Easement (Exhibit B to the Purchase and Sales Agreement, which is Attachment A to the Proposed Ordinance) would permit the purchaser to keep up to 10% of the property (or a total of 19.1 acres) in non-tillable surfaces and structures, such as residences, barns, machine sheds, permanent greenhouses, roads and driveways, and surfaced pads.</p> <p>This amendment would reduce that amount to five percent (or a total of 9.55 acres).</p>
13 to S1	RD-12	Mining	Dembowski	<p>The transmitted Conservation Easement (Exhibit B to the Purchase and Sales Agreement, which is Attachment A to the Proposed Ordinance) would permit the purchaser to undertake certain mining activities, which are not allowed under the zoning code.</p> <p>This amendment would provide clarification about how resources can be extracted and used.</p>
14 to S1	RD-13	Indemnification & Title Insurance	Dembowski	<p>The transmitted Purchase and Sale Agreement would not provide indemnification for the County and would require the County to pay for the title insurance policy.</p> <p>This amendment would add indemnification language and would require the buyer to reimburse for title insurance costs.</p>

18194

Striker with new CE
and MOA

S1

December 7, 2015

as amended

wsh

Sponsor: Lambert

Proposed No.: 2015-0423

KL → passed

6-2 RDM + LG No' LPex.

1 **STRIKING AMENDMENT TO PROPOSED ORDINANCE 2015-0423, VERSION**

2 **1**

3 On page 1, beginning on line 5, strike everything through page 3, line 47, and insert:

4 "STATEMENT OF FACTS:

5 1. The 191-acre Tall Chief property located at 1313 West Snoqualmie

6 River Road Southeast, Fall City, Washington, located within council

7 district three, operated as a golf course from approximately 1950 through

8 2012 and was purchased by the water and land resources division of the

9 department of natural resources and parks on December 17, 2013.

10 2. The water and land resources division of the department of natural

11 resources and parks declared the 191-acre Tall Chief property surplus to

12 its needs on March 23, 2015.

13 3. The facilities management division offered the property to other county

14 agencies on March 25, 2015, and received no interest.

15 4. The facilities management division declared the property surplus to the

16 current and future foreseeable needs of the county on May 7, 2015.

5. The facilities management division found the property unsuitable for affordable housing development on April 30, 2015.

6. The property was marketed in the following manner: the county issued a request for proposals and entered a negotiated direct sale with the entity that was selected. Information on the selection and evaluation process is included in the property summary on file with the clerk of the King County council.

7. The county received one proposal to purchase the entire property and accepted a purchase price of \$720,000 on September 9, 2015, subject to an agricultural conservation easement in favor of the county.

8. The county received two additional proposals, one from Seattle Tilth and the other from Kou Oh and Fong Cha, neither of which proposed to purchase the entire property.

9. The net proceeds from the sale of the property will be deposited into the conservation futures fund with the intention to apply it to the purchase of additional agricultural properties within Snoqualmie Valley consistent with the memoranda of understanding with Seattle Tilth and Kou Oh.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings: The sale of the Tall Chief property through a negotiated direct sale is authorized under K.C.C. 4.56.100.A.2. because unique circumstances make the sale in the best interests of the public. Unique circumstances are present because the county marketed the property through issuance of a request for proposals and received only one proposal for purchase for the entire property. Further, that proposal was the

highest ranked submittal under the evaluation criteria and best served the county's goals for returning the property to farming.

SECTION 2. A. The executive is not authorized to convey the Tall Chief property to the Keller Family Dairy, LLC until the executive and the Keller Family Dairy, LLC execute amendments to the purchase and sale agreement as set forth in this section. Once purchase and sale agreement amendments that fulfill the requirements of this section are executed, the executive is authorized to convey the Tall Chief property to the Keller Family Dairy, LLC, consistent with a purchase and sale agreement, which is Attachment A to this ordinance, as modified by the requirements of this section. The executive may then take all actions necessary to implement the terms of the purchase and sale agreement as amended.

B. An amendment to the purchase and sale agreement shall require as a condition of closing the execution of the memorandum of agreement in substantially the form of Attachment B to this ordinance, and the memorandum of agreement shall become an exhibit and be incorporated into the purchase and sale agreement.

C. An amendment to the purchase and sale agreement shall delete Exhibit B of the purchase and sale agreement, which is Attachment A to this ordinance, and replace it with a revised Exhibit B in substantially the form of Attachment C to this ordinance."

Insert Attachment B, Memorandum of Agreement, dated December 7, 2015.

Insert Attachment C, Conservation Easement, dated December 7, 2015.

EFFECT: Replaces the Conservation Easement, which makes various clarifications and technical corrections.

- 63 **Inserts a new Memorandum of Agreement which shall become an Exhibit to the**
64 **Purchase and Sale Agreement.**

ATTACHMENT B

Memorandum of Agreement

Regarding the commitment to achieve public benefits related to use of the Property known as Tall Chief.

This memorandum of agreement is made by and between King County, a political subdivision of Washington ("the County") and the Keller Family Dairy, LLC ("Keller Family Dairy"), as of the ____ day of December, 2015 ("Agreement").

WHEREAS:

- A. The Keller Family Dairy proposes to purchase the Tall Chief property to expand its adjacent farm and preserve the upland forest area under an approved Forest Management Plan that will include recreational opportunities.
- B. The County will reserve an Agricultural Conservation Easement ("Conservation Easement"), in the form attached hereto, prior to conveyance of the Property to the Keller Family Dairy.
- C. Under the Keller's proposal, , and subject to obtaining all necessary permits, the farmable land in the Agricultural Area, outside the Building Site Area, will be in production in 2016, and operated under the approved Farm Conservation Plan for the property..
- D. The Keller Family Dairy is a 5th-generation small business that currently supplies milk to Darigold. The acquisition will allow the Keller Family Dairy to move some operations away from the floodplain, which will benefit the business and the environment.
- E. The Keller Family Dairy has proposed several community benefits on a portion of the property, including developing greenhouses for other farmers to use and lease and providing equipment storage area(s) for lease within the Building Site Area allowing other farmers to store equipment on high ground during flooding.

NOW THEREFORE, King County and the Keller Family Dairy have reached the following agreement:

The enumerated commitments below are subject to the terms of the Conservation Easement, but in the event of any conflict between the terms of the Conservation Easement and this Agreement, the terms of this Agreement shall control. Capitalized terms herein shall have the meanings set forth in the Conservation Easement.

1. Farmable land in the Agriculture Area, outside the Building Site Area, will be actively farmed;

2. Subject to appropriate zoning, issuance of any required permits, and availability of utilities, within a reasonable period of time the Keller Family Dairy will make available greenhouses within a portion of the Building Site Area for area farmer(s) under a lease or other arrangement to be determined. The physical location within the Building Site Area and the actual number and size of the greenhouses will depend upon market demand.

3. Subject to appropriate zoning, issuance of any required permits, and availability of utilities, within a reasonable period of time the Keller Family Dairy will make available a portion of the Building Site Area to King County farmers for farm equipment storage during the flood season (likely November through February) under a lease or other arrangement to be determined.

4. If the old Tall Chief pro-shop building is deemed salvageable and is restored, and subject to appropriate zoning, issuance of any required permits, and availability of utilities, within a reasonable period of time the Keller Family Dairy will utilize it for uses permitted in Section 3.5 of the Conservation Easement and also make it available, for a fee or otherwise, for a reasonable number of local farm community meetings to be determined at the discretion of the Keller Family Dairy and subject to the Keller Family Dairy approval.

5. Subject to appropriate zoning, issuance of any required permits, availability of utilities and ability to make arrangements with qualified equipment repair technicians, within a reasonable period of time the Keller Family Dairy will provide a farm equipment repair shop, which will be available to King County farmers. Customers of the farm equipment repair shop will be required to pay for repair work at customary rates to be determined.

6. The Keller Family Dairy will work with King County Historical Society to provide signage near the Property entrance to state the name, reflect the history of the Property (and adjoining property owned by the Keller Family Dairy) and to denote its status as Protected Property under the Conservation Easement as contemplated in Section 3.11.1 of the Conservation Easement; provided however, that Buyer will avoid repetition of signage contemplated by King County in Section 3.11 of the Conservation Easement.

7. King County and the Keller Family Dairy will meet on an annual basis, for a period at least up to five years, to discuss progress toward fulfilling the above objectives.

8. The Keller Family Dairy acknowledges and will support King County's proposal for the Property be added to the agriculture production district and rezoned to agriculture zoning.

9. The term of this Agreement shall be five (5) years from the date this Agreement is fully executed.

10. The parties agree that this Agreement is incorporated into the purchase and sale agreement; provided however, the enforcement terms of the Conservation Easement shall apply to this Agreement.

Keller Family Dairy, LLC,
a Washington limited liability company

By: _____

Steve Keller

Its: Co-Managing Member

Date: December __, 2015

By: _____

Janet Keller

Its: Co-Managing Member

Date: December __, 2015

King County
a political subdivision of Washington

By: _____

Christie True, Director

Department of Natural Resources and Parks

Date: December __, 2015

After Recording Return To:
King County Department of Executive Services
Facilities Management Division
Real Estate Services Manager

830 King County Administration Building
500 Fourth Avenue
Seattle, Washington, 98104-2337 Attn: Gail Houser

RESERVATION OF AGRICULTURAL CONSERVATION EASEMENT

GRANTOR/LANDOWNER:

KELLER FAMILY DAIRY, LLC, a Washington limited liability company

GRANTEE/RESERVING ENTITY:

KING COUNTY, a political subdivision of the State of Washington

LEGAL DESCRIPTION:

Abbreviated form: Sec 5, Town 24, Range 7, Ptn East ½ & Sec 4, Town 24,
Range 7, Gov't Lots 6 & 7.

Full legal: Attached hereto as Exhibit A.

**ASSESSOR'S TAX PARCEL NOS.: 052407-9002-09; 052407-9025-02; and
052407-9026-01**

REFERENCE NUMBER(S) OF RELATED DOCUMENT(S): N/A

KING COUNTY RESERVATION OF AGRICULTURAL CONSERVATION EASEMENT

THIS RESERVATION OF AGRICULTURAL CONSERVATION EASEMENT ("Conservation Easement") is made and effective as of the date of the Deed into which it is incorporated ("Effective Date") and is between **KING COUNTY**, a political subdivision of the State of Washington, its successors and assigns (hereinafter together referred to as the "County") and the **KELLER FAMILY DAIRY, LLC**, a Washington limited liability company its successors and assigns (hereinafter together referred to as the "Landowner"). The County and the Landowner may be referred to individually herein as a "Party" and collectively as the "Parties".

1 RECITALS.

- 1.1 The County is the present owner in fee of that certain real property situated in King County, State of Washington, and more particularly described in Exhibit A and shown in aerial photography on Exhibit B, both of which are attached to and made a part hereof by this reference (hereinafter the "Protected Property"). The Protected Property includes all existing and/or claimed water rights ("Water Rights") as described in Exhibit C, attached to and made a part hereof by this reference.
- 1.2 The Protected Property is three existing parcels, with tax parcel numbers of 052407-9002-09; 052407-9025-02; and 052407-9026-01, consisting of approximately 146, 25 and 20 acres respectively, and together comprising approximately 191 acres. Certain portions of the Protected Property, together comprising approximately 80 acres of land, are designated herein as forestlands ("Forestland Area"). The remaining portions of the Protected Property, together comprising approximately 111 acres of land, are designated herein for permanent protection as agricultural lands ("Agricultural Area"). The locations of the Forestland Area and the Agricultural Area are shown on Exhibit B.
- 1.3 The Landowner agrees that it is purchasing the Protected Property encumbered by this Conservation Easement under which the County retains certain Development Rights in the Protected Property and the associated transferable development rights ("TDRs") as defined in King County Code ("KCC") chapter 21.A.37. The Landowner agrees that thirty (30) rural TDRs are being generated by encumbering the Protected Property with this Conservation Easement. In accordance with KCC chapter 21.A.37, these TDRs will be issued to the County's TDR Bank. The County has determined that transfer of the Development Rights from the Protected Property will benefit the public through the preservation of the Protected Property devoted to agricultural, forestry and open space uses.

- 1.4 The County and Landowner have mutual interests in preventing the conversion of agricultural lands to non-agricultural uses and forestlands to non-forestry uses and it is the purpose of this Conservation Easement to protect the prime farmland soils and to retain the agricultural viability within the Agricultural Area, as defined herein, and to protect the forestlands for allowed forest uses within the Forestland Area, as defined herein.
- 1.5 The County is a “qualified conservation organization,” as defined by the Internal Revenue Code, and accepts the responsibility of enforcing the terms of this Conservation Easement in perpetuity.
- 1.6 The Agricultural Area has the capacity to be Farm and Agricultural Land as defined in RCW 84.34.020(2) or Farm and Agricultural Conservation Land as defined in RCW 84.34.020(8) and it possesses agricultural soils as well as having other characteristics, including having a portion of land located out of the floodplain that is available for agriculture related uses, that make it very suitable for commercial production of agricultural products.
- 1.7 The Forestland Area has important ecological functions that benefit the Protected Property as a whole, and retention of the Forestland Area in commercial forestry uses is one of the purposes of this Conservation Easement.
- 1.8 Preservation of the Agricultural Area for agricultural uses and the Forestland Area for the forestry uses described herein is referred to herein as “Conservation Values” of the Protected Property.
- 1.9 The Protected Property also possesses open space, ecological and natural values (e.g., undeveloped rural views, undeveloped wetland and riparian areas that enhance habitat for salmon and provide wildlife habitat and resting areas for migratory waterfowl), forested areas, natural flood storage and conveyance functions and ground-water recharge values (e.g. lack of impervious surface and existing wetlands), all of which are of great importance to the County, Landowner, the people of King County, and the people of the State of Washington. Collectively these values are referred to herein as the “Open Space Values”.
- 1.10 Landowner desires to cooperate with the County in preserving and devoting the Protected Property for Agricultural Uses, Forestry Uses, and Open Space Uses, as those terms are defined in this Conservation Easement.
- 1.11 This Conservation Easement will preserve the Protected Property for activities consistent with Agricultural Uses, Forestry Uses, and Open Space Uses to maintain and enhance the Conservation Values and Open Space Values in perpetuity in accordance with the specific terms and conditions hereinafter set forth. Uses of the

Protected Property that are inconsistent with the allowed uses established in this Conservation Easement will be prohibited, prevented or corrected by Landowner in consultation with the County. The Parties acknowledge and agree that, subject to obtaining all required governmental building and related permits, the existing buildings, structures, improvements, roadways and other impervious surfaces currently located on the Protected Property may remain, and may be renovated, repaired, remodeled, demolished, replaced or otherwise improved for allowed uses in this Conservation Easement, subject to obtaining all necessary permits from the County. Such buildings, structures, improvements, roadways and all other impervious surfaces are to be included in the calculation of the 10% limitation on non-tillable surfaces referred to in Subsection 3.7 of this Conservation Easement.

- 1.12 The water wells, and Water Rights, as defined below, located on the Protected Property, or to which the Protected Property has a beneficial interest, shall remain, be preserved, and continue to be put to beneficial use in accordance with this Conservation Easement. The Water Rights are bound by and permanently subject to the covenants, terms and conditions contained in this Conservation Easement. The County and Landowner have agreed that, in order to maintain the opportunity for the commercial production of agricultural products upon a significant portion of the Protected Property and to protect the Conservation Values and Open Space Values of the Protected Property, this Conservation Easement includes the right of the County to oversee and assist with proper management and allocation of any and all Water Rights appurtenant to the Protected Property. The term "Water Rights" includes any and all of the rights associated with the historical and beneficial use of water on the Protected Property including, without limitation, any of the embankments, flumes, head gates, measuring devices, structures, easements and rights-of-way appurtenant thereto.
- 1.13 This Conservation Easement furthers the objectives of the King County Comprehensive Plan to ensure the conservation and productive use of the County's natural resource lands and is responsive to the Washington State Growth Management Act as it serves to retain open space, encourages the conservation of productive agricultural lands and forestry lands, discourages incompatible uses of these lands, and maintains and enhances natural resource-based industries occurring thereon.
- 1.14 The Conservation Values and Open Space Values protected by this Conservation Easement also further the following governmental conservation objectives:

1.14.1 King County Comprehensive Plan Policy R-313, which provides as follows: "The purpose of the [Transfer of Development Rights] TDR Program is to reduce development potential in the Rural Area and the designated Resource Lands, and its priority is to encourage the transfer of development rights from private rural lands into the Urban Growth Area."

1.14.2 King County Comprehensive Plan Policy E-499(s), which provides as follows: "The existing flood storage and conveyance functions and ecological values of floodplains, wetlands, and riparian corridors shall be protected, and should, where possible, be enhanced or restored."

1.14.3 RCW 84.34.010, in which the Washington State Legislature has declared "that it is in the best interests of the State to maintain, preserve, conserve and otherwise continue in existence adequate open space lands for the production of food, fiber and forest crops, 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."

1.14.4 RCW 64.04.130 and RCW 84.34.210 grant counties the authority to hold and acquire real property interests to preserve, conserve and maintain open space, agricultural and timberlands; and RCW 36.70A.090 provides that counties should provide for innovative land use management techniques such as transfer of development credit programs.

1.14.5 A significant portion of the Protected Property possesses the capacity to produce agricultural products in furtherance of State and King County objectives described in RCW 84.34.020, the King County Countywide Planning Policies, and the King County Comprehensive Plan.

1.14.6 Conservation Futures Tax Ordinance No. 10750, wherein the King County Council determined that there is an "increasing need to provide a system of public open spaces necessary for the health, welfare, benefit and safety of the residents of King County and to maintain King County as a desirable place to live, visit and locate businesses."

1.14.7 King County's Transfer of Development Rights Program, KCC 21A.37, which enables the owners of property with "Rural" zoning designations to transfer development rights from their property to certain receiving sites within unincorporated and incorporated King County in exchange for the permanent preservation and protection of the land and its Conservation Values and Open Space Values.

~~1.14.8 Waterways Motion No. 9175, in which King County commits to preserving critical waterways in order to preserve these systems for habitat and recreational purposes.~~

2 CONVEYANCE AND CONSIDERATION.

- 2.1 By accepting the County's reservation of this Conservation Easement from the conveyance of the Protected Property, for the reasons stated above, and in consideration of the mutual covenants, terms and conditions contained herein and other valuable consideration, the receipt and adequacy of which is hereby acknowledged, Landowner hereby accepts a perpetual Conservation Easement on, over, and across the Protected Property, consisting of the rights in the Protected Property hereinafter enumerated, subjecting the Protected Property to the terms, covenants, limitations, restrictions, easements and servitudes set forth in this Conservation Easement and limiting allowed activities to agricultural, forestry and open space uses as specifically delineated herein.
- 2.2 The Recitals are hereby incorporated herein and made a part hereof.
- 2.3 The County and Landowner hereby agree that the Protected Property shall be bound by and permanently subject to the restrictive covenants, terms, and conditions set forth in this Conservation Easement. None of these covenants, terms, and conditions shall be construed as allowing a use that is not otherwise permitted by applicable federal, state and County laws, codes, requirements, standards, rules, regulations and ordinances ("Applicable Law"). Landowner shall conduct all allowed uses and activities under this Conservation Easement so as to meet all requirements of Applicable Law as it may be amended from time to time, and to obtain all permits required by such Applicable Law. Neither the permission, consent, approval or allowance by the County contained herein or given pursuant to this Conservation Easement is, or shall be construed as, a representation or assurance that the matter to which consent, approval or allowance has been given complies with Applicable Law; nor shall any such consent, approval or allowance be construed to authorize any failure to comply with Applicable Law.
- 2.4 This Conservation Easement reserves an interest in real property under the provisions of RCW 64.04.130 and is made as an absolute, unconditional, unqualified, and completed reservation to the County of this interest in real property, subject only to the mutual covenants and restrictions hereinafter set forth.
- 2.5 This Conservation Easement is subject to easements, covenants, restrictions, water rights and other matters of record as of the Effective Date of this Conservation Easement.
- 2.6 Except as provided in Subsection 3.12, this Conservation Easement does not reserve to the County any Water Rights, which are hereby expressly retained by Landowner.

**3 LANDOWNER RIGHTS, AND COVENANTS, RESTRICTIONS AND USES
GENERAL TO THE ENTIRE PROTECTED PROPERTY.**

3.1 Purposes. The purposes of this Conservation Easement are to implement the mutual intentions of the County and Landowner to preserve and protect in perpetuity the Conservation Values and Open Space Values on the Protected Property as described in the above Recitals and to limit the uses on and of the Protected Property to those specifically allowed in this Conservation Easement. Unless the Parties mutually agree by written amendment to this Conservation Easement, allowed uses shall include only those uses specified in this Section 3 (Uses and Restrictions Applicable to Entire Protected Property); Section 4 (Agricultural Area); and Section 5 (Forestland Area); Section 6 (Dwelling Units); Section 7 (Accessory Dwelling Units) and Section 8 (Agricultural Employee Dwelling Units) (collectively, these may be referred to as the "Allowed Uses").

3.2 Landowner's Intent. Landowner intends that the Protected Property shall not be converted or directed to any uses other than the Allowed Uses.

3.3 Landowner's Retained Rights. Landowner retains for itself, and its successors and assigns, all customary rights and privileges of ownership of the Protected Property, including, but not limited to, the right to use, sell, lease and devise the Protected Property or Water Rights associated therewith, subject to the terms, covenants, limitations, restrictions, easements and servitudes, set forth in this Conservation Easement.

3.4 Allowed Open Space Uses. The following open space uses are allowed within the Protected Property subject to Applicable Law. Open space uses, as used herein, mean:

3.4.1 Agricultural and Forestry uses.

3.4.2 The Landowner's right, but not obligation, with the County's prior written consent, to voluntarily conduct habitat restoration or allow mitigation activities within Potential Restoration Areas on the Protected Property, as identified in Exhibit B, to meet on or off-site compensatory mitigation needs consistent with King County policies and regulations.

3.4.3 All restoration and mitigation activities shall: (a) ensure that agriculture and forestry uses remain the predominant uses on the Protected Property; (b) avoid impacts to and prevent loss of land suitable for direct agricultural or forestry production outside the Potential Restoration Areas; (c) not substantially reduce the Protected Property's overall capacity for future agricultural

and forestry production; (d) not enhance or substantially increase flooding potential on the Protected Property; (e) be planned and designed to benefit current and future agricultural and forestry production within the Agricultural Area and Forestland Area; (f) be conducted such that the natural, ecological, scenic, or designated historic resources are conserved or enhanced; and (g) not permanently compact, remove, sterilize, or pollute the soils outside the Potential Restoration Areas.

3.4.4 Recreational uses in accordance with Subsection 3.5 below.

3.5 Recreational Uses. Provided a majority of the Agricultural Area is being utilized for allowed agricultural uses pursuant to Section 4, the following recreational uses are allowed:

3.5.1 Non-motorized, in-season hunting and fishing over the Protected Property;

3.5.2 Passive recreational uses, which means low-impact outdoor recreational pursuits, such as hiking, horseback riding, and other forms of non-motorized recreation that do not adversely impact the Conservation Values or Open Space Values of the Protected Property on the Building Site Area, as defined in Subsection 4.1, and on the Forested Area. Without the prior written consent of the County, trails for non-motorized uses, benches, viewing platforms, accessibility improvements and permitted signage may be installed adjacent to these recreational uses, which uses and installations shall only be allowed in the Building Site Area, as defined in Section 4, and Forestland Area, as defined in Section 5, both of which are identified in Exhibit B. Trails shall be predominantly built of pervious surfaces and, unless Landowner and the County otherwise agree in writing, trails shall not exceed ten feet (10') in width.

3.5.3 Non-commercial camping and RV parking spaces for overnight use associated with recreational activities of a group nature and as allowed herein, local community events, local farm community celebrations or gatherings, or weddings (collectively "group events") on the Building Site Area and on the Forested Area subject to the following conditions:

3.5.3.1 No more than ten (10) such group events are allowed during a calendar year, and such events are limited to no more than four consecutive nights of overnight camping and parking per event. Such uses shall not result in soil compaction such that the soil is no longer in a tillable state.

3.5.3.2 During in-season hunting and fishing on the Protected Property, camping and RV parking is allowed to such hunters and fishermen in addition to the up to ten (10) events allowed in Subsection 3.5.1 above. Such use

shall not result in soil compaction such that the soil is no longer in a tillable state.

3.5.3.3 The kitchen in the existing pro-shop, or subsequent building that replaces the existing pro-shop, may be used for group events; for hunters and fishermen during in-season hunting and fishing; for use by local famers for processing of farm products; and to prepare meals for farmworkers who work on the Protected Property or other property owned by Landowner or its members.

3.5.3.4 Overnight camping and RV parking is allowed by Landowner, its members, family members and individual guests and invitees, on the Building Site Area and Forestland Area; provided, however, that no more than ten (10) people are allowed to overnight camp at any given time pursuant to this Subsection 3.5.4.

3.5.3.5 The existing pro-shop, or subsequent building that replaces the existing pro-shop, may not be used for overnight lodging at any time.

- 3.6 Roads and Utilities. Roads and utilities including, without limitation, stormwater, power, electricity, water, gas and similar utilities may be installed, maintained, repaired, reconstructed, relocated and replaced within the Forestland Area in conjunction with an Allowed Use including, without limitation, a allowed residential use ("Infrastructure Improvements) in accordance with an approved King County Forest Management Plan ("Forest Management Plan"), as described in Subsection 5.2, and in compliance with the terms of this Conservation Easement and with Applicable Law. Infrastructure Improvements may be installed, maintained, repaired, reconstructed, relocated and replaced within the Building Site Area of the Agricultural Area in conjunction with an Allowed Use including, without limitation, a permitted residential use. Infrastructure Improvements may be installed, maintained, repaired, reconstructed, relocated and replaced within any other location within the Agricultural Area only if specifically allowed in writing by the Farmland Preservation Program or its successor agency, and in accordance with an approved Farm Management Plan and in compliance with Applicable Law. All above ground Infrastructure Improvements shall be included in the calculation of the 10% limitation on structures and/or non-tillable surfaces contained in Subsection 3.7; provided, however, that only that portion of the above ground Infrastructure Improvements that are structures or that result in non-tillable surfaces shall be included in the calculation (for example, a power pole and appurtenant structures on the ground, but not the area under overhead power lines above, will be included in the calculation). In the event of underground Infrastructure Improvements in the Agricultural Area, outside the Building Site Area, all utility excavations for underground utilities or pipelines shall not cause permanent damage to the surface of the land, and temporarily disrupted soils shall be restored

in a manner consistent with agricultural uses, including restoration of the original soil horizon sequence, within one year of when the soils were initially disturbed.

- 3.7 Limitations on Non-tillable surfaces and structures. At any given time, no more than a total of ten percent (10%) of the Protected Property or of any parcel thereof resulting from any future division of the Protected Property, boundary line adjustment, or transfer of a portion of the Protected Property, shall be covered by structures and/or non-tillable surfaces. This equates to 19.1 acres on the Protected Property, including 1.9 acres of non-tillable surfaces and structures existing on the Effective Date of this Conservation Easement. "Structures" shall include but are not limited to residences, barns, machine sheds, permanent greenhouses, associated structures, retail and processing facilities, surfaced parking areas, surfaced driveways, surfaced roadways, and surfaced pads. Temporary shelter for soil-dependent cultivation of horticultural or viticultural crops is not considered a structure. "Non-tillable surfaces" shall include but are not limited to asphalt, concrete, gravel, and other materials and actions that result in soil compaction such that the soil is no longer in a tillable state. Naturally occurring non-tillable surfaces, such as rock out-crops or bodies of water, shall not be counted against the 10% non-tillable surface limitation. Non-tillable surfaces within public right-of-way or utility easements, that exist as of the Effective Date or which are approved in writing by the County subsequent to this the Effective Date, shall not be counted against the 10% non-tillable surface and structures limitation. The floors of greenhouses, exclusive of impervious foundations, shall not be counted against the 10% non-tillable surface and structures limitation, if left in a tillable condition. In the Agricultural Area, prior to the creation of any non-tillable surface, the topsoil on the area so affected shall be removed and used elsewhere on the Protected Property; said requirement is subject to permitting restrictions. Should the amount of non-tillable surface on any parcel comprising a portion of the Protected Property exceed 10% for that parcel, such parcel cannot be transferred separately but must remain under the same ownership as other parcels of which the Protected Property is comprised, said parcels being of sufficient size so that, collectively, their total non-tillable surface does not exceed 10% of their total acreage. No parcel may be transferred separately from the remaining parcel or parcels, if the transfer of that parcel would cause the remaining parcel or parcels to exceed the 10% limitation on non-tillable surfaces and structures for those parcels or parcel.

- 3.8 Subdivision. No division of the Protected Property, or transfer of a portion of the Protected Property, resulting in any parcel, or portion of the Protected Property, being smaller than the size allowed by zoning, but in no event less than five (5) acres, shall be allowed. Landowner must obtain written permission from the Farmland Preservation Program or its successor agency prior to initiating any subdivision, boundary line adjustment or transfer of a portion of the Protected

Property. The provisions of this Conservation Easement shall survive any subdivision, boundary line adjustment or transfer of all, or a portion of, the Protected Property. A boundary line adjustment that combines the Protected Property, or any portion thereof, with property on which development rights have not been conveyed to King County is prohibited.

- 3.9 Extraction of Aggregate Resources. Except as otherwise set forth in this Subsection 3.9, no mining, drilling, extracting or processing of oil, gas, minerals or aggregate resources, including rock and gravel, on or under the Protected Property shall be allowed. Provided the majority of the Agricultural Area is being utilized for allowed agricultural uses pursuant to Section 4, storage of gas, oil, aggregate resources or minerals on the Protected Property is allowed but only to the extent such storage is directly related to an Allowed Use on the Protected Property. Extraction of aggregate resources may be allowed on the Protected Property, but only if (a) outside of the Agricultural Area; (b) the excavation area is less than one (1) acre in total at any given time; (c) the excavated materials are used in connection with an Allowed Use on the Protected Property; and (d) unless any excavated area is to be used for a structure allowed under the terms of this Conservation Easement, the area disturbed by excavation is to be restored and replanted to mitigate the impacts of such extraction. Additionally, if permitted by Applicable Law, aggregate resources extracted from the Protected Property may be exported for use on other properties in the Snoqualmie Valley Agricultural Production District owned by Landowner or its members.
- 3.10 Waste Dumping/Storage. No dumping or storage of solid or liquid waste, or of trash, rubbish, hazardous, or noxious materials shall be allowed on the Protected Property. Hazardous materials include explosives, veterinary or medical wastes, radioactive wastes, chemical, biological or petroleum products that are not being used for agricultural, forestry or residential purposes and that may pose a substantial present or potential hazard to humans, wildlife or the environment and that, either singularly or in combination, have toxic properties that may cause death, injury or illness or have mutagenic, teratogenic, or carcinogenic properties or are corrosive, explosive, flammable, or may generate pressure through decomposition or other means. However, provided a majority of the Agricultural Area is being utilized for allowed agricultural uses pursuant to Section 4, the temporary storage of solid or liquid waste, or of trash, rubbish, hazardous, or noxious materials generated on, or used in conjunction with any Allowed Use on the Protected Property is allowed providing such storage and use is in compliance with Applicable Law. Temporary storage means storage for the duration of not more than one year. Composting of biodegradable materials for on-site application at agronomic rates is allowed, providing the composting is performed in accordance with all applicable federal, state and local laws and regulations. If

allowed under the Farm Management Plan described in Subsection 4.2 and Applicable Law production of compost, including manure management through soil amendment, for use on-site, sale and/or off-site application may be allowed but must be predominately of biodegradable materials produced on the Protected Property or on other nearby property owned by Landowner or its members, or of biodegradable materials that have been used for agricultural purposes on the Protected Property, or on other nearby property owned by Landowner or its members. . Hazardous or noxious materials shall not include biosolids, herbicides, pesticides, rodenticides, insecticides, fertilizers and similar materials used in conjunction with Allowed Uses on the Protected Property and applied and maintained in accordance with Applicable Law.

3.11 Signs. Unless Landowner and the Farmland Preservation Program or its successor agency otherwise mutually agree in writing, signs on the Protected Property shall be limited to the following:

3.11.1 Signage to state the name, reflect the history of the farm and its status on the Protected Property, names and addresses of owners and occupants, and to state conditions of access (including "no trespassing" signs);

3.11.2 Signage required to be placed on the Protected Property by any federal, state or local governmental entity or agency based upon Allowed Uses on the Protected Property, such as farm signage required to be posted on farms associated with certain activities on the farm;

3.11.3 Informational and directional signage to facilitate Allowed Uses on the Protected Property including, without limitation, recreational uses, such as trail signage, mile posts, maps, danger and similar signage to facilitate non-motorized recreational use;

3.11.4 Temporary signs associated with special events occurring on the Protected Property to provide information, directions, prohibited areas, parking areas and similar signage; providing that such signage shall be consistent with any special event or other permits if required, and that such signage shall not be in place for a period longer than fourteen (14) days; and

3.11.5 Signs to advertise all, or any portion of, the Protected Property for sale or lease.

Notwithstanding the foregoing, the County shall have the right to erect and maintain a sign or other appropriate marker on the Protected Property, no greater than twelve (12) square feet in size, bearing information indicating, among other things, that the Protected Property is subject to the terms and conditions of this

Conservation Easement. The sign's wording, location and design shall be determined by mutual consent of Landowner and the County, which consent shall not be unreasonably withheld. The sign shall clearly indicate that the Protected Property is privately owned and not open to the public. The County will be solely responsible for the costs of erecting and maintaining such sign or marker.

Permitted signs shall not be located within sensitive areas such as wetlands or stream corridors or within actively farmed areas within the Agricultural Area, unless placed therein pursuant to Subsection 3.11.2.

- 3.12 Water Rights. In order to maintain the ability of the Protected Property to support commercial agricultural production and other Allowed Uses, Landowner shall cooperate with the County to help assure that the Water Rights are maintained and that water is put to beneficial use. Landowner shall retain all Water Rights necessary for present or future agricultural production on the Protected Property and shall not transfer, encumber, lease, sell, abandon, relinquish or otherwise separate, by action or inaction, such quantity of Water Rights from title to the Protected Property. Landowner shall take affirmative actions to avoid such abandonment, relinquishment, loss or forfeiture, including but not limited to the following:

3.12.1 Exercising the Water Rights by putting them to any beneficial use that is not inconsistent with the terms of this Conservation Easement in accordance with Chapter 90.14 RCW;

3.12.2 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 ten (10) years;

3.12.3 Seeking to lease the Water Rights for use on land other than the Protected Property for a term no longer than ten (10) years, with prior written notice to the County, 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 purposes only (collectively, "Water Rights Maintenance Actions").

3.12.4 If Landowner is unable to take the Water Rights Maintenance Actions or if the Water Rights are under threat of abandonment, relinquishment, loss or forfeiture, Landowner shall immediately notify the County and agrees to convey ownership of said Water Rights to the County for the County's use in order to maintain the opportunity for commercial agricultural production on the Protected Property; or

3.12.5 Managing the Water Rights through a Watershed Improvement District, if one is created in the Snoqualmie Valley.

If Protected Property possessing divisible Water Rights is divided, a Water Right of sufficient quantity to support any present or future economically viable agricultural practice must be allocated to each portion of the Protected Property that exists after the division. Any relinquishment, loss or forfeiture of the Water Rights shall not be deemed or construed to be a waiver of the County's rights under this Conservation Easement or to defeat the purpose of the Conservation Easement, and shall not otherwise impair the validity of this Conservation Easement or limit its enforceability in any way.

- 3.13 Trees. To the extent otherwise permitted by law, the following shall apply to trees on the Protected Property:

3.13.1 Trees within the Forestland Area shall be subject to the limitations of Section 5 of this Conservation Easement; and

3.13.2 Trees located within the Agricultural Area may be removed, managed, maintained, planted and replaced in accordance with an approved Farm Management Plan and in compliance with Applicable Law.

- 3.14 Fences. Existing fences on the Protected Property may be repaired or replaced. New fences located within the Agricultural Area may be constructed, repaired and maintained in accordance with an approved Farm Management Plan and in compliance with Applicable Law. New fences located within the Forestland Area may be constructed, repaired and maintained in accordance with an approved Forest Management Plan and in compliance with Applicable Law.

- 3.15 Home Occupation. Home occupations or home industries, as defined in Chapter 21A.06 of the King County Code ("KCC"), or its successor, and that are subordinate to the use of the Protected Property for agricultural, forestry and open space purposes, are allowed, provided that:

3.15.1 The home occupation or home industry must be consistent with the size, scale and intensity of the Allowed Uses on the Protected Property and must maintain the primacy of and be subordinate to use of the Protected Property for agricultural, forestry and open space uses; and

3.15.2 The home occupation or home industry must remain in full compliance with this Conservation Easement; and

3.15.3 The home occupation or home industry must be owned and operated

by Landowner, its members or their immediate family, or the farm operator and immediate family, residing in a Dwelling Unit on the Protected Property; and

3.15.4 All activities associated with the home occupation or home industry must be located and remain within the Building Site Area and/or Forestland Area; and

3.15.5 If the home occupation or home industry is sited within an agricultural building or structure, such as a barn, the Landowner, or successors, or farm operator must be able to provide verification that the home occupation or home industry is subordinate to the primary use of the Agricultural Area for production of agricultural products; and

3.15.6 No new structures or surfaces, to be used primarily for the operation of a home occupation or home industry shall be constructed or installed within the Agricultural Area outside the Building Site Area without the prior written consent of the County at the County's sole discretion; and

3.15.7 Should there be any discrepancy between the provisions of this Conservation Easement and Applicable Law, in particular the provisions of KCC Chapter 21A.30 governing home occupations and home industries, the more restrictive shall prevail.

3.16 Segregation of Protected Property from Development Approvals on other Property. Except as otherwise provided in this Subsection 3.16, in conjunction with any application or proposal to develop ("Proposed Development") other real property, whether contiguous or not, no portion of the Protected Property may be used to satisfy or contribute toward any governmental requirement for a specified quantity of open space or other restrictions on development.

3.17 Public Access. Nothing in this Conservation Easement shall be construed as (a) affording to the general public access to any portion of the Protected Property; or (b) preventing Landowner from providing public access to any portion of the Protected Property associated with Allowed Uses.

3.18 Easements: Landowner may not convey any road or utility easements, including temporary easements, over the Protected Property for the benefit of any adjacent or other properties without the express written permission of the County, unless ordered by a court of competent jurisdiction to do so.

3.19 Compliance with Laws. All Allowed Uses on the Protected Property shall be carried out in accordance with Applicable Law and in compliance with this Conservation Easement.

3.20 Prohibited Uses. Irrespective of whether Applicable Law would permit the following uses, they are specifically prohibited on the Protected Property:

3.20.1 Commercial and industrial activities unassociated with agriculture or forestry uses on the Protected Property;

3.20.2 Construction, habitation, or other use of a dwelling unit and/or agricultural employee dwelling units, except to the extent such use is specifically allowed in this Conservation Easement;

3.20.3 Restaurants or other establishments primarily intended for the consumption of food or beverages;

3.20.4 The construction or use of the Protected Property for golf course purposes;

3.20.5 Impervious parking lot(s) unassociated with Allowed Uses on the Protected Property;

3.20.6 Motorized recreational uses including, without limitation, ATV or other off-road vehicles or motorcycles; provided, however, that nothing herein shall prohibit motorized vehicle usage in conjunction with agricultural or forestry uses on the Protected Property, and provided further this prohibition shall not apply to recreational camping vehicles associated with allowed camping uses in the Building Site Area and the Forestland Area;

3.20.7 Zoos, kennels, catteries, athletic fields or commercial campgrounds;

3.20.8 Large equestrian facilities such as indoor arenas, large horse barns or polo fields; and

3.20.9 Vehicle raceways and animal raceways other than those principally used for the exercise of animals grown, raised, or produced on the Protected Property or on other nearby property owned by Landowner or its members.

3.21 Emergencies. Landowner shall have the right to undertake any activities that are reasonably deemed necessary to protect health or safety or prevent significant property damage on the Protected Property or are required by and subject to compulsion of any government agency; providing, however, that Landowner shall first reasonably attempt to notify the County prior to taking such action but in no event later than ten (10) days after the Landowner has initiated any activity pursuant to this Subsection. After the emergency has passed, the County may require Landowner to undertake restorative actions to bring the Protected Property back to a condition consistent with the Conservation Values. Failure to undertake such restorative actions shall constitute a violation of the terms of this Conservation Easement, and shall be subject to terms of Section 9.

4 AGRICULTURAL AREA ALLOWED USES AND RESTRICTIONS.

4.1 Designation of Agricultural Area. The Agricultural Area is shown on Exhibit B, and by this reference incorporated herein. Within the Agricultural Area is a sub-area denoted "Building Site Area", comprised of approximately 31 acres and also shown on Exhibit B. The Building Site Area is that portion of the Agricultural Area outside of the floodplain, and includes pre-existing roadways and infrastructure, impervious surfaces, buildings, structures, and improvements located thereon, all of which are to be included in the calculation of the 10% non-tillable surface and structures limitation set forth in Subsection 3.7.

4.2 Farm Management Plan. The Agricultural Area shall be managed or farmed under a Farm Management Plan as defined in King County Administrative Rule PUT 8-21 (PR), or its successor, and approved by an agency or agencies designated by the County. The Farm Management Plan facilitates farming on the Agricultural Area in a manner and condition capable of supporting current and/or future commercially viable agriculture. The Farm Management Plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR part 12 that are in effect on the Effective Date of this Conservation Easement, as may be amended from time to time. The Farm Management Plan, which Landowner shall abide by, shall contain a nutrient management component. Landowner may develop and implement a Farm Management Plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. A copy of the Farm Management Plan shall be kept on file at the offices of the County that houses the King County Farmland Preservation Program or its successor agency. The County shall have the right to enter upon the Protected Property from time to time, upon providing Landowner at least three (3) days' written notice, in order to monitor compliance with the Farm Management Plan. In the event of noncompliance with the Farm Management Plan, the County in seeking to enforce the Farm Management Plan shall work with the Landowner to explore methods of compliance and give the Landowner a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Landowner does not comply with the Farm Management Plan, the County may take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the Farm Management Plan.

4.3 Building Site Area. Except as otherwise specifically set forth in this Conservation Easement, including without limitation Subsection 3.6, and unless Landowner and the County otherwise mutually agree in writing, the location of impervious surfaces, buildings and structures, infrastructure and improvements within the Agricultural Area shall be limited to the Building Site Area. "Impervious

surfaces" include, without limitation surfaced parking areas, surfaced driveways, surfaced roadways and surfaced pads, graveled roadways and graveled areas, and impervious trails and walkways associated with Allowed Uses within the Agricultural Area and Forestlands Area as set forth in this Conservation Easement. "Buildings and structures, infrastructure and improvements" include, without limitation, buildings, structures, infrastructure and improvements associated with allowed agricultural and recreational uses in the Building Site Area as set forth in this Conservation Easement. Prior to creation of any impervious surfaces, buildings and structures, infrastructure and improvements within the Building Site Area, the topsoil on the area so affected shall be removed and used elsewhere on the Protected Property or stockpiled elsewhere on the Protected Property for future use on the Protected Property. All such impervious surfaces, buildings and structures, infrastructure and improvements are subject to the 10% limitation on non-tillable surfaces and structures contained in Subsection 3.7. Landowner must obtain all King County and other governmental agency permits, if any, required in conjunction with installation, construction or creation of impervious surfaces, buildings and structures, infrastructure and improvements within the Building Site Area. Graveled roads may be constructed and utilized within the Agricultural Area, outside the Building Site Area, solely for the purposes of serving all forms of animal husbandry and the growing, raising, production and harvesting of horticultural and agricultural crops, including, but not limited to, vegetables, berries, other fruits, cereal grains, herbs, and hay. Such roads are subject to the 10% limitation on non-tillable surfaces and structures contained in Subsection 3.7.

4.4 Allowed Agricultural Uses. The following agricultural uses are allowed within the Agricultural Area subject to Applicable Law. Agricultural uses, as used herein, mean:

4.4.1 The growing, raising, and production of horticultural and agricultural crops, including, but not limited to, vegetables, berries, other fruits, cereal grains, herbs, and hay.

4.4.2 Additional activities supporting such growing, raising and production, including but not limited to (a) constructing, grading and maintaining farm roads; (b) constructing, maintaining or replacing bridges and culverts; (c) fertilizing, including the application of biosolids, and preventing or suppressing diseases, insects, and undesirable vegetation with pesticides or herbicides and pest control, including trapping and hunting; and (d) controlling brush, disposing of slash, and controlled burning; and (e) within the Building Site Area only, manure management facilities for processing, augmenting, and sale of manure products predominately of biodegradable materials produced primarily on the Protected Property or on other nearby property owned by Landowner or its members.

4.4.3 Within the Building Site Area only, the processing and marketing, for consumption off-premises, of horticultural and agricultural crops and products. Although intended to support agricultural activity on the Protected Property, such processing and marketing may include agricultural crops from other properties in King County, provided such activity serves to support the economic viability of agricultural operations on other farmlands in King County.

4.4.4 On-premises tasting and sampling of horticultural and agricultural crops is allowed within the Building Site Area as part of the performance of processing and marketing activities that are otherwise allowed herein.

4.4.5 All forms of animal husbandry including, without limitation, within the Building Site Area only, the processing and marketing of animals or their products for off-premises consumption. Although intended to support agricultural activity on the Protected Property, such processing and marketing may include animal products from other properties in King County provided such activity serves to support the economic viability of agricultural operations on other farmlands in King County. On-premises tasting and sampling of animals or their products is allowed within the Building Site Area as part of the performance of processing and marketing activities that are otherwise allowed herein.

4.4.6 Uses consistent with the classification as "Farm and Agricultural Land" as defined in RCW 84.34.020(2).

4.4.7 Any processing and/or marketing of agricultural crops and animal products within the Building Site Area as allowed in Subsections 4.4.1 through 4.4.5 above must be secondary to the primary use of the overall Agricultural Area for the growing, raising, and production of horticultural and agricultural crops and/or all forms of animal husbandry.

4.4.8 Within the Building Site Area only, infrastructure and facilities including, without limitation, manure digesters; greenhouses; wind turbines; retail and processing facilities including, without limitation, milk processing, cheese processing or other farm-product processing; dairy and other farm animal housing; crop storage and silos; water reservoirs or tanks; manure management facilities for processing, augmenting, and sale of manure products predominately of biodegradable materials produced primarily on the Protected Property or on other nearby property owned by Landowner or its members; farm community meeting and gathering building; barns; agricultural employee dwelling unit(s); surfaced parking areas; surfaced driveways; surfaced pads; temporary shelter for soil-dependent cultivation of horticultural or viticultural crops; and similar infrastructure and facilities that support and/or enhance the agricultural use of the Agricultural Area and other farm properties are allowed. Except as specifically allowed elsewhere in this Conservation Easement, all such

infrastructure and facilities shall be located within the Building Site Area. Infrastructure and facilities that utilize agricultural materials or products must use materials or products that are produced on-site or produced on other King County farms. It is the intent of this provision to promote the economic viability of agricultural operations on the Agricultural Area and on other farmlands in King County.

4.4.9 A farm equipment storage area is allowed, provided such storage area is located in the Building Site Area and in a location consistent with an approved Farm Management Plan. Use of the farm equipment storage area shall be limited to Landowner, its members, and other King County farmers.

4.4.10 A farm equipment repair shop is allowed, provided the shop is located in the Building Site Area and in a location consistent with the Farm Management Plan. The farm equipment repair shop shall not occupy more than 10,000 square feet. Use of the farm equipment repair shop shall be limited to Landowner, its members, and other King County farmers.

5 FORESTLAND AREA ALLOWED USES AND RESTRICTIONS.

5.1 Designation of Forestland Area. The Forestland Area is shown on Exhibit B, and by this reference incorporated herein.

5.2 Forest Management Plan. The Forestland Area shall be managed under a Forest Management Plan, approved by an agency or agencies designated by the County. The Forest Management Plan facilitates forest practices on the Forestland Area in a manner and condition capable of supporting current and/or future commercially viable trees and forestry products. A copy of the Forest Management Plan shall be kept on file at the offices of the County. The County shall have the right to enter upon the Protected Property from time to time, upon providing Landowner at least three (3) days written notice, in order to monitor compliance with the Forest Management Plan. In the event of noncompliance with the Forest Management Plan, the County in seeking to enforce the Forest Management Plan shall work with the Landowner to explore methods of compliance and give the Landowner a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Landowner does not comply with the Forest Management Plan, the County may take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the Forest Management Plan.

5.3 Allowed Forestry Uses. Subject to the 10% limitation on non-tillable surfaces and structures in Subsection 3.7, the following forestry uses are allowed within the Forestland Area, subject to Applicable Law. Forestry uses, as used herein, mean:

5.3.1 Any legally permissible activity defined in or allowed under Applicable Law pertaining to forestlands and relating to the growing, managing, harvesting or processing of trees or timber, including, without limitation (a) constructing, grading and maintaining roads and trails; (b) constructing, maintaining or replacing bridges and culverts; (c) subject to the limitations in Subsection 3.9 hereof, excavating rock or other materials from on-site pits or quarries for use on the Protected Property; (d) final and intermediate harvesting of timber; (e) pre-commercial thinning or pruning of timber; (f) reforestation; (g) fertilizing, including the application of biosolids, and preventing or suppressing diseases, insects, and undesirable vegetation with pesticides or herbicides (including ground and aerial application of chemicals) and pest control, including trapping and hunting; (h) salvage of trees; (i) controlling brush, disposing of slash, and prescribed burning; (j) preparatory work such as tree marking, surveying and road flagging; (k) installing gates and other measures to close access to the Forestland Area; (l) removing or harvesting incidental vegetation from the Forestland Area such as berries, ferns, greenery, mistletoe, herbs, mushrooms and other products; (m) protecting structures such as bridges, ponds and other improvements related to forestry practices; (n) processing forest products from the Protected Property with portable or temporary equipment designed for in-woods processing; and (m) constructing landing and storage areas associated with harvesting and processing forest products from the Protected Property.

6 DWELLING UNITS.

This Section 6 is subject to the 10% limitation on non-tillable surfaces and structures contained in Subsection 3.7.

- 6.1 Retention of Three Dwelling Units. The Landowner retains the rights on the Protected Property for up to three (3) dwelling units ("Dwelling Unit" or "Dwelling Units") in accordance with the provisions of this Section 6 of the Conservation Easement. A Dwelling Unit means a permanent or manufactured home structure, at the sole discretion of Landowner, located on the Protected Property in the Building Site Area or Forestland Area within a 10,000 square foot building envelope, excluding driveways, in a location determined at Landowner's discretion as allowed by Applicable Law, that will be designed and used for single-family residential occupancy.

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- 6.2 Reserved Dwelling Unit and Option to Acquire the Rights to Two Additional Dwelling Units. Landowner shall have the right to one (1) Dwelling Unit, located on the Protected Property within the Building Site Area or Forestland Area in a location determined at Landowner's discretion and as allowed by Applicable Law ("Reserved Dwelling Unit"). In accordance with this Subsection, the Landowner

shall also have the right to two (2) additional Dwelling Units, to be placed on the Protected Property within the Building Site Area or Forestland Land Area in a location determined at Landowner's discretion and as allowed by Applicable Law, ("Additional Dwelling Unit(s)"). Collectively the Reserved Dwelling Unit and the Additional Dwelling Units shall be referred to as "Dwelling Units." Landowner shall have the right, but not the obligation, to purchase the rights to one or both of the Additional Dwelling Units. For the first Additional Dwelling Unit purchased, Landowner shall pay **ONE HUNDRED SIXTY THOUSAND DOLLARS (\$160,000)** to the County. For the second Additional Dwelling Unit purchased, Landowner shall pay **ONE HUNDRED FIVE THOUSAND DOLLARS (\$105,000)** to the County. Either or both of the Additional Dwelling Units shall be purchased no later than ten (10) years from the Effective Date of this Conservation Easement ("Option Period"). Landowner shall have the right to purchase the Additional Dwelling Units separately or at the same time. The right to purchase the two (2) Additional Dwelling Units may only be exercised by the original Landowner, those persons who as of the Effective Date were Landowner's members, Steve and/or Janet Keller, or their immediate family members. If the right to purchase one or both of the Additional Dwelling Units is not exercised prior to termination of the Option Period, then the unexercised right(s) will automatically expire and become null and void. There shall be no time period in which the Dwelling Units must be constructed. Landowner shall have a right to construct the Additional Dwelling Units on the Protected Property within the Building Site Area and Forestland Area as may be allowed by Applicable Law upon purchasing the Additional Dwelling Units from the County. Landowner and the County agree that if the right to purchase one or both of the Additional Dwelling Units is exercised, Landowner and the County shall execute and record an addendum to this Conservation Easement memorializing such purchase in accordance with the terms of this Conservation Easement.

- 6.3 Limitation on Dwelling Units. No more than the three (3) Dwelling Units contemplated in this Section 6 shall be allowed on the Protected Property, regardless of whether the Protected Property is divided or its boundaries are altered by Landowner. If a portion of the Protected Property is transferred separate from the whole, the conveyance instrument shall state the number of reserved Dwelling Units, if any, that are allocated to that portion of the Protected Property conveyed.
- 6.4 No Further Development Rights. It is expressly understood and agreed by Landowner and the County that except as specifically provided in this Section 6 for the rights to three (3) Dwelling Units, there are no further Dwelling Units or development rights for residential, commercial, industrial or other future development that are now or hereafter allocated, reserved or inherent for the benefit of the Protected Property.

6.5 Dwelling Unit Size. The total living space square footage of any new or remodeled Dwelling Unit, excluding attached or detached garage, accessory dwelling unit, accessory outbuildings or structures, decks and patios, within the building envelope, shall not exceed 2,995 square feet, which is 150% of the median size of dwelling unit living space in King County's Agricultural Production Districts, as determined by King County Assessor's records upon the Effective Date of this Conservation Easement.

6.6 Dwelling Unit Use. The Dwelling Units must be used for the sole purpose of providing housing to members of Landowner and their immediate families, the farm operator and immediate family, or the immediate families of agricultural employees working for the Landowner or farm operator.

7 ACCESSORY DWELLING UNITS.

This Section 7 is subject to the 10% limitation on non-tillable surfaces and structures contained in Subsection 3.7.

7.1 Accessory Dwelling Unit Defined. In addition to Landowner's rights to Dwelling Units as specified in Section 6, Landowner may construct up to three (3) accessory dwelling units ("Accessory Dwelling Unit(s)"). For purposes of this Conservation Easement, Accessory Dwelling Unit means: A separate, complete dwelling unit that is attached to or contained within the structure of a Dwelling Unit or is contained within a separate structure that is accessory to and within the same building envelope as the Dwelling Unit. The total living space square footage of an Accessory Dwelling Unit shall not exceed the limitations in square footage imposed by the King County Code, as amended from time to time. Only one Accessory Dwelling Unit is allowed for each Dwelling Unit. Property containing an Accessory Dwelling Unit cannot be divided or transferred separately from the property on which the Dwelling Unit is located unless the Accessory Dwelling Unit is removed prior to such action.

7.2 Accessory Dwelling Unit Use. The use of Accessory Dwelling Unit units shall be limited to those entitled to own and/or reside in the Dwelling Unit in accordance with Subsection 6.6 of this Conservation Easement. Accessory Dwelling Units shall not be leased to the public-at large.

8 AGRICULTURAL EMPLOYEE DWELLING UNIT(S).

This Section 8 is subject to the 10% limitation on non-tillable surfaces and structures contained in Subsection 3.7.

8.1 Agricultural Employee Dwelling Unit Defined. In addition to Landowner's rights to Dwelling Units as specified in Section 6, Landowner may construct agricultural

employee dwelling units ("Agricultural Employee Dwelling Units") For purposes of this Conservation Easement, Agricultural Employee Dwelling Unit means: A dwelling unit in which the total living space square footage does not exceed the limitations in square footage imposed by the King County Code, as amended from time to time, and which is used only to house the immediate families of agricultural employees who are employed to work either by the Landowner or its members or the Protected Property operator (i) on the Protected Property; or (ii) on properties contiguous to the Protected Property and either owned by the Landowner or its members or operated by the same operator. Agricultural Employee Dwelling Units must be located within the Building Site Area in which Agricultural Employee Dwelling Units are an allowed use under the zoning code. Agricultural Employee Dwelling Units are not included in the number of Dwelling Units reserved on the Protected Property.

the immediate families of agricultural employees working for the Landowner or farm operator.

- 8.2 Agricultural Employee Dwelling Unit Use and Restrictions. If the preponderant use of the Protected Property changes to a non-agricultural use, all Agricultural Employee Dwelling Units shall be removed. Property containing Agricultural Employee Dwelling Units cannot be divided or transferred separately from the rest of the Protected Property unless said structures are permanently removed prior to such action.

9 REMEDIES.

- 9.1 Right to Enforce. The County has the right to enforce the terms of this Conservation Easement and to prevent and correct or require correction of violations of the terms, conditions, restrictions and covenants of this Conservation Easement. The County shall have the right to prevent, or cause Landowner to prevent, any use of, or activity on, the Protected Property that is inconsistent with the purpose and terms of this Conservation Easement, and shall have the right to undertake or cause to be undertaken the restoration of such areas or features of the Protected Property as may be materially damaged by activities contrary to the provisions hereof.
- 9.2 Right of Entry. After giving three days' written notice to the Landowner, the County or its authorized representative shall have the right to enter from time to time onto the Protected Property and into structures located thereon for the sole purposes of inspection and enforcement of the terms, conditions, restrictions and covenants hereby imposed. In addition, the County shall have the right to enter upon the Protected Property, at a mutually agreeable date and time and upon prior notice to Landowner, to inspect the Protected Property after major natural events occur, such as fires, windstorms, and floods. The County shall exercise its access rights in compliance

with Applicable Law and in a manner that will not materially disturb or interfere with Landowner's reserved rights, any other person's lawful use of the Protected Property, or Landowner's quiet enjoyment of the Protected Property. This right of entry and inspection by the County shall not extend to Landowner's Reserved Dwelling Unit and its appurtenances, or to the Additional Dwelling Units and their appurtenances, if the rights to purchase these units are exercised in accordance with Subsection 6.2, or Accessory Dwelling Units or Agricultural Employee Dwelling Units, unless the County has reasonable grounds to believe that the provisions of Subsections 3.15, 6.6 or 7.2 are being violated. Landowner shall be responsible for informing those persons living in the Dwelling Units, Accessory Dwelling Units and Agriculture Employee Dwelling Units or lessees of any portion of the Protected Property of this provision and shall make this provision a condition of any lease or use of the various types of dwelling units and Protected Property.

- 9.3 Initial Dispute Resolution. If a dispute arises between the Parties concerning the consistency of any proposed or actual use or activity with this Conservation Easement, or an alleged breach of this Conservation Easement, the Parties, prior to exercising the rights set forth in Subsections 9.4 and 9.5 of this Conservation Easement, and except when an ongoing or imminent violation could, as determined by the County, seriously impair the Conservation Values of the Protected Property, as provided for in Subsection 9.4, shall attempt to resolve the dispute through informal discussion within fifteen (15) days after receipt of a written request for a meeting to resolve the dispute. If the dispute is not resolved within the 15 days, and Landowner and the County do not utilize mediation as provided for below, Landowner and the Director (or the Director's designee) of the King County Department of Natural Resources and Parks, or its successor agency, shall meet within fifteen (15) days and engage in good faith negotiations to resolve the dispute. Alternatively, Landowner and the County after the initial period of fifteen (15) days for informal discussion may mutually agree to refer the dispute to mediation upon such rules of mediation as the Parties may agree. Each Party shall bear its own costs, including attorney's fees, if mediation is pursued under this Subsection 9.3. The Parties shall share equally the fees and expenses of the mediator. Except as otherwise provided for in Subsection 9.4, the County agrees that it shall not pursue the remedies provided for in Subsections 9.4 and 9.5 until and unless these procedural steps are exhausted. If any applicable statute of limitations will or may run during the time that may be required to exhaust the procedural steps set forth above, the Parties agree to seek an order to suspend any proceeding filed in a court of law while the procedural steps set forth above are satisfied.

- 9.4 Cure Period. If the County determines, after utilizing the procedures provided for in Subsection 9.3 above, that a violation of this Conservation Easement has occurred or

is occurring, the County may at its discretion take any and all appropriate legal action in law or equity. Upon such determination of a violation, the County shall notify Landowner in writing of the violation. Except when an ongoing or imminent violation could, as determined by the County, seriously impair the Conservation Values of the Protected Property, the County shall give Landowner written notice of the violation and thirty (30) days to correct it before filing any legal action. If Landowner agrees to proceed with correction and demonstrates that additional time is required to complete the correction, the County shall extend the thirty (30) day period to a period of time that the County determines is reasonable for the correction to be completed.

- 9.5 Remedies. If Landowner fails to cure the violation within the thirty (30) day period or other such period as determined by the County, the County may bring an action in court to enforce the terms of this Conservation Easement, to enjoin the violation, and to require restoration of the Protected Property to the condition that existed prior to any such injury. Landowner agrees that the County's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that the County shall be entitled to seek the injunctive relief described in this Subsection 9.5 both prohibitive and mandatory, in addition to such other relief to which the County may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. All such actions seeking injunctive relief may be taken without the County being required to post bond or provide other security.
- 9.6 Damages/Costs. Where a court finds that a violation has occurred, Landowner shall reimburse the County for all its expenses incurred in halting and correcting the violation, including but not limited to actual costs of restoration. In as much as the actual damages to the Conservation Values and Open Space Values that could result from a breach of this Conservation Easement by Landowner would be impractical or extremely difficult to measure, the Parties agree that the money damages the County is entitled to recover from Landowner shall be, at the County's election, the higher of (i) the amount of economic gain realized by Landowner from violating the terms of the Conservation Easement or (ii) the cost of restoring any Conservation Values and/or Open Space Values that have been damaged by such violation. In the event the County chooses the second of these two measures, Landowner agrees to allow the County, its agents or contractors, to enter upon the Protected Property and conduct restoration activities. In any such action, the prevailing party shall be entitled to recover from the non-prevailing party court costs and reasonable attorneys' fees.
- 9.7 Waiver. Enforcement of the terms of this Conservation Easement shall be at the discretion of the County, and any forbearance by the County to exercise its rights under this Conservation Easement in the event of any breach of any terms of this

Conservation Easement by Landowner shall not be deemed or construed to be a waiver by the County of such term or of any of the County's rights under this Conservation Easement. No delay or omission by the County in the exercise of any right or remedy upon any breach by Landowner shall impair such right or remedy or be construed as a waiver. Moreover, any failure by the County to discover a violation of this Conservation Easement or forbearance by the County in exercising its rights under this Conservation Easement in the event of any violation of its terms by Landowner shall not be deemed a waiver by the County of such rights with respect to any subsequent violation. No waiver or waivers by the County or by its successors or assigns of any breach of a term, condition, restriction, or covenant contained herein shall be deemed a waiver of any subsequent breach of such term, condition, restriction or covenant or of any other term, condition, restriction, or covenant contained herein.

- 9.8 Acts beyond Landowner's Control. Nothing contained in this Conservation Easement shall be construed to entitle the County to bring any action against Landowner to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from natural causes beyond Landowner's control, including, but not limited to, natural disasters such as climate change, fire, flood, storm, and earth movement ("Acts of God"); or from any prudent action taken by Landowner under emergency conditions to prevent, abate, or mitigate injury to the Protected Property resulting from such causes, provided that such actions taken by Landowner shall be subject to the restorative action requirements of Subsection 3.21.
- 9.9 County's Right to Restore the Protected Property. In the event that any of the Conservation Values of the Protected Property are impaired by an Act of God, the County, at its sole cost and expense and following written consent by Landowner, shall have the right, but not the obligation, to restore all or portions of the Protected Property.
- 9.10 Violations of Easement by Third Parties. When there are violations of the terms of this Conservation Easement by parties other than Landowner, its members, employees, lessees, licensees, agents and contractors, Landowner shall take reasonable steps that are customarily used in the agricultural industry to terminate such violations. If such violations persist even after Landowner has taken reasonable steps that are customarily used in the agricultural industry to terminate them, ~~Landowner will not be deemed to be in violation of this Conservation Easement~~ but shall be responsible to repair or remediate any damage to the Protected Property resulting from the violations. Landowner's failure to make such repair or remediation shall be a violation of this Conservation Easement.

- 9.11 Landowner Waiver of Specific Defenses. Landowner hereby waives any defense of laches and of estoppel, except in the circumstance where written permission or approval has been given by the County. This Subsection 9.11 shall not apply to the Washington State Department of Natural Resources or its successor agency should Landowner ever convey all or a portion of the Protected Property fee interest to the State of Washington.
- 9.12 Landowner's Reservation of Rights and Remedies. Except as provided for in Subsection 9.11, Landowner shall maintain all rights and remedies available at law and equity, including the ability to seek specific performance, other contract remedies and claims for damages arising from or in relation to any of the County's obligations in this Conservation Easement. Nothing in this Subsection 9.12 shall preclude the County from asserting equitable defenses in any claim or cause of action asserted by Landowner.

10 MISCELLANEOUS.

- 10.1 Succession. This Conservation Easement shall be assignable by the County, but only to a "Qualified Donee" within the meaning of Section 170(h)(3) of the IRC, or its successor, that is organized or operated primarily or substantially for one of the conservation purposes specified in Section 170(h)(4)(A) of the IRC, or its successor. Any assignment of benefits by the County (or successors) must require the transferee to comply with all terms and conditions of the Conservation Easement and to carry out the purposes of this Conservation Easement. The County shall notify Landowner, in writing, at Landowner's last known addresses, in advance of such assignment.

10.2 Taxes, Expenses and Maintenance.

10.2.1 Taxes and Assessments. Landowner agrees to pay any and all real property taxes and/or assessments levied by competent authority on the Protected Property. Upon execution of this Conservation Easement by both Parties, Landowner has the right but not the obligation to seek status of all, or a portion of the Protected Property as "agricultural land," "open space," "forestland" or other similar designations pursuant to Applicable Law. The County shall cooperate as reasonably requested in the application and approval process for such designations on the Protected Property.

10.2.2 Maintenance. Landowner retains all responsibilities and shall bear all costs and liabilities related to the ownership, operation, upkeep, and maintenance of the Protected Property. The Landowner agrees that maintenance of the Protected Property shall be conducted in accordance with the standards contained in the Farm Management Plan and Forest Management Plan, as

applicable. For any activity conducted by Landowner, Landowner remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use allowed by this Conservation Easement, and all such construction or other activity or use shall be undertaken in accordance with all Applicable Law. As to work conducted or caused to be conducted by the County pursuant to Subsections 9.6 and 9.9, the County shall keep the Protected Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by the County. Landowner shall maintain adequate liability insurance coverage in amounts not less than required under Subsection 10.4.5.

10.2.3 No Affirmative Obligations. The County, in reserving this Conservation Easement, assumes no affirmative obligations whatsoever for the management, supervision or control of the Protected Property or of any activities occurring on the Protected Property.

10.3 Termination and Proceeds.

10.3.1 Frustration of Purpose. If a court of competent jurisdiction determines that conditions on or surrounding the Protected Property change so much that it becomes impossible to fulfill any of the conservation purposes of the Conservation Easement, the court may, at the request of either Landowner or the County, terminate in whole or in part the rights and/or obligations created by this Conservation Easement. The County shall be entitled upon such termination to the value of the Conservation Easement as determined by the court or as otherwise agreed to by the Parties.

10.3.2 Economic Value. The fact that any use of the Protected Property that is expressly prohibited by this Conservation Easement, or any other use as determined to be inconsistent with the purpose of this Conservation Easement, may become greatly more economically valuable than Allowed Uses, or that neighboring properties may in the future be put entirely to uses that are not allowed hereunder, has been considered by the Landowner in agreeing to the terms of this Conservation Easement. It is the intent of both Landowner and the County that any such changes shall not be assumed to be circumstances justifying the termination or extinguishment of this Conservation Easement.

10.3.3 Condemnation. If the Protected Property, or any portion thereof, is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, Landowner, and the County if it determines in its sole discretion to do so, shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. The County shall be entitled

to compensation for the value of the Conservation Easement taken, and Landowner 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 the court or jury determines compensation in the form of a single lump sum award, Landowner and the County reserve the right to seek to recover their respective portions of any such award.

10.4 Indemnification/Hold Harmless and Hazardous Substances.

10.4.1 Remediation. If, at any time after the Effective Date, there occurs a release in, on, or about the Protected Property of any hazardous substances, Landowner agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required under any applicable environmental law, unless the release was caused solely by the County, in which case the County shall be responsible for such remediation. Landowner must make best efforts to notify the County of the occurrence of any release of hazardous substances as soon as possible after such release and must comply with all environmental laws applicable to such release. This Subsection 10.4.1 shall not be construed as in any way preventing Landowner from taking steps to seek recovery, cleanup, or contribution from any release that may have been caused by a third party.

10.4.2 Environmental Laws. For purposes of this Conservation Easement, the term "environmental law" shall mean: any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health, safety, or the environment, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9602 et. seq. ("CERCLA"); the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq. ("RCRA"); the Washington State Model Toxics Control Act, RCW ch. 70.105D ("MTCA"); the Washington Hazardous Waste Management Act, RCW ch. 70.105; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Washington Water Pollution Control Act, RCW ch. 90.48; and any laws concerning above ground or underground storage tanks.

10.4.3 Hazardous Substance. For the purposes of this Conservation Easement, the term "hazardous substance" shall mean: any waste, pollutant, contaminant, or other material that now or in the future becomes regulated or defined under any environmental law.

10.4.4 Control. Nothing in this Conservation Easement shall be construed as giving rise to any right or ability in the County to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any

of Landowner's activities on the Protected Property, or otherwise to become an owner or operator with respect to the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9602 et. seq., as amended; or the Model Toxics Control Act, RCW ch. 70.105D, as amended.

10.4.5 Liability and Indemnification.

10.4.5.1 Landowner shall maintain at all times Commercial General Liability coverage in the amount of \$5,000,000.00 per occurrence and in the aggregate, which shall include King County, its officers, employees, elected officials, invitees, licensees and agents, (individually and collectively, "County" as additional named insureds. Such insurance shall not be terminated without thirty (30) days prior notice to the County of such termination. In the event and upon the date of any such termination, the indemnification provisions in Subsection 10.4.5.2 shall immediately and automatically go into effect without further notification or action being required of either party. Due to the duration of this Conservation Easement, and taking into account the effects of changed circumstances and inflation, the Parties agree that the insurance requirements provided for herein shall every ten years be re-evaluated for adequacy and possible adjustment, and Landowner shall cooperate with the County's Risk Manager in ensuring that the County continue to have in future years the equivalent of the insurance coverage that exists for the County as of the Effective Date.

10.4.5.2 Landowner hereby agrees to hold harmless, indemnify, and defend the County from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, judgments or administrative actions, including, without limitation, reasonable attorney's and consultant's fees, arising from or in any way connected with (1) injury to or death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except to the extent caused by the acts or omissions of the County. This Subsection 10.4.5.2 shall only be effective in the event and upon the date of termination of the insurance described and provided for in Subsection 10.4.5.1 above.

10.4.5.3: Landowner hereby agrees to hold harmless, indemnify, and defend the County from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, judgments or administrative actions, including, without limitation, reasonable attorney's and consultant's fees, arising from or in any way connected with (1) the violation or alleged violation of, or other failure to comply with, any environmental laws by any person other than County; or (2) the presence or release in, on, from, or about the Protected Property,

at any time, of any hazardous substances, unless caused by the County; provided, however, that this Subsection 10.4.5.3 shall only apply to any such violation or release occurring after the Effective Date.

10.4.5.4 Notwithstanding the foregoing, the County hereby agrees to hold harmless, indemnify and defend Landowner, its officers, employees, invitees, agents, and their successors and assigns (individually and collectively the "Indemnified Landowner Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, judgments or administrative actions, including, without limitation, reasonable attorney's and consultant's fees, arising from or in any way connected with (1) injury to or death of any person, or physical damage to any property to the extent caused by any act or omissions of the County after the Effective Date while located on the Protected Property, except to the extent caused by the Indemnified Landowner Parties; (2) the violation or alleged violation of, or other failure to comply with, any environmental laws by the County after the Effective Date, except to the extent caused by the acts or omissions of the Indemnified Landowner Parties or (3) the release after the Effective Date in, on, from, or about the Protected Property, at any time, of any hazardous substances, to the extent caused by the County.

10.4.5.6 Representation. Landowner makes no representation or warranty regarding whether or not there are any conditions at, on, under or related to the Protected Property that presently or potentially poses significant threats to human health or the environment. Landowner acquires the Protected Property from the County subject to this Conservation Easement and has limited knowledge of activities on the Protected Property prior thereto.

10.4.7 Liability for Public Access. In the event that Landowner allows public access to the Protected Property for passive recreational purposes described herein, the Parties intend that RCW 4.24.210, as amended from time to time, shall apply to such public access.

10.5 Covenants Running with Land. The Landowner and the County agree that the terms, conditions, restrictions, and covenants contained herein shall be binding upon the Landowner, its members, lessees, licensees, invitees, agents, personal representatives, heirs, assigns, and all other successors-in-interest to the Protected Property, and shall be permanent terms, conditions, restrictions, covenants, servitudes, and easements running with and perpetually binding the Protected Property. Any interests in the Protected Property held or obtained by third parties after the Effective Date of this Conservation Easement shall be subordinate to the terms of this Conservation Easement.

10.6 "Landowner" – "County". The terms "Landowner" and "County," wherever used
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herein, and any pronouns used in place thereof, shall be held to mean and to include, respectively the above-named Landowner, and the successors, assigns and future owners of all, or a portion of, the Protected Property, except as otherwise provided for during the Option Period in Subsection 6.2 above, and King County, and its successors and assigns.

- 10.7 Severability. If any section or provision of this Conservation Easement shall be held by any court of competent jurisdiction to be unenforceable, this Conservation Easement shall be construed as though such section or provision had not been included in it, and the remainder of this Conservation Easement shall be enforced as the expression of the parties' intentions. If any material provision of this Conservation 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 Conservation Easement and Applicable Law.

10.8 Subsequent Transfers/No Merger.

10.8.1 The County agrees that the Development Rights to the Protected Property shall not be sold, given, divested, transferred, or otherwise reconveyed in whole or in part in any manner except as provided in King County Code Chapter 21A.37, or its successor.

10.8.2 "Transfer" includes but is not limited to any sale, grant, lease, hypothecation, encumbrance, assignment, devise, conveyance, or any transaction the purpose of which is to effect a sale, grant, lease, hypothecation, encumbrance, assignment, devise, or conveyance. Landowner shall include a written notification indicating that the Protected Property is subject to this Conservation Easement to any person or entity that is to be the recipient of a transfer of the Protected Property or any portion of the Protected Property. Landowner shall give written notice to the County of the sale or conveyance of any interest in all or a portion of the Protected Property at least thirty (30) days prior to the date of such sale or conveyance. Such notice to the County shall include the name, address, and telephone number of the prospective recipient of the sale or conveyance or such recipient's representative. Landowner agrees to: (1) incorporate by express reference the terms of this Conservation Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property; and (2) describe this Conservation Easement in and append it to, any executory contract for the sale or conveyance of any interest in the Protected Property. The failure of the Landowner to perform any act required by this

Subsection shall not impair the validity of the Conservation Easement or limit its enforceability in any way. A Party's rights and obligations under this Conservation Easement shall terminate upon the sale, devise or conveyance of the Party's interest in the Protected Property or this Conservation Easement, as the case may be, except that liability for acts or omissions occurring prior to the sale, devise or conveyance shall survive the sale, devise or conveyance.

10.8.3 In the event that the County acquires the fee title to all or a portion of the Protected Property subject to this Conservation Easement, it is the intent of the Parties, both Landowner and the County, that no merger of title shall take place that would merge the restrictions of this Conservation Easement with fee title to the Protected Property, notwithstanding any otherwise applicable legal doctrine under which such property interests would or might be merged.

10.9 Notices and Approval.

10.9.1 Notices. All written notices required or allowed to be given under the terms of this Conservation Easement shall be personally delivered or sent by certified mail, return receipt requested, or nationally recognized, overnight delivery service (postage/shipping prepaid) that provides a receipt of delivery, and addressed as set forth below:

All notices to be given to Landowner shall be addressed as follows:

Keller Family Dairy, LLC
Attn: Steve and Janet Keller
Post Office Box 1377
Fall City, Washington 98024-1377

All notices to be given to the County shall be addressed as follows:

King County
Attn: Director of the King County Department of Natural Resources and Parks
201 South Jackson Street, Suite 700
Seattle, Washington 98104

Either Landowner or the County may, by proper notice to the other, designate another address for the giving of notices, including by email or facsimile transmission (which may be provided in addition to but not in lieu of the means of delivery provided for above). All notices shall be deemed given on the date delivered if personally delivered, or on the earlier of the third day following the day the notice is mailed in accordance with this Subsection 10.9.1 or the date delivery is officially recorded on the return or delivery receipt. Notwithstanding the

forgoing, for the purposes of the written notice requirements in Subsections 4.2, 5.2, and 9.2, "written notice" may consist of email, facsimile, or standard postal notice, provided the sending Party shall have and retain confirmation of receipt by the other Party.

10.9.2 Notice and Approval. The purpose of notice and reasonable approval is to afford the County an opportunity to ensure that the activities or uses in question are designed and carried out in a manner consistent the terms and conditions of this Conservation Easement. Where notice to the County is required, Landowner shall describe in such notice the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit the County to make an informed judgment as to its consistency with the terms and conditions of this Conservation Easement. Such notice shall be in writing not less than sixty (60) days prior to the date Landowner intends to undertake the activity or use in question. Where Landowner's or the County's consent or approval is required in this Conservation Easement, Landowner or the County shall grant or withhold its consent or approval in writing within sixty (60) days of receipt of the written request for consent or approval. Notwithstanding the forgoing, if the County determines that its granting or withholding consent involves significant policy issues requiring additional time for deliberation or requiring consultation or action by the Metropolitan King County Council, such 60 day period may be extended by the County for a period of time not to exceed an additional 120 days, provided written notice of such extension is provided to Landowner within the 60 day period. In the event that the County does not respond within the 60 day period, or the additional 120 day period if so extended, the provisions of Subsection 9.3 shall apply. Except as otherwise specifically provided in this Conservation Easement, consent or approval may be withheld only upon a reasonable determination by the consenting or approving Party that the action as proposed would be inconsistent with the terms and/or conditions of this Conservation Easement. Any consent may include reasonable conditions consistent with the purpose and terms of this Conservation Easement that must be satisfied in undertaking the proposed activity or use. If Landowner or the County determines that the activity or use as contemplated by the other Party in its notice is not consistent with the terms and/or conditions of the Conservation Easement, Landowner or the County may inform the other Party in writing of its determination and of any reasonable conditions that would make the activity or use in question consistent with the terms and conditions of this Conservation Easement.

- 10.10 Amendments. The terms, conditions, restrictions, and covenants contained herein shall not be altered or amended unless such alteration or amendment shall be made with the written consent of the County or its successors or assigns, and any such alteration or amendment shall be consistent with the purposes of preserving and

protecting the Conservation Values and Open Space Values and shall not affect the perpetual duration of the Conservation Easement. No amendment shall be allowed that would adversely affect the qualifications of this Conservation Easement or the status of the County under any Applicable Law. Any such amendment shall be executed by both parties and recorded in the land records of King County, Washington.

- 10.11 Encumbrances. No provisions of this Conservation Easement shall be construed as impairing Landowner's right to use the Protected Property as collateral for a loan or otherwise encumber the Protected Property; provided, however, that any encumbrance including, without limitation, mortgage, deed of trust, lease, license, agreement or similar instrument after the Effective Date shall be, and is, subordinated to this Conservation Easement.
- 10.12 Covenant Against Encumbrances. Landowner covenants that it has not done or executed, or allowed to be done or executed, any act, deed, or thing whatsoever whereby this Conservation Easement hereby reserved, or any part thereof, now or at any time hereafter, will or may be charged or encumbered in any manner or way whatsoever.
- 10.13 Recitals. The Parties agree that the terms and recitals set forth in this Conservation Easement are material to this Conservation Easement, and that each Party has relied on the material nature of such terms and recitals in entering into this Conservation Easement. Each recital set forth in this Conservation Easement is hereby incorporated into this Conservation Easement as though fully set forth herein.
- 10.14 Interpretation. This Conservation Easement shall be interpreted to resolve any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its Purposes. The use in this Conservation Easement of the words "including," "such as," and words of similar import following a general statement, term, or matter, shall not be construed to limit such statement, term, or matter in any manner, whether or not language of non-limitation (such as "without limitation" or "but not limited to") is used in connection therewith, but rather shall be deemed to refer to all of the provisions or matters that could reasonably fall within the scope of the general statement, term, or matter. The captions and headings of this Conservation Easement are for convenience only and shall not define, limit, or describe the applicability, scope, meaning, or intent of any provision of this Conservation Easement. Personal pronouns shall be construed as though of the gender and number required by the context, the singular including the plural, the plural including the singular, and each gender including other genders, all as may be required by the context and in a manner most consistent with the terms and conditions of the Conservation Easement. Wherever in this

Conservation Easement the term “and/or” is used, it shall mean: “one or the other, both, any one or more, or all” of the things, events, persons or parties in connection with which the term is used. The Parties confirm that they have mutually negotiated this Conservation Easement and that none of the terms or provisions of this Conservation Easement shall be construed by presumption against either Party.

10.15 Construction. Any ambiguities in this Conservation Easement and questions as to the validity or interpretation of any of its specific provisions shall be resolved in favor of the County so as to preserve the agricultural and open space uses of the Protected Property and to obtain the goals and objectives expressed in the Conservation Values and Open Space Values. If any section or provision of this Conservation Easement is found to be subject to two constructions, one of which would render such section or provision invalid, and one of which would render such section or provision valid, then the latter construction shall prevail. If any section or provision of this Conservation Easement is determined to be ambiguous or unclear, it shall be interpreted in accordance with the Conservation Values and Open Space Values expressed herein.

10.16 Governing Law. This Conservation Easement shall be governed by and construed in accordance with the laws of the State of Washington applicable to contracts and conveyances made and to be performed therein, without giving effect to its conflicts of law rules or choice of law provisions. In the event that either Party shall bring a lawsuit related to or arising out of this Conservation Easement, venue shall be in a court of competent jurisdiction in King County, Washington.

10.17 Rights and Obligations.

10.17.1 A Party’s rights and obligations under this Conservation Easement terminate upon transfer of the Party’s interest in the Conservation Easement or Protected Property, *except* that such Party’s liability for acts or omissions occurring prior to transfer shall survive transfer.

10.17.2 Notwithstanding any other provision of this Conservation Easement to the contrary, the obligations under this Conservation Easement of Landowner, and of each of Landowner’s respective successors and assigns, shall only be as to the portion of the Property owned by Landowner, and of each of Landowner’s respective successors and assigns, such that the obligations imposed by this Conservation Easement shall not be joint and several.

10.17.3 Landowner shall obtain any and all required permits from the agency of the appropriate government responsible for issuing permits, in connection with any activities, including Allowed Uses, on the Protected Property that require such

permits. By requiring the foregoing, the County does not warrant that the permits for Allowed Uses will issue.

- 10.18 Cooperation. Each Party agrees to reasonably cooperate with the other in carrying out the purposes of this Conservation Easement and in that connection to do all such things and execute all such documents as may be reasonably necessary to assist the other in performing its rights and obligations hereunder.

IN WITNESS WHEREOF, the undersigned have executed this Conservation Easement on or about the _____ day of _____, 2015.

KELLER FAMILY DAIRY, LLC,
a Washington limited liability company

By: _____
Steve Keller

Its: Co-Managing Member

By: _____
Janet Keller

Its: Co-Managing Member

KING COUNTY, Washington,
a political subdivision of the
State of Washington

By _____

Name: Anthony Wright

Title: Director, Facilities Management Division

APPROVED AS TO FORM:

By: _____
Senior Deputy Prosecuting Attorney

Date: _____

EXHIBIT A
LEGAL DESCRIPTION

That portion of Government Lots 6 and 7, Section 4, Township 24 North, Range 7 East, Willamette Meridian, in King County, Washington, lying Westerly of County Road 228 (West Snoqualmie River Road Southeast);

Together with that portion of the South Half of the Northeast Quarter of Section 5, Township 24 North, Range 7 East Willamette Meridian, in King County, Washington, lying Westerly of County Road 228;

Except any portion thereof lying Westerly of the following described line:

Beginning at a point on the West line of said Northeast Quarter of said Section 5, South 11°14'05" West a distance of 558.43 feet from the Northwest corner thereof;

Thence South 12°55'30" East a distance of 1285.76 feet;

Thence South 07°16'50" West a distance of 592.98 feet to the terminus of said line, said terminus being a point on the South line of said subdivision, South 88°15'21" East a distance of 575.00 feet from the Southwest corner thereof;

Together with Government Lots 1 and 2, in said Section 5;

Except the North 13 acres of said Government Lots 1 and 2; and

Except any portion thereof lying Easterly of the Westerly margin of said County Road No. 228; and

Except that portion thereof described as follows:

Beginning at the intersection of the South line of said North 13 acres and the East line of the West 30 feet of said Government Lot 2, said intersection being the Northwest corner of that certain tract of land conveyed to Joe E. Monahan and Carole A. Monahan, his wife, by Statutory Warranty Deed recorded under Recording Number 6094031;

Thence South 11°14'05" West, along said East line, and along the Westerly line of said Monahan Tract, a distance of 72.65 feet to an angle point in said Westerly line;

Thence South 78°45'55" East, at right angles to said East line, and continuing along said Westerly line of said Monahan Tract, a distance of 14.50 feet to an angle point in said Westerly line;

Thence South 40°15'55" East, continuing along said Westerly line of said Monahan Tract, a distance of 99.85 feet to an angle point in said Westerly line;

Thence South 41°45'55" East, continuing along said Westerly line of said Monahan Tract, a distance of 188.22 feet to the most Southwesterly corner of said Monahan Tract;

Thence North 87°14'05" East, along the South line of said Monahan Tract, a distance of

King County CE – Page 40

(12/7/15)

166.13 feet to the Southeast corner of said Monahan Tract;
Thence North 00°15'55" West, along the East line of said Monahan Tract, a distance of 274.76 feet, more or less, to said South line of said North 13 acres, and the Northeast corner of said Monahan Tract;
Thence North 88°43'30" West, along said South line of said North 13 acres a distance of 354.73 feet, more or less, to the Point of Beginning; and

Except any portion thereof lying Westerly of the following described line:

Beginning at a point on the West line of said Northeast Quarter of said Section 5, South 11°14'05" West a distance of 558.43 feet from the Northwest corner thereof;
Thence South 12°55'30" East a distance of 1285.76 feet;
Thence South 07°16'50" West a distance of 592.98 feet to the terminus of said line, said terminus being a point on the South line of said subdivision, South 88°15'21" East a distance of 575.00 feet from the Southwest corner thereof;

Together with the East Half of the Southeast Quarter of said Section 5; and

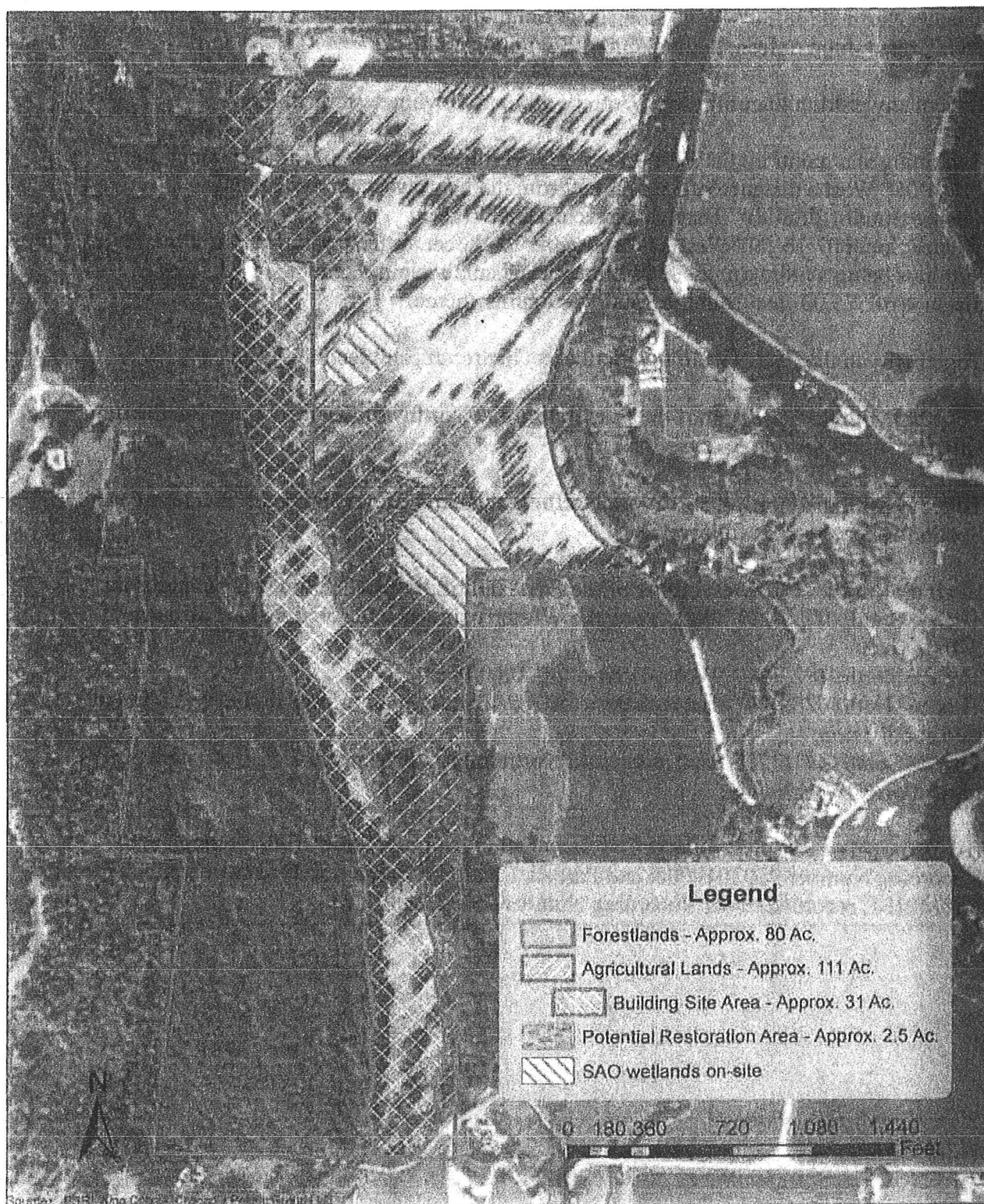
Together with the East Half of the East Half of the Northwest Quarter of the Southeast Quarter of said Section 5; and

Together with that portion of the said Northwest Quarter of the Southeast Quarter of said Section 5, described as follows:

Beginning at the Northwest corner of the East Half of the East Half of said subdivision;
Thence South 07°37'29" West, along the Westerly line of said subdivision a distance of 270.00 feet;
Thence North 19°22'31" West a distance of 106.00 feet;
Thence North 02°52'29" East a distance of 169.73 feet, more or less, to the North line of said subdivision;
Thence South 88°15'21" East, along said North line, a distance of 62.51 feet, more or less, to the Point of Beginning.

(Also known as Parcel 2 of Large Lot Segregation Number L96M0170, recorded under Recording Number 9703049006; and Parcels 1 and 2 of Large Lot Segregation Number L98M0131, recorded under Recording Number 9811259001)

EXHIBIT B





STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

January 11, 2011

Thomas M. Pors
Law Office of Thomas M. Pors
1700 Seventh Avenue
Suite 2100
Seattle, WA 98101

RE: Tentative Determination of Extent and Validity Tall Chief Golf Course Claims

Dear Mr. Pors:

Per your request I have prepared that attached document to summarize my analysis of the evidence supporting the extent and validity of two claims to vested water rights filed by the Tall Chief Golf Course during the first opening of the claims registry in the early 1970's (G1-25318CL and G1-26873CL). A third claim filed by Tall Chief Golf Course in the 1998 registry opening (G1-30166CL) appears to duplicate the earlier claims.

The analysis that I supply summarizes the tentative determination of extent and validity that was performed as part my investigations of the applications for change (CG1-25318CL and CG1-26873CL) which were filed in 2008 by Ames Lake Water Association (ALWA).

Subsequent to completing my investigation of the two change applications, ALWA, through your office, requested that our work the applications be suspended as a result of the district gaining an alternative source to supply expansion of its service area.

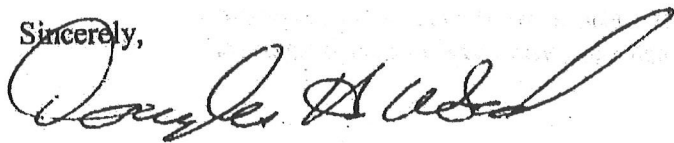
ALWA has since finalized access to the alternative supply and seeks now to have the ~~Department of Ecology (Ecology) withdraw it applications for change. The district however~~ requests, that prior to withdrawal of the two change applications, Ecology provide a written account of its analysis of the extent and validity of the claims.

Please convey to your clients that my analysis is not a formal evaluation, and even as a tentative evaluation it represents our opinions at the time the investigation was made. Any formal evaluation of the priority, extent, and validity must be made by a Superior Court Judge through the adjudication procedures as outlined in RCW 90.03.105 through 90.03.245, RCW 90.03.610 through 90.03.645, and RCW 90.44.220.

Thomas M. Pors
January 11, 2011
Page 2 of 2

If you have any questions, please contact me at 425.649.7077 or at Doug.Wood@ecy.wa.gov.

Sincerely,



Douglas H. Wood, M.S., LHG
Water Resources Hydrogeologist

dh/mc

Enclosure: Tall Chief Golf Course Water Right Claims Summary

Tall Chief Golf Course Vested Water Right Claims (G1-126873CL & G1-125318CL)

Background

The Tall Chief Golf Course occupies lands first settled in the 1880's and used for cattle and dairy farming from the 1890's until the mid 1960's. During the 1960's the property was re-developed as a golf course and has remained so since that time.

In 2006 Ames Lake Water Association (ALWA), with permission from the directors of Tall Chief Golf Inc., filed applications CG1-126873CL and CG1-125318CL with the Department Ecology seeking to change the purpose of use, place of use, season of use, and add new points of withdrawal. The changes were intended to allow redevelopment of portions of the property from recreational use to housing.

In 2008 ALWA requested that the change applications be withdrawn from active consideration when an alternative source of water was obtained for the housing development. Prior to this request the NWRO office of the Water Resources Program had essentially completed its examination of the proposed change, including an investigation into the extent and validity of the claims.

The purpose of this document is to provide a summary of the investigation by Water Resources staff regarding the extent and validity of claims G1-126873CL and G1-125318CL. Please note that these determinations are tentative and represent the opinion of Water Resources staff at the time of the investigation. A full determination of the extent and validity of these claims to vested rights can only be made by a Superior Court judge through the water right adjudication process as provided in RCW 90.03.105 through 90.03.245, RCW 90.03.620 through 90.03.645, and RCW 90.44.220.

Investigation

Whenever Ecology investigates an application for change, a tentative determination is made of the extent and validity of that right (Policy 1120). In the case of a change involving a claim to vested water right it is necessary first to establish whether water use began prior to the passage of the Water Code. For surface water right claims, this means that use must have begun prior to 1917 and for groundwater claims, prior to 1945. Together with an analysis of whether the right was either abandoned or relinquished, this part of the investigation evaluates the validity of the claim and is provided here in the subsequent section on the history of water use.

The evaluation of the extent of the water right looks into the quantities beneficially used in developing the water right. With claims to a vested water right, it is necessary to determine the scope of the original project since the usual investigation accompanying an application for a permit to develop the right is not part of the record. In addition to determining the original scope of the vested right, it is necessary to look at whether past and present usage conform so that a maximum quantity can be determined and the potential for partial relinquishment may be established (or not).

History of Water Use

The first European settlement in the Fall City area was at Fort Patterson in the 1850's. Fort Patterson was located at the confluence of Patterson Creek and the Snoqualmie River at a point that appears to have been approximately 1/8 mile (~650 feet) east of the present boundary of the Tall Chief Golf Course property.

Land Survey records dating from 1884 describe the land along the northern boundary of the NE1/4 of Section 5 as having first rate soils and that the west bank of the Snoqualmie River was at that time at the boundary between sections 4 and 5. The 1884 survey map shows that, south of the north edge of Township 24N, the river bank cuts through a small portion of section 5 before trending east into section 4. This places a portion of the NE1/4 of section 5 on the bank of Snoqualmie River in the late 1800's. Today the river bank lies entirely within section 4 in this area.

Land records dating to the 1880's were researched by ALWA consultant Robert Pancoast. These records reveal that the land now occupied by the Tall Chief Golf Course in Section 5, T24N, R7E was originally part of the Railroad Land Grant of 1864 to the Northern Pacific Railroad.

Tall Chief Golf Course Vested Water Right Claims (G1-126873CL & G1-125318CL)

The land covered by the claim, specifically the East 1/2 of the Northeast 1/4 of Section 5, Township 24 North, Range 7 East, Willamette Meridian, began to be developed between approximately 1883 and 1890 when the land was sold by the Union Pacific Railroad to two families that had earlier homesteaded adjacent lands in Sec. 32, T25N, R7E (Peter Peterson, granted in 1883) and in Sec. 4, T24N, R7E (Otto Hogonson, granted in 1893).

The NE1/4 of Section 5, T24N, R7E was developed beginning in May 1883 when the N1/2 of the NE1/4 were sold by the railroad to Peter Peterson, owner of the homestead land immediately north of the section boundary in the S1/2 of SE1/4 of Section 32, T25N, R7E. Peterson then sold this land to James W. Bush, a pioneer who had homesteaded in the Issaquah valley in 1864.

Between 1884 and 1924 the Peterson land was bought and sold several times until purchased in 1924 by James Profit whose family farmed on this land until late 1950's (Figures 1 and 2). In 1957 the property was sold by the Profit's to Clyde and Beulah Davis who deeded it to the developer of the Tall Chief Golf Course in 1979. Air photo evidence indicates the property was growing crops in 1965 (Figure 3), but was being developed as part of the golf course by 1971 (Figure 4). Other air photos show that in 1981 (Figure 5) and 1993 (Figure 6) the area was part of the golf course (Figure 1).

Otto Hogonson settled on the west bank of the Snoqualmie River in the mid or late 1880's in Section 4. He patented Government Lots 5, 6, and 7 of section 4, totaling 25.2 acres, in January 1890 under the Homestead Act. The Hogonson family farmed the South 1/2 of the NE 1/4 of Sec. 5 until 1945 when they deeded the property to Earl and Anna Twigg. The Twigg family sold their farm in 1962 to Frank Avant, the developer of the Tall Chief Golf Course.

Early irrigation of the site is evident from historical records of dairy farming dating from the late 1880's. The property is adjacent to the Snoqualmie River and a perennially filled oxbow lake, either or both of which likely supplied irrigation water prior to and possibly after 1945.

The Twigg family is reported to have replaced surface water sources with wells in the spring of 1945 (Avant affidavits). It is unclear if irrigation was fully accomplished using groundwater prior to the conversion of the property from agricultural to recreational use in the 1960's.

Air photos of the area taken in 1965 shows that the Twigg property had been partially converted to golf course use by that time (Figure 3). The Profit (Davis) property was still being used to grow crops in 1965. The 1965 photo also shows that the entrance to the golf course was from the county road adjacent to the oxbow lake, which connects directly west to the clubhouse (originally the Twigg residence). The 1971 air photo (Figure 4) shows the golf course entrance road had been moved to its current location approximately 1/2 way into the Profit (Davis) property. The 1971 photo also shows that trees were planted where the original entrance road had been. The original entrance road is preserved today as a tree-lined raised path used by golf carts. Cloud cover on the date of the 1971 photos makes it difficult to determine whether the golf course had been completed. The next available air photos are dated 1981 and these clearly show that the golf course is completed over what had been both the Profit and Twigg properties.

Affidavits signed by Frank and Anne Avant and dated August 6, 1998 state that they developed the Tall Chief Golf Course in two phases beginning in 1965 with the first nine holes located in the western portion of the Hogonson/Twigg property. The second phase involved the construction of an additional nine holes on both the Hogonson/Twigg and Profit/Davis properties. The Avant affidavits assert that the second phase was begun in 1967.

Springs drain the lower slopes of Tolt Hill in the western portion of the Tall Chief Golf Course property. An orchard, adjacent to the likely location of these springs, can be seen in 1940's vintage aerial photography of the area (Figures 1 and 2). The probable location of a spring, situated approximately 50 yards northwest of where the Profit home was located was visited in October 2008. Although all spring collection equipment has been removed, evidence remains that the spring was developed during the past.

Tall Chief Golf Course Vested Water Right Claims (G1-126873CL & G1-125318CL)

Extent of Water Use

The quantities available for transfer under claims G1-126873CL and G1-125318CL are limited to those quantities that were established and vested through beneficial use for the purposes of agricultural activities performed on the properties that are now occupied by the Tall Chief Golf Course.

Agricultural water rights holders have not traditionally kept records of water use in this area of the state. The only source of actual water use are records collected by the Tall Chief Golf Course since 2003 and submitted with applications for change CG1-126873CL and CG1-125318CL. It is however possible to estimate usage for the original agricultural purposes if it is assumed that farmers now use the same quantities to grow crops as was the custom when the property was originally developed as farm land.

Historical records indicate that the alluvial plain of the Snoqualmie River Valley was fully cleared and developed for agricultural purposes by the turn of the 20th century. Land transactions and census records show that the parts of the Tall Chief property that occupy the alluvial plain were in agricultural use beginning in the 1880's and had been completely developed by the 1920's.

Aerial photography from 1942 was used by the US Army to produce orthophoto maps of the Fall City area. These maps clearly show cultivated fields occupying the northwestern portion of what is now the Tall Chief Golf Course property. Land records indicate that at that time these cultivated areas were owned by James Profit and Earl Twigg (Figure 1).

The 1942 orthomap was imported into ArcGIS, modified to fit known geographical landmarks (georeferenced), irrigated areas were outlined based on crop pattern, and then irrigated acreage calculated using the XTools utility (Figure 2). The resulting calculated irrigated area is 51.36 acres, 24.11 acres of which were irrigated by Twigg and 27.25 acres by Profit.

Using the Washington Irrigation guide for a crop of hay/pasture annual irrigation requirement would be 14.32 inches/acre at an average efficiency of 75% (19.09 inches/acre total usage), giving a likely annual water duty of 81.7 acre-feet. Factoring in return flows at 15% gives total consumptive use of 69.5 afy. The total transferable consumptive use for irrigation purposes utilized prior to the enactment of the Groundwater Code (RCW 90.44) in 1945 was likely therefore to have been approximately 69.5 afy.

Tall Chief Golf Course Vested Water Right Claims (G1-126873CL & G1-125318CL)

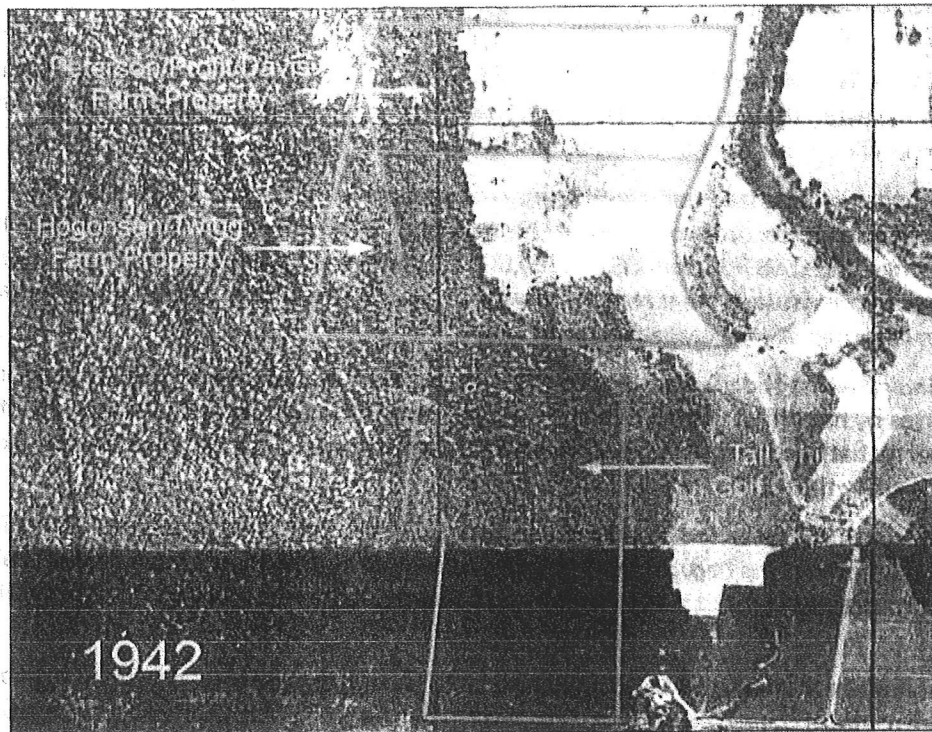


Figure 1: Air photos of the Tall Chief site dated 1942.
(Note the different shades of grey for cultivated and irrigated farmland.)

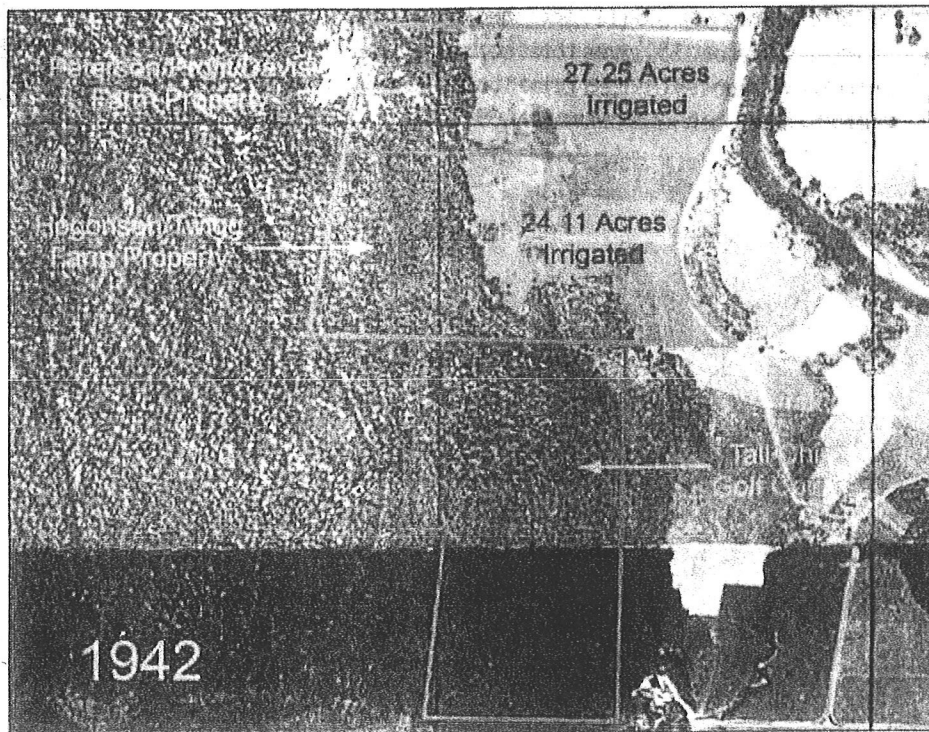


Figure 2: Irrigated areas highlighted on the 1942 air photo
(Calculation of irrigated acreage done using ArcGIS).

Tall Chief Golf Course Vested Water Right Claims (G1-126873CL & G1-125318CL)

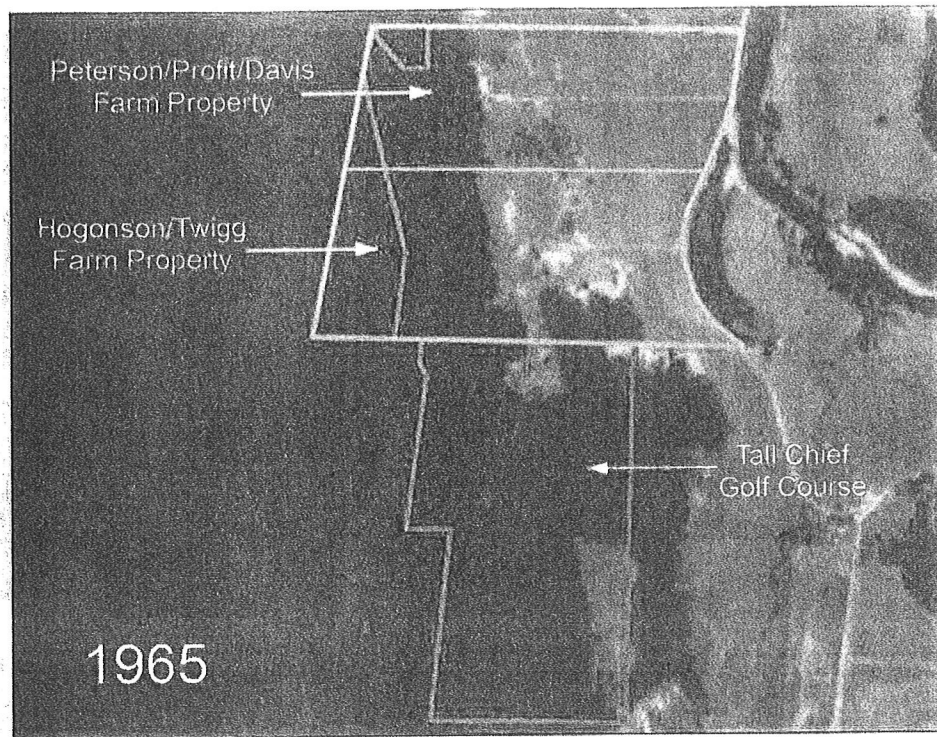


Figure 3: Air photo dated 1965. Note that golf course is being constructed on the Twigg property.

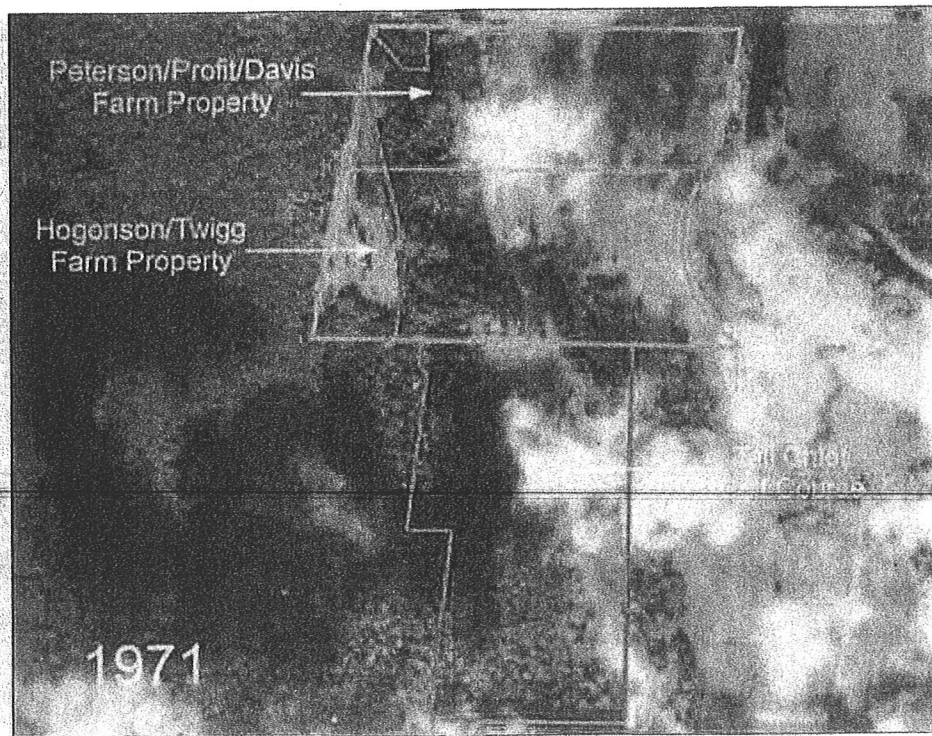


Figure 4: Air photo dated 1971 of the Tall Chief property. Although clouds obscure much detail it can be seen that the entrance road to the golf course is located on the former Profit property.

Tall Chief Golf Course Vested Water Right Claims (G1-126873CL & G1-125318CL)



Figure 5: Air photo dated 1983 of the Tall Chief site.
(The golf Course had been completed by this date)



Figure 6: Air photo of the Tall Chief site dated 1993.
(No additional changes are seen from 1983 photo.)

Tall Chief Golf Course Vested Water Right Claims (G1-126873CL & G1-125318CL)

The instantaneous quantity (Qi) of 200 gpm asserted under claim G1-126873CL, while comparable to similar golf course and agricultural irrigation operations of similar acreage is not supported by materials supplied by the applicant. The applicant provides evidence that actual pumping rates for golf course irrigation are 100 gpm. The proposed change for G1-126873CL is for 150 gpm. The amount that can be transferred is limited to what can be demonstrated, thus approval of a transfer to G1-126873CL would be limited to 100 gpm.

ALWA provided golf course irrigation use data for the years 2003 to 2005 (Table 1) which states that annual use ranged from 69.7 to 95.1 afy. A portion of excess quantities above 81.7 afy, while not established under the claim for irrigation, has been established through historical use for stockwatering. Since stockwatering was at least in part perfected with those quantities asserted as vested under claim G1-125318CL, the amount of excess irrigation that can be tied to stockwatering would be considered under an application for change to claim G1-125318CL.

Table 1: Tall Chief Golf Course Irrigation use 2003 to 2005		
Year	Gallons	Acre-Feet
2003	30,988,404	95.1
2004	23,937,551	73.5
2005	22,700,409	69.7
Maximum	30,988,404	95.1

Table 2: Tall Chief Domestic Use 2003 to 2005		
Year	Gallons	Acre-Feet
2003	599,580	1.8
2004	628,750	1.9
2005	429,210	1.3
Max. (Cal. Year)		1.9
Max. (12 mo.)		2.2

Table 3: Estimated Stockwatering Use 1910 to 1962		
Farm Owner	Head of Cattle	Acre-Feet
Hogson/Twigg	60	0.81
Profit	60	0.81
Maximum	120	1.62

Tall Chief Golf Course Vested Water Right Claims (G1-126873CL & G1-125318CL)

Table 4: Estimated Irrigation Use 1910 to 1962		
Farm Owner	Acres Irrigated	Acre-Feet
Hogson/Twigg	24.11	38.4
Profitt	27.25	43.4
Total	51.36	81.7
Less 15% return		69.5

Two claims cover water use on the Tall Chief Golf Course (G1-126873CL and G1-125318CL). A third claim (G1-301661CL) was filed 1998 that also references irrigation quantities already covered under the 1974 irrigation claim (G1-126873CL). The stockwatering and domestic quantities used at Tall Chief Golf Course are the subject of claim number G1-125318CL.

ALWA supplied information on water usage for both the Hogonson and Profit farm properties. Pancoast (2007) suggests that usage for the Profit farm was 30.92 afy for the irrigation of 26 acres, and for the Hogonson farm, estimates of irrigation use are 20.4 to 35.6 afy. Adding these gives between 51.3 and 66.5 afy, similar to the quantities derived through Ecology's GIS analysis and the Washington Irrigation Guide (Table 4).

Claim G1-125318CL was filed in 1973 by the Tall Chief Golf Course for 200 gpm and 320 afy for the purpose of irrigation of 220 acres. Two points of withdrawal associated with the irrigation claim are described as Well 2 and Well 3 in documents supplied by the applicant and in Ecology Well logs.

Ecology estimates stockwatering uses for the Profit and Hogonson farms at approximately 1.62 afy based on 12 gpd per head of cattle, and 0.67 afy for domestic use based on 300 gpd per household. This proves a total of 2.3 afy for both farms. Recent use for the golf course club house (2003 to 2005) documents a maximum of 2.2 afy for domestic purposes during a 12 month period between May 2003 and April 2004.

Irrigation of the golf course fairways and greens (Table 1) exceeds the total estimated use for the two farm properties by 13.4 afy (95.1 afy less 81.7 afy that can be considered vested through agricultural irrigation use). The excess irrigation (less return flows) can be, in part, construed as use of the portion of the domestic and stockwatering quantities claimed under G1-125318CL. This would account for the difference between the historical farm domestic and stockwatering use of 2.3 afy and the current clubhouse maximum use of 2.2 afy.

The two wells used to irrigate the present golf course are located in the flood plain of the Snoqualmie River approximately half-way between the West Snoqualmie River Road and the base of the slope of Tolt hill. Water that is pumped from these wells is stored in ponds on the fairways, and from there distributed to sprinklers located on golf course fairways and greens.

Tentative Findings

The evidence reviewed supports a finding that the two claims (G1-26873CL and G1-25318CL) represent continuous beneficial usage of water on the site beginning in the late 1880 from adjacent riparian sources (Snoqualmie River and oxbow lake) and from springs located along the west edge of the alluvial plain of the Snoqualmie River. Groundwater sources utilized since the 1940's are directly connected to the Snoqualmie River and thus do not in reality represent exploitation of a separate source. Differences in the timing of impacts would remain relevant to an analysis of the potential for impairment.

Tall Chief Golf Course Vested Water Right Claims (G1-126873CL & G1-125318CL)

The extent and validity of the two Tall Chief Golf Course claims were tentatively determined to be as follows:

Claim	First Use	Qi	Qa	Acres	Season
G1-126873CL	Pre-1917 Surface and Pre-1945 Groundwater	100 gpm	81.7 afy (69.5 afy consumptive*)	51.36	Irrigation Season
G1-125318CL	Pre-1917 Surface and Pre-1945 Groundwater	25 gpm	2.2 afy	N/A	All Year

* Irrigation quantities include return flows that contribute to flows of the Snoqualmie River, and to the availability of water used under other water rights, both junior and senior. Any future changes that result in moving the source of the irrigation quantities from the alluvial aquifer would necessitate a reduction in quantities to account for these return flows (see RCW 90.03.380 sec. 1).

The extent and validity analysis presented here is tentative, and represents what Ecology staff had determined were the transferable quantities under these two claims through a change application as of the end of 2008. Both of these claims are subject to relinquishment as provided in RCW 90.14. A full determination of the extent and validity of a water right or claim can only be made by Superior Court judge through the water right adjudication process as provided in RCW 90.03.105 through 90.03.245, RCW 90.03.620 through 90.03.645, and RCW 90.44.220.



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
WATER RIGHT CLAIMS REGISTRATION

WATER RIGHT CLAIM

1. NAME TALL CHIEF ASSOCIATES LIMITED
ADDRESS 7714 GREENWOOD AVENUE NO.
SEATTLE, WASHINGTON ZIP CODE 98103
2. SOURCE FROM WHICH THE RIGHT TO TAKE AND MAKE USE OF WATER IS CLAIMED: GROUND WATER
(SURFACE OR GROUND WATER)
W.R.I.A. 07
(LEAVE BLANK)
- A. IF GROUND WATER, THE SOURCE IS WELL
B. IF SURFACE WATER, THE SOURCE IS _____
3. THE QUANTITIES OF WATER AND TIMES OF USE CLAIMED:
A. QUANTITY OF WATER CLAIMED 200 GPM PRESENTLY USED 175 GPM
(CUBIC FEET PER SECOND OR GALLONS PER MINUTE)
B. ANNUAL QUANTITY CLAIMED 320 PRESENTLY USED 280
(ACRE FEET PER YEAR)
C. IF FOR IRRIGATION, ACRES CLAIMED 220 PRESENTLY IRRIGATED 70
D. TIME(S) DURING EACH YEAR WHEN WATER IS USED: MARCH 1 THRU NOVEMBER 1
4. DATE OF FIRST PUTTING WATER TO USE: MONTH MARCH YEAR 1968
5. LOCATION OF THE POINT(S) OF DIVERSION/WITHDRAWAL: 1650 FEET SOUTH AND 600
FEET WEST FROM THE NORTHEAST CORNER OF SECTION 5
BEING WITHIN S.E. 1/4 N.E. 1/4 OF SECTION 5, T. 24 N., R. 7 (E. OR W.) W.M.
IF THIS IS WITHIN THE LIMITS OF A RECORDED PLATTED PROPERTY, LOT _____ BLOCK _____ OF _____
(GIVE NAME OF PLAT OR ADDITION)
6. LEGAL DESCRIPTION OF LANDS ON WHICH THE WATER IS USED: E 1/2 N.E. 1/4 SEC 5
T 24 N R 7 E WM
- KING COUNTY, WASHINGTON
7. PURPOSE(S) FOR WHICH WATER IS USED: IRRIGATION
8. THE LEGAL DOCTRINE(S) UPON WHICH THE RIGHT OF CLAIM IS BASED: APPROPRIATION

DO NOT USE THIS SPACE
THE FILING OF A STATEMENT OF CLAIM DOES NOT CONSTITUTE AN ADJUDICATION OF ANY CLAIM TO THE RIGHT TO USE OF WATERS AS BETWEEN THE WATER USE CLAIMANT AND THE STATE OR AS BETWEEN ONE OR MORE WATER USE CLAIMANTS AND ANOTHER OR OTHERS. THIS ACKNOWLEDGEMENT CONSTITUTES RECEIPT FOR THE FILING FEE.

DATE RETURNED THIS HAS BEEN ASSIGNED
WATER RIGHT CLAIM REGISTRY NO.

ED 075126873

DIRECTOR - DEPARTMENT OF ECOLOGY

I HEREBY SWEAR THAT THE ABOVE INFORMATION IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DATE 6-26-70
IF CLAIM FILED BY DESIGNATED REPRESENTATIVE, PRINT OR TYPE FULL NAME AND MAILING ADDRESS OF AGENT BELOW.

GILBERT N. HAIN
7714 GREENWOOD AVEN

☐ ADDITIONAL INFORMATION RELATING TO WATER QUALITY AND/OR WELL CONSTRUCTION IS AVAILABLE

A FEE OF \$2.00 MUST ACCOMPANY THIS WATER RIGHT CLAIM
ORIGINAL DWR

RETURN ALL THREE COPIES WITH CARBONS INTACT, ALONG WITH YOUR FEE TO:
DEPARTMENT OF ECOLOGY
WATER RIGHT CLAIMS REGISTRATION
P.O. BOX 820 OLYMPIA, WASHINGTON 98504



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
WATER RIGHT CLAIMS REGISTRATION

WATER RIGHT CLAIM

1. NAME TALL CHIEF ASSOCIATES LIMITED

ADDRESS 7714 GREENWOOD AVENUE NO.

SEATTLE, WASHINGTON

ZIP
CODE 98103

2. SOURCE FROM WHICH THE RIGHT TO TAKE AND MAKE USE OF WATER IS CLAIMED: GROUND WATER
(SURFACE OR GROUND WATER)

W.R.I.A. DT
(LEAVE BLANK)

A. IF GROUND WATER, THE SOURCE IS WELL

B. IF SURFACE WATER, THE SOURCE IS _____

3. THE QUANTITIES OF WATER AND TIMES OF USE CLAIMED:

A. QUANTITY OF WATER CLAIMED 25 GPM PRESENTLY USED 1 - 5 GPM
(CUBIC FEET PER SECOND OR GALLONS PER MINUTE)

B. ANNUAL QUANTITY CLAIMED 40 PRESENTLY USED 1.6 - 8
(ACRE FEET PER YEAR)

C. IF FOR IRRIGATION, ACRES CLAIMED _____ PRESENTLY IRRIGATED _____

D. TIME(S) DURING EACH YEAR WHEN WATER IS USED: JAN. 1 THRU DEC 31

4. DATE OF FIRST PUTTING WATER TO USE: MONTH JUNE YEAR 1974

5. LOCATION OF THE POINT(S) OF DIVERSION/WITHDRAWAL: 1500 FEET SOUTH AND 1600

FEET EAST FROM THE NORTHEAST CORNER OF SECTION 5

BEING WITHIN SW 1/4 NE 1/4 OF SECTION 5, T. 24 N., R. 7 E. (E. OR W.) W.M.

IF THIS IS WITHIN THE LIMITS OF A RECORDED PLATTED PROPERTY, LOT _____ BLOCK _____ OF _____

(GIVE NAME OF PLAT OR ADDITION)

6. LEGAL DESCRIPTION OF LANDS ON WHICH THE WATER IS USED: PORTION OF N.W. 1/4 NE 1/4

SEC 5 T 24N R 7 E WM

KING

COUNTY WASHINGTON

7. PURPOSE(S) FOR WHICH WATER IS USED: DOMESTIC

8. THE LEGAL DOCTRINE(S) UPON WHICH THE RIGHT OF CLAIM IS BASED: APPROPRIATION

DO NOT USE THIS SPACE
THE FILING OF A STATEMENT OF CLAIM DOES NOT CONSTITUTE AN ADJUDICATION
OF ANY CLAIM TO THE RIGHT TO USE OF WATERS AS BETWEEN THE WATER USE
CLAIMANT AND THE STATE OR AS BETWEEN ONE OR MORE WATER USE CLAIMANTS
AND ANOTHER OR OTHERS. THIS ACKNOWLEDGEMENT CONSTITUTES RECEIPT FOR
THE FILING FEE.

DATE RETURNED _____ THIS HAS BEEN ASSIGNED
WATER RIGHT CLAIM REGISTRY NO. _____

FEB 10 1975 125378

DIRECTOR - DEPARTMENT OF ECOLOGY

I HEREBY SWEAR THAT THE ABOVE INFORMATION IS TRUE AND
ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF

X GILBERT N. HARRIS

DATE 6-26-74

IF CLAIM FILED BY DESIGNATED REPRESENTATIVE, PRINT OR TYPE
FULL NAME AND MAILING ADDRESS OF AGENT BELOW.

GILBERT N. HARRIS

7714 GREENWOOD AVE N

☒ ADDITIONAL INFORMATION RELATING TO WATER QUALITY
AND/OR WELL CONSTRUCTION IS AVAILABLE.

A FEE OF \$2.00 MUST ACCOMPANY THIS WATER RIGHT CLAIM.
ORIGINAL DWR

RETURN ALL THREE COPIES WITH CARBONS INTACT, ALONG WITH YOUR FEE TO:
DEPARTMENT OF ECOLOGY
WATER RIGHT CLAIMS REGISTRATION
P.O. BOX 829 OLYMPIA, WASHINGTON 98504

December 7, 2015

DU-1 to S1
(Livestock Treatment)

1
to S1

[mb]

Sponsor: Upthegrove

Proposed No.: 2015-0423

DU → KL accepted as friendly passed 8-0 vpx

1 **AMENDMENT TO AMENDMENT S1 TO PROPOSED ORDINANCE 2015-0423,**

2 **VERSION 1**

3 On page 3, delete lines 51 through 54 and insert:

4 "B. An amendment to the purchase and sale agreement shall require as a
5 condition of closing the execution of the memorandum of agreement substantially in the
6 form of Attachment B to this ordinance, except that prior to executing the memorandum
7 of agreement a provision must be added to it to require that the handling of animals on
8 the Protected Property shall, at a minimum, be conducted in a manner consistent with
9 best management practices as outlined in the current FARM Animal Care Reference
10 Manual of the National Dairy FARM Program. The memorandum of agreement,
11 including the revision required by this subsection, shall become an exhibit and be
12 incorporated into the purchase and sale agreement."

13 Renumber as needed and correct internal references accordingly.

14 ***EFFECT: This amendment would amend the Memorandum of Agreement between the***
15 ***County and the Kellers to add language requiring specific standards related to the***
16 ***treatment of livestock on the property.***

December 7, 2015

[mb]

Sponsor: Lambert

Proposed No.: 2015-0423

KL → passed 6-2 LG, R Dem 'NO' LPEX

1 **AMENDMENT TO AMENDMENT S1 TO PROPOSED ORDINANCE 2015-0423,**

2 **VERSION 1**

3 On page 3, delete lines 55 through 57 and insert:

4 "C. An amendment to the purchase and sale agreement shall delete Exhibit B of
5 the purchase and sale agreement, which is Attachment A to this ordinance, and replace it
6 with a revised Exhibit B in substantially the form of Attachment C to this ordinance,
7 except that prior to the executive and the Keller Family Dairy, LLC executing the revised
8 Exhibit B, it shall be further modified to require that sections 6, 7 and 8 be revised to
9 require that all dwelling units allowed under sections 6, 7 and 8 of the conservation
10 easement be located in an area that satisfies the provisions of K.C.C 21A.37.050 or its
11 successor. However, if the land use designation and zoning on the property changes to
12 agriculture, then no clustering for development of dwelling units shall be required. "

13 Renumber as needed and correct internal references accordingly.

14 ***EFFECT: This amendment would require that all dwelling units allowed under the***
15 ***conservation easement be located in an area that is determined by the underlying land use***
16 ***designation and zoning.***

- 17 *1. Rural Area – development to be actualized through a clustered subdivision, short*
18 *subdivision or binding site plan that creates a permanent preservation tract as large*
19 *or larger than the portion of the subdivision set aside as lots.*
- 20 *2. Agricultural – development in single and contiguous reserved residential area*
21 *that shall be adjacent to any existing development or roadways on the property.*
22 *The reserved residential area shall be equal to the acreage associated with the*
23 *minimum lot size of the zone for each remaining residential dwelling unit.*
- 24 *Tall Chief is currently zoned RA-10. Under the executive's comprehensive plan draft,*
25 *the Tall chief property is proposed to change to A-10 and A-35. This amendment*
26 *would specifically relieve any clustering requirement if the zoning changes.*

December 7, 2015

RD-1 to S1
(Dwelling Units)

2
to S1

[mb]

Sponsor: Dembowski

Proposed No.: 2015-0423

R Dem → Failed 3-5

RDum, JH, KL, PVR, JM 'No' LPex.

1 AMENDMENT TO AMENDMENT S1 TO PROPOSED ORDINANCE 2015-0423,

2 VERSION 1

3 On page 3, beginning on line 60, insert:

4 "D. Prior to the executive and the Keller Family Dairy, LLC executing the
5 revised Exhibit B, substantially in the form of Attachment C to this ordinance, it shall be
6 further modified to amend subsections 6.1, 6.2, 6.3, 6.4, 6.5 and 6.6 of the revised Exhibit
7 B to only allow the landowner to retain the rights to one dwelling unit on the Protected
8 Property.

9 E. An amendment to the purchase and sale agreement shall delete section 1.4 of
10 the purchase and sale agreement and replace it with a provision that only allows one
11 dwelling unit on the property."

12 Renumber as needed and correct internal references accordingly.

13 ***EFFECT: The transmitted Purchase and Sale Agreement and Conservation Easement***
14 ***would permit the purchaser to acquire two additional dwelling units, in addition to the***
15 ***one dwelling unit that would accompany the original purchase, for a total of three***

- 16 *dwelling units. This amendment would limit the total number of dwelling units to one*
17 *and would remove the option to acquire the rights to two additional dwelling units.*

December 7, 2015

RD-2 to S1
(Accessory Dwelling
Units)

3
to S1

[mb]

Sponsor: Dembowski

Proposed No.: 2015-0423

R Dem → Failed

2 - 6 RDum, LG, JH, KL, PVN (No) LP ex.

1 AMENDMENT TO AMENDMENT S1 TO PROPOSED ORDINANCE 2015-0423,

2 VERSION 1

3 On page 3, beginning on line 60, insert:

4 "D. Prior to the executive and the Keller Family Dairy, LLC executing the
5 revised Exhibit B, substantially in the form of Attachment C to this ordinance, it shall be
6 further modified to delete subsections 7.1 and 7.2 of the revised Exhibit B and replace
7 them with a new subsection 7.1 that prohibits the construction or use of accessory
8 dwelling units on the Protected Property."

9 Renumber as needed and correct internal references accordingly.

10 ***EFFECT: The transmitted Conservation Easement (Exhibit B to the Purchase and***
11 ***Sales Agreement, which is Attachment A to the Proposed Ordinance) would permit one***
12 ***accessory dwelling unit to be constructed for each allowed dwelling unit, for a total of***

13 ***six dwelling units (up to three dwelling units and up to three accessory dwelling units).***

14 ***This amendment would prohibit the construction of any accessory dwelling units.***

December 7, 2015

RD-3 to S1
(Agricultural Housing)

4
to S1

[mb]

Sponsor: Dembowski

Proposed No.: 2015-0423

R Dem → Failed 3-S RD Ann, JH, KL, PVR, JM LPex.

1 **AMENDMENT TO AMENDMENT S1 TO PROPOSED ORDINANCE 2015-0423,**

2 **VERSION 1**

3 On page 3, beginning on line 60, insert:

4 "D. Prior to the executive and the Keller Family Dairy, LLC executing the
5 revised Exhibit B, substantially in the form of Attachment C to this ordinance, it shall be
6 further modified to delete subsection 8.1 of the revised Exhibit B and replace it with a
7 new subsection 8.1 that limits the agricultural employee dwelling units to agricultural
8 employees who are employed to work on the Protected Property and that limits the
9 location and number of agricultural employee dwelling units by stipulating that no new
10 construction for agricultural employee dwelling units is permitted other than within the
11 footprint of the existing buildings on the Protected Property."

12 Renumber as needed and correct internal references accordingly.

13 ***EFFECT: The transmitted Conservation Easement (Exhibit B to the Purchase and***
14 ***Sales Agreement, which is Attachment A to the Proposed Ordinance) would allow***
15 ***agricultural employee housing for agricultural workers on any farm in King County***
16 ***and would limit the development of that housing only as limited by the zoning code.***

17 ***This amendment would limit this housing to agricultural employees on the Tall Chief***
18 ***property and limit the location and number of units to the footprint of the existing***
19 ***structures already on the property.***

December 7, 2015

RD-4 to S1
(Require Ag)

5
to S1

[mb]

Sponsor: Dembowski

Proposed No.: 2015-0423

R Dem → Failed 2-6 RDunn, JH, KL, DU, PVR, JM No' LPe

AMENDMENT TO AMENDMENT S1 TO PROPOSED ORDINANCE 2015-0423,

VERSION 1

On page 3, beginning on line 60, insert:

"D. Prior to the executive and the Keller Family Dairy, LLC executing the revised Exhibit B, substantially in the form of Attachment C to this ordinance, it shall be further modified to add language to subsection 4.2 of the revised Exhibit B stating that farmable land in the Agriculture Area outside the Building Site Area will be actively farmed and that King County has the option to acquire the Protected Property at fair market value if it is not predominantly being used for agricultural purposes."

Renumber as needed and correct internal references accordingly.

EFFECT: The transmitted Conservation Easement (Exhibit B to the Purchase and Sales Agreement, which is Attachment A to the Proposed Ordinance) would encourage

but not require the property to be used for agriculture. This amendment would require agricultural use and give the County the right to re-acquire the property if it is not predominantly being used for agricultural purposes.

December 7, 2015

RD-5 to S1
(Farm Management Plan)

6
to S1

[mb]

Sponsor: Dembowski

Proposed No.: 2015-0423

*Failed
R Dem's
1-7*
R Dem →
Ulex

1 **AMENDMENT TO AMENDMENT S1 TO PROPOSED ORDINANCE 2015-0423,**

2 **VERSION 1**

3 On page 3, beginning on line 60, insert:

4 "D. Prior to the executive and the Keller Family Dairy, LLC executing the
5 revised Exhibit B, substantially in the form of Attachment C to this ordinance, it shall be
6 further modified to add language to subsection 4.2 of the revised Exhibit B stating that
7 the Farm Management Plan shall be developed in consultation with the King
8 Conservation District and shall rely on the best available science and practices for dairy
9 farm management to protect wetlands and critical areas."

10 Renumber as needed and correct internal references accordingly.

11 ***EFFECT: The transmitted Conservation Easement (Exhibit B to the Purchase and***
12 ***Sales Agreement, which is Attachment A to the Proposed Ordinance) requires that the***
13 ***property be managed or farmed under a Farm Management Plan. This amendment***
14 ***would add language about the contents of the Farm Management Plan, requiring that***
15 ***it be prepared in consultation with the King Conservation District and that it be based***

- 16 *on the best available science and practices so as to protect the critical areas on the*
17 *property.*

December 7, 2015

[mb]

Sponsor: Dembowski

Proposed No.: 2015-0423

*Failed
R Dem + LG's*

R Dem → 2 - 6 LP ex.

1 **AMENDMENT TO AMENDMENT S1 TO PROPOSED ORDINANCE 2015-0423,**

2 **VERSION 1**

3 On page 3, beginning on line 60, insert:

4 "D. Prior to the executive and the Keller Family Dairy, LLC executing the
5 revised Exhibit B, substantially in the form of Attachment C to this ordinance, it shall be
6 further modified to add language to subsection 3.5 of the revised Exhibit B to limit group
7 events to those that are non-commercial in nature."

8 Renumber as needed and correct internal references accordingly.

9 ***EFFECT: The transmitted Conservation Easement (Exhibit B to the Purchase and***
10 ***Sales Agreement, which is Attachment A to the Proposed Ordinance) would allow the***
11 ***purchaser to host up to ten group events – including local community events, local***
12 ***farm community celebrations or gatherings, or weddings – each year. This amendment***
13 ***would require that these group events be non-commercial in nature, and not designed***
14 ***as commercial or profit-making ventures.***

December 7, 2015

RD-7 to S1
(Public Benefits)

8
to S1

[mb]

Sponsor: Dembowski

Proposed No.: 2015-0423

R Dem → Failed 3-5 R Dem, LG, Pm, yes Lfex

1 **AMENDMENT TO AMENDMENT S1 TO PROPOSED ORDINANCE 2015-0423,**

2 **VERSION 1**

3 On page 3, beginning on line 60, insert:

4 "D. Prior to the executive and the Keller Family Dairy, LLC executing the
5 revised Exhibit B, substantially in the form of Attachment C to this ordinance, it shall be
6 further modified to add a new section on the provision of public benefits to the revised
7 Exhibit B. The new section shall include language requiring the landowner to make
8 commercially reasonable efforts within five years to:

9 1. Make available greenhouses within a portion of the Building Site Area to
10 King County farmers under a lease arrangement;

11 2. Make available a portion of the Building Site Area to King County farmers
12 for farm equipment storage during the flood season under a lease arrangement;

13 3. Salvage and restore the old pro-shop building to make it available for allowed
14 group events and also a reasonable number of local farm community meetings;

15 4. Provide a farm equipment repair shop, which will be available to King
16 County farmers under customary rates and charges; and

17 5. Work with King County Historical Society to provide signage near the
18 property entrance to state the name, reflect the history of the property and denote its
19 status as Protected Property.

20 6. Meet with King County on an annual basis for up to five years to discuss
21 progress toward fulfilling the objectives listed in subsection B. of this section."

22 Renumber as needed and correct internal references accordingly.

23 **EFFECT: *The Conservation Easement as transmitted does not contain any requirement that***
24 ***the purchaser provide the public benefits that were informally agreed to during the Request for***
25 ***Proposals process and in the September 8, 2015, offer letter from King County to sell the***
26 ***property. This amendment would incorporate the public benefits listed in the County's offer***
27 ***letter into the Conservation Easement (greenhouses, farm equipment flood storage, restored***
28 ***pro-shop, farm equipment repair, historical markers) and require an annual meeting with the***
29 ***County to review progress in achieving these benefits.***

December 7, 2015

RD-8 to S1
(Price Escalator)

9
to S1

[mb]

Sponsor: Dembowski

Proposed No.: 2015-0423

RDem → Failed
RDem + LG yes
2 - 6 LPex.

1 **AMENDMENT TO AMENDMENT S1 TO PROPOSED ORDINANCE 2015-0423,**

2 **VERSION 1**

3 On page 3, beginning on line 60, insert:

4 "D. Prior to the executive and the Keller Family Dairy, LLC executing the
5 revised Exhibit B, substantially in the form of Attachment C to this ordinance, it shall be
6 further modified to delete subsection 6.2 and replace it with a new subsection 6.2 that
7 requires that after two years from the execution of the purchase and sale agreement, the
8 price of the two additional dwelling units will increase by three percent each year, or,
9 alternatively, will be set by a new appraisal that is conducted at the time the landowner
10 wishes to exercise the right to the two additional dwelling units and is funded by the
11 landowner."

12 Renumber as needed and correct internal references accordingly.

13 ***EFFECT: The transmitted Conservation Easement (Exhibit B to the Purchase and***
14 ***Sales Agreement, which is Attachment A to the Proposed Ordinance) would permit the***
15 ***purchaser to purchase the rights for two additional dwelling units: one for \$160,000***
16 ***and one for \$105,000. This amendment would lock in those prices for two years and***

- 17 *then require an annual price escalation of 3% after that, or, alternatively, allow the*
18 *price to be set through a new appraisal that is funded by the purchaser*

December 7, 2015

RD-9 to S1
(Clustering)

**10
to S1**

[mb]

Sponsor: Dembowski

Proposed No.: 2015-0423

Not Offered

AMENDMENT TO AMENDMENT S1 TO PROPOSED ORDINANCE 2015-0423,

VERSION 1

On page 3, beginning on line 60, and insert:

"D. Prior to the executive and the Keller Family Dairy, LLC executing the revised Exhibit B, substantially in the form of Attachment C to this ordinance, it shall be further modified to delete subsection 6.1 and replace it with a new subsection 6.1 that requires that the three dwelling units permitted as part of the purchase and sale agreement may only be actualized through a clustered subdivision, short subdivision or binding site plan that create a permanent preservation tract as large or larger than the portion of the subdivision set aside as lots."

Renumber as needed and correct internal references accordingly.

EFFECT: The transmitted Conservation Easement (Exhibit B to the Purchase and

Sales Agreement, which is Attachment A to the Proposed Ordinance) would permit the purchaser to purchase the rights for a total of three dwelling units. This amendment would require that those dwelling units, if constructed, must be clustered as is required for TDR sending sites zoned RA under K.C.C. 21A.37.050. (Note that this amendment

17 *is being proposed because the property is proposed to be rezoned to A as part of the*
18 *2016 Comp Plan, and A zoning does not require that type of clustering on TDR*
19 *sending sites.)*

December 7, 2015

RD-10 to S1
(Recreational Uses)

11
to S1

[mb]

Sponsor: Dembowski

Proposed No.: 2015-0423

Not offered

AMENDMENT TO AMENDMENT S1 TO PROPOSED ORDINANCE 2015-0423,

VERSION 1

On page 3, beginning on line 60, and insert:

"D. Prior to the executive and the Keller Family Dairy, LLC executing the revised Exhibit B, substantially in the form of Attachment C to this ordinance, it shall be further modified to delete subsection 3.5 and replace it with a new subsection 3.5 that allows low-impact outdoor recreational pursuits, such as hiking, horseback riding and other forms of non-motorized recreation that do not adversely impact the Protected Property, as well as non-motorized in season hunting and fishing and non-commercial camping and RV parking spaces for overnight use only if the farmable land in the Agriculture Area outside the Building Site Area is being actively farmed."

Renumber as needed and correct internal references accordingly.

EFFECT: The transmitted Conservation Easement (Exhibit B to the Purchase and Sales Agreement, which is Attachment A to the Proposed Ordinance) would permit the purchaser to allow recreational uses, such as hiking, camping, hunting and fishing, on

- 16 *the property. This amendment would specify that these recreational uses are allowed*
17 *only if the property is predominantly being used for agriculture.*

December 7, 2015

RD-11 to S1
(Five Percent Non-
Tillable)

12
to S1

[mb]

Sponsor: Dembowski

Proposed No.: 2015-0423

RDem, LG, PVR 'yes'
RDem → Failed 3-5 4ex

1 **AMENDMENT TO AMENDMENT S1 TO PROPOSED ORDINANCE 2015-0423,**

2 **VERSION 1**

3 On page 3, beginning on line 60, and insert:

4 "D. Prior to the executive and the Keller Family Dairy, LLC executing the
5 revised Exhibit B, substantially in the form of Attachment C to this ordinance, it shall be
6 further modified to delete subsection 3.7 and replace it with a new subsection 3.7 that
7 states that at any given time, no more than a total of five percent of the Protected Property
8 shall be covered by structures and/or non-tillable surfaces. References to non-tillable
9 surfaces in other areas of Exhibit B shall be modified to reflect this five percent
10 limitation."

11 Renumber as needed and correct internal references accordingly.

12 **EFFECT: *The transmitted Conservation Easement (Exhibit B to the Purchase and***

13 ***Sales Agreement, which is Attachment A to the Proposed Ordinance) would permit the***
14 ***purchaser to keep up to 10% of the property (or a total of 19.1 acres) in non-tillable***
15 ***surfaces and structures, such as residences, barns, machine sheds, permanent***

- 16 ***greenhouses, roads and driveways, and surfaced pads. This amendment would reduce***
17 ***that amount to five percent (or a total of 9.55 acres).***

December 7, 2015

[mb]

Sponsor: Dembowski

Proposed No.: 2015-0423

Not offered

1 **AMENDMENT TO AMENDMENT S1 TO PROPOSED ORDINANCE 2015-0423,**

2 **VERSION 1**

3 On page 3, beginning on line 60, and insert:

4 "D. Prior to the executive and the Keller Family Dairy, LLC executing the
5 revised Exhibit B, substantially in the form of Attachment C to this ordinance, it shall be
6 further modified to delete subsection 3.9 and replace it with a new subsection 3.9 that
7 states that, except as otherwise set forth, no mining, drilling, extracting or processing of
8 oil, gas, minerals or aggregate resources, including rock and gravel, on or under the
9 Protected Property shall be allowed. Provided the majority of the Agricultural Area is
10 being utilized for allowed agricultural uses pursuant to Section 4, storage of gas, oil,
11 aggregate resources or minerals on the Protected Property is allowed but only to the
12 extent such storage is directly related to an Allowed Use on the Protected Property.

13 Extraction of aggregate resources may be allowed on the Protected Property, but only if
14 (a) outside of the Agricultural Area; (b) the excavation area is less than one (1) acre in
15 total at any given time; (c) the excavated materials are used in connection with an
16 Allowed Use on the Protected Property; and (d) unless any excavated area is to be used

17 for a structure allowed under the terms of this Conservation Easement, the area disturbed
18 by excavation is to be restored and replanted to mitigate the impacts of such extraction.
19 Additionally, if permitted by Applicable Law, aggregate resources extracted from the
20 Protected Property may be exported for use on other properties in the Snoqualmie Valley
21 Agricultural Production District owned by Landowner or its members."

22 Renumber as needed and correct internal references accordingly.

23 **EFFECT: *The transmitted Conservation Easement (Exhibit B to the Purchase and***
24 ***Sales Agreement, which is Attachment A to the Proposed Ordinance) would permit the***
25 ***purchaser to undertake certain mining activities, which are not allowed under the***
26 ***zoning code. This amendment would provide clarification about how resources can be***
27 ***extracted and used .***

December 7, 2015

RD-13 to S1
(Indemnification + Title
Insurance)

14
to S1

[mb]

Sponsor: Dembowski

Proposed No.: 2015-0423

R Dem → Failed 2-6 Llex
RDem, L6 'yes'

1 **AMENDMENT TO AMENDMENT S1 TO PROPOSED ORDINANCE 2015-0423,**

2 **VERSION 1**

3 On page 3, beginning on line 60, and insert:

4 "D. Prior to the executive and the Keller Family Dairy, LLC executing the
5 revised Exhibit A, substantially in the form of Attachment A to this ordinance, it shall be
6 further modified to section 3.3.4 of the purchase and sale agreement and replace it with a
7 provision that requires that from and after the closing, the purchaser shall indemnify,
8 defend and hold the seller, its officers, agents and employees harmless from and against
9 any and all losses, liability, claim, agency order or requirement, damage and expense
10 relating to or arising out of, directly or indirectly, occurrences on the property prior to the
11 closing date, including without limitation those relating the actual or threatened release,
12 disposal, deposit, seepage, migration or escape of hazardous substances at, from, into or

13 underneath the property, and the compliance or noncompliance of the property with
14 applicable federal, state, county and local laws and regulations including, without
15 limitation, Environmental Laws and regulations. It shall also be modified to delete
16 section 4.4 of the purchase and sale agreement and replace it with a provision that

17 requires that the cost of the owner's title Insurance policy shall be reimbursed by the
18 buyer at closing."

19 Renumber as needed and correct internal references accordingly.

20 **EFFECT: *The transmitted Purchase and Sale Agreement would not provide***
21 ***indemnification for the County and would require the County to pay for the title***
22 ***insurance policy. This amendment would add indemnification language and would***
23 ***require the buyer to reimburse for title insurance costs.***