

CLARK COUNTY STAFF REPORT

DEPARTMENT: Public Works, Parks and Lands Division

DATE: July 21, 2020

REQUESTED ACTION: Approve an amendment to the interlocal agreement extending time for the City of La Center to complete the Bolen Creek Trail Corridor Conservation Futures bond project.

Consent Hearing County Manager

BACKGROUND

In 2017, the Clark County Council approved Resolution No. 2017-11-06 authorizing the use of Conservation Futures revenues to assist the City of La Center with the acquisition of a Bolen Creek Trail Corridor segment. This project was approved as part of the \$7.3 million Conservation Futures bond. An interlocal agreement was executed on February 27, 2018 via staff report 49-18 to provide \$139,000 in Conservation Futures revenue to the city for the project.

COUNCIL POLICY IMPLICATIONS

Provision IX of the agreement establishes the acquisition period as extending through February 28, 2020 and enables the Council to extend the duration of the agreement upon written request by project sponsors. A written request was submitted by the City of La Center on February 7, 2020.

Amendment One to the agreement extends the duration of the agreement to February 28, 2021, to allow time for the city to complete the Bolen Creek Trail Corridor. The letter requesting the extension and the original interlocal agreement are attached.

ADMINISTRATIVE POLICY IMPLICATIONS

None.

COMMUNITY OUTREACH

Significant public outreach led up to the adoption of Resolution 2017-11-06.

BUDGET IMPLICATIONS

There is sufficient budget capacity in the 2020 budget to fund the project.

YES	NO	
X		Action falls within existing budget capacity.
	X	Action falls within existing budget capacity but requires a change of purpose within existing appropriation
	X	Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

BUDGET DETAILS

Local Fund Dollar Amount	\$139,000
Grant Fund Dollar Amount	NA
Account	3085 Conservation Futures
Company Name	City of La Center

DISTRIBUTION:

Council staff will post all staff reports to the county website, www.clark.wa.gov/thegrid/

ATTACHEMENTS: (1) Amendment to Interlocal Agreement (2) Extension Request Letter; and (3) Interlocal agreement with the City of La Center for Bolen Creek Habitat/Trail Corridor

Galina Burley

Galina Burley, MPA
Parks and Lands Division Manager

Ahmad Qayoumi

Ahmad Qayoumi, PE
Public Works Director/County Engineer

Eva Haney

Eva Haney, CGFM
Finance Division Manager

Primary Staff Contact: Patrick Lee, Ext. 1652

APPROVED: *[Signature]*
CLARK COUNTY, WASHINGTON
CLARK COUNTY COUNCIL

DATE: *July 21, 2020*

SR# *100-20*



APPENDIX A
AGREEMENT BETWEEN CLARK COUNTY AND CITY OF LA CENTER
Bolen Creek Trail Corridor

Amendment 1

On this 21st day of July, 2020, Clark County ("County"), a political subdivision of the State of Washington and the City of La Center ("City") amend Appendix A to the Application for Conservation Futures Funding 2017 ("Agreement"). The purpose of the amendment is to extend the Acquisition Period of the Agreement.

RECITALS

WHEREAS, the parties entered into the above stated Agreement in February 2018 as part of a 2017 application for conservation futures funding; and,

WHEREAS, the Agreement had a stated Acquisition Period from February 2018 through February 2020; and,

WHEREAS, the Agreement provided the County with discretion to extend the Acquisition Period in the Agreement upon written notice from the City that explains the need for an extension; and,

WHEREAS, the City provided notice to the County of ongoing negotiations for the purchase of property interests in conservation properties on February 7, 2020, attached hereto as Exhibit A and incorporated herein by reference; and,

WHEREAS, the Agreement provides for an extension of the Acquisition Period under the circumstances provided above; and,



360.263.7665 • Fax 360.263.7666 • www.ci.lacenter.wa.us

305 NW Pacific Highway • La Center, WA 98629

305 NW Pacific Hwy
La Center, WA 98629
February 7, 2020

Mr. Patrick Lee
Program Manager
Legacy Lands
P.O. Box 9810
Vancouver, WA 98660

Dear Mr. Lee:

The City of La Center would like to request an extension on the Legacy Lands grant for the Bolen Creek Habitat and Trail Acquisition. We have completed one appraisal on the Faust property, but it was before the homeowner was permitted to build a house. This may affect where the trail is proposed to go and we may need to conduct an additional appraisal.

We plan on obtaining a new appraisal, speaking with the Faust property's homeowner about acquiring part of their land for a trail, and to look at possible acquisition of other property to connect the trail to an existing trail. These tasks will need additional time for us to take care of and we would like to extend this as long as possible.

Sincerely,

Greg Thornton, Mayor



CITY OF LA CENTER
BOLEN CREEK HABITAT/TRAIL CORRIDOR
INTERLOCAL AGREEMENT FOR
CONSERVATION FUTURES FUNDING

APPENDIX A INTERLOCAL AGREEMENT

I PURPOSE

This agreement sets forth the terms and conditions by which Clark County, Washington, hereafter referred to as County, shall provide funds from its Conservation Futures Account, pursuant to RCW 84.34.210 and Chapter 3.24 of the Clark County Code, to the City of La Center, hereinafter identified as City, for the purpose of acquiring fee simple or lesser interest in open space, farm land, or timber land, as such are defined in RCW 84.34.020.

II AUTHORITY

This interlocal agreement by and between Clark County, Washington, and the City of La Center is authorized by Chapter 39.34 of the Revised Code of Washington.

III PROJECT DESCRIPTION

The City's application to County is part of this contract. The application is the City's notification of its intent to implement and manage this project in conformance with local and state goals and objectives. The project to be assisted is summarized from the City's application as follows:

- A. Acquire approximately 5.48 acres of land to protect, scenic, recreation and environmental values adjacent to Bolen Creek, a fish-bearing tributary of the East Fork Lewis River.
- B. Acquisition facilitates establishment of a trail corridor that would connect northern portions of the city to the East Fork Lewis River.

IV FUNDING OF PROJECT

City estimates the total cost of the property to be acquired under terms of this agreement is \$154,000. City requests that County pay \$139,000, or 90 percent of the total estimated project cost.

County recognizes, however, that this estimate, while made in good faith, may or may not represent fair market value as determined by standard professional appraisal procedures.

County agrees to pay \$139,000 or 90 percent of the total estimated project cost, or the same percentage amount of fair market value, whichever is less.

- A. Fair market value shall be determined utilizing professional appraisal procedures as set forth in subsections 1 through 5, below:**
- 1. Fair Market Value is established through professional appraisals.**
 - 2. Appraisals are completed and approved by a real estate appraiser licensed in the state of Washington pursuant to 18.140 RCW.**
 - 3. Review appraisals, when required by state or federal regulations or grant funding sources, or when determined advisable by County, shall be completed by a Member of the American Institute of Real Estate Appraisers (MAI) licensed in the state of Washington.**
 - 4. Appraisal Reports and Reviews for acquisitions involving federal funding must be in compliance with the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA).**
 - 5. For all other funding programs, appraisals meeting the current Uniform Standards of Professional Appraisal Practice (USPAP) publication are acceptable with the following exceptions:**
 - a. Extraordinary Assumptions and Hypothetical Conditions must be clearly listed and justified in the appraisal report.**
 - b. Appraisals must consider existing encumbrances.**
 - c. The restricted format for reporting appraisals is not acceptable.**
 - d. Appraisers must provide a specific point value rather than a value range.**
 - e. Property owners are given an opportunity to accompany each appraiser during inspection of the property.**
- B. City Completes Due Diligence Investigations:**
- 1. City orders and reviews a preliminary title report. City submits title report to County for review with the County Prosecuting Attorney.**
 - 2. If no prior survey exists, City shall have a boundary survey of the property completed and a legal description of the property prepared.**
 - 3. City shall prepare all required maps and exhibits, such as the Land and Water Conservation Fund 6(f)(3) map, for acquisitions involving federal funding based on the legal description of any easements or other encumbrances that may restrict use of the property.**
 - 4. Acquisitions that may receive grant funding will meet all requirements of the anticipated funding sources.**
 - 5. City shall invite County to participate in a site inspection, or series of site inspections, to determine that the property is suitable for the intended purpose.**
 - a. Zoning is appropriate for the intended use.**

- b. Necessary land use permits for the intended use are identified/verified.
 - c. Structures meet current building code requirements.
 - d. An Americans with Disabilities Act (ADA) and/or Outdoor Accessibility (USDOJ) assessment is completed.
6. City requires a hazardous materials questionnaire to be completed by the property owner:
- a. If deemed advisable by City or County, City shall cause a Phase I Environmental Site Assessment to be completed.
 - b. The format and content of Phase I ESA reports must be in general accordance with the American Society for Testing of Materials (ASTM) Standard Practice for Environmental Site Assessments including: Site Assessment Process E-1527-05 and the United States Environmental Protection Agency's (USEPA) standards for All Appropriate Inquiries (AAI) at 40 Code of Federal Regulations (CFR) Part 312.
- C. The cost of the appraisal, other due diligence studies and related administrative costs incurred by City may be reimbursed by County as components of the \$139,000, or 90% of total costs requested by City. Unless specifically authorized via a written amendment to this agreement, however, County funding contributions to this acquisition project including land costs and said incidental costs shall not exceed this limit.
- D. In the event fair market value exceeds the City's estimated project cost, the Board of County Councilors, at its discretion, may increase the approved funding allocation to cover fair market value of the property to be acquired. A written request to this effect should be submitted by City to the County Conservation Futures Program Manager, acting as program staff for the Board of Councilors. The request shall include a copy of the appraisal report and appraisal review. County program manager shall notify City of the Board's decision within 45 days of the receipt of the request, or as soon thereafter as is practicable, and a written amendment to this agreement shall be executed by the parties.

V LAND ACQUISITION COSTS EXCEEDING FAIR MARKET VALUE

County considers a reviewed and approved appraisal to be an acceptable estimate of property value. The negotiation between a willing seller and a willing buyer may set a price that is higher than the appraisal, and this marketplace value may be considered along with the appraised value in establishing the reasonable limits of assistance.

If City believes that the negotiation price is a better indication of market value yet it is higher than the appraised value, a detailed and well-documented statement of this difference must be submitted, together with a formal request for a cost increase. This

statement must explain why the appraisal did not reflect the true value and what steps City took to establish the true value through acceptable appraisal technique.

VI STATEMENT OF DIFFERENCE IN VALUE

If the property is to be purchased for less than the approved fair market value, City must submit a letter to County signed by seller acknowledging that the seller was aware of the approved fair market value and that the seller's decision to sell at less than fair market value was made of his/her own free will.

VII REAL PROPERTY ACQUISITION PROCEDURES

City may designate City staff or a third party as the "Acquisition Specialist" that will assist with the acquisition of the subject property. A list of this individual's qualifications and credentials relating to real property acquisition shall be provided to the Conservation Futures Program Manager to assure the designated acquisition specialist is qualified to participate.

VIII CONTINGENCIES

The duty of County to pay out funds under this contract depends on:

- A. Strict compliance by City with the terms of this contract, and;
- B. Available funds in County's Conservation Futures Account.

IX ACQUISITION PERIOD

City shall have two years from notification of funding approval by the Board of County Councilors to complete the project. The term of this project shall run from 2-27-2018 to 2-28-2020

The Board of County Councilors may extend the acquisition period at its discretion. To secure an extension, City shall send written notice to the Conservation Futures Program Manager, acting as program staff for the Board of Councilors, at least thirty days prior to the end of the acquisition period. The notice shall state the need for an extension and explain the reasons for the request. The program manager shall notify City of the Board's decision within thirty days of receipt of the request, or as soon thereafter as is practicable.

Any project that has not been completed within the acquisition period, and for which no extension has been granted, shall be considered withdrawn and allocated funds shall become available for other projects.

City agrees to notify the Conservation Futures Program Manager of any circumstances or events during the acquisition period (such as an owner indicating he is no longer a willing seller) which will cause the termination of efforts to acquire the subject property.

City, on forms provided, will advise Clark County at least once every six months of their acquisition progress.

City shall obtain, and submit for review by County, a title insurance policy for the acquired land. County shall review all easements, restrictions, and other encumbrances that appear in the policy to assure that they do not impact, to an excessively negative degree, the Conservation Futures purposes for which the land is to be acquired. Clark County will not release funds for land purchases until this requirement is met.

X DURATION OF INTERLOCAL AGREEMENT

This agreement shall remain in effect in perpetuity, except as otherwise provided for in the "Acquisition Period" section of this agreement.

XI RELATIONSHIP OF PARTIES

The Clark County Board of Councilors imposed the Conservation Futures levy to provide a reliable and predictable funding source to help acquire interest in open space, farm land, timber land, and certain classifications of park property. This project, however, is sponsored by the City of La Center and not Clark County. The purpose of this agreement is to provide City monetary assistance, which will enable it to complete the project described herein. In return for monetary assistance, County requires that a Deed of Right to the County, as shown in Appendix B, be recorded by City at closing of the acquisition to ensure that the acquired land is managed consistent with the purposes articulated in this agreement. County will not acquire any ownership interest in the subject property by virtue of this agreement, nor will County assume any responsibility for improving or managing the property.

City shall be responsible for the management of this project within the terms and conditions of this agreement. Furthermore, Clark County shall not become party to any contract between the Contracting Party and others by reason of having entered into this agreement.

XII OTHER ORGANIZATIONS

No separate legal or administrative entity shall be created by this agreement.

XIII PERFORMANCE

City agrees to manage the subject property in a manner consistent with the legislative declarations and objectives set forth in RCW 84.34.010-020 and RCW 84.34.200-250 and in Chapter 3.24 of the Clark County Code. Moreover, City recognizes that boards of county councilors are the only legislative authority empowered to impose the Conservation Futures levy and that the Board of Clark County Councilors, having done so, has the responsibility to assure proper use and administration of the Conservation Futures Fund and has a corresponding interest in the management of all properties acquired with the fund. Therefore City shall operate and maintain the subject property as follows:

- A. The property and any improvements to the property shall be kept safe and clean.**
- B. City shall make reasonable effort to control nonconforming uses, such as hunting in wildlife preserves and sanctuaries.**
- C. Sanitation and sanitary facilities shall be maintained in accordance with applicable state and local public health standards.**
- D. City shall submit to the Conservation Futures Program Manager any plans for improving the subject property to assure statutory compliance and consistency with the Conservation Futures Project Application attached as Appendix _____. This does not apply to routine maintenance. Improvements that may be allowed under terms of the statute, the plans for which, in any event, should be submitted to the program manager, include but are not limited to picnic tables, viewpoints, rest areas, docks, benches, boat launches, restrooms, and parking lots. Work shall not commence without written approval from the Conservation Futures Program Manager. Though County shall be given the opportunity to review plans for improvements, this should not be construed to mean that County shall participate in the funding of improvements.**
- E. City shall submit to the Conservation Futures Program Manager any proposals for lease-back agreements, as provided in RCW 84.34.210 easements, rights-of-way, or other conditions or restrictions which limit the use of or alter the character of the subject property. Any such proposal shall be reviewed for statutory compliance and consistency with proposed plans and uses as stated in City's project application at the time of funding approval. City shall not conclude any such agreement without written consent of the Conservation Futures Program Manager.**
- F. The property shall be kept open for public use at reasonable hours and times of year. County recognizes, however, that appropriate hours may vary considerably depending on the type of interest that has been acquired, and**

the existence of leaseback or other agreements that might properly limit public access.

- G. The property shall be open for the use of all segments of the public without restriction because of the race creed, color, sex, religion, national origin or residence of the user.
- H. Roads, trails, tables, benches, and other improvements shall be kept in reasonable repair throughout their estimated lifetime, as to prevent undue deterioration that would discourage public use.
- I. City should operate and maintain the facility in accordance with all applicable federal, state, and local laws and regulations.

XIV USER FEES AND CHARGES

User or other types of fees may be charged in connection with areas that are the subject matter of this contract, provided that the fees and charges are commensurate with the value of recreation services or opportunities furnished and are within the prevailing range of public fees and charges within the state for the particular activity involved.

XV CONVERSION

City for and in consideration of monies coming in whole or in part from Clark County's Conservation Futures Fund, shall record a Deed of Right to County upon closing, and dedicate the property to be acquired under terms of this agreement in perpetuity for the public's use and enjoyment and to promote the purposes of Conservation Futures.

The City will not make or permit to be made any use of the real property described in this agreement, or any part of it, which is inconsistent with those chapters of the Clark County Code and Revised Code of Washington that govern the use of Conservation Futures funds, or any use which is inconsistent with the purposes and improvements as described in City's project application at the time of funding approval, unless the Board of Clark County Councilors consents to the inconsistent use. County shall approve any such conversion only upon conditions where City can assure it will acquire substitute properties which are of equal or greater value at the time of conversion, which, to the extent feasible, are equivalent in usefulness and location, and which also meet the goals and objectives of the Conservation Futures Program.

XVI REMEDIES

In the event the City fails to comply with any or all of its obligations under this agreement, County stipulates that specific performance shall be the remedy preferred

by County.

The remedy of specific performance shall not be the sole remedy and does not serve to exclude any and all other remedies available to County. County may choose to exercise any and all other remedies available, together with, or as an alternative to, specific performance, at the option of County.

XVII REPORTS AND INSPECTIONS

City, in cooperation with the Conservation Futures Program Manager, shall prepare a final report upon completion of this project or its early termination for presentation to the Board of Clark County Councilors. The report shall include a final accounting of all expenditures and a description of the work accomplished. If the project is terminated early, the report shall provide a full explanation of the reasons for not completing the project. City also agrees to provide interim status reports to the Conservation Futures Program Manager every six months during the acquisition period.

Property and improvements acquired under terms of this agreement shall be available for inspection by the Conservation Futures Program Manager, or his designee, upon request. As a matter routine, Clark County shall conduct an on-site inspection approximately once a year to assure that the property is being operated, maintained, and used in accordance with this Contract.

XVIII ASSIGNMENT

This agreement shall not be assignable in whole or in part by the City except with the express written consent of the Board of Clark County Councilors.

XIX HOLD HARMLESS

City agrees to defend and hold harmless Clark County, Washington, the Board of Clark County Councilors and any employees thereof from any and all suits at law or equity or claims or demands, or any loss of any nature, including but not limited to costs and attorneys' fees, suffered, or alleged to be suffered, on the premises, or arising out of use, improvements, operation, or management of the subject property.

XX NOTICES

Any notices, requests, consents, approvals, and other communications shall be in writing and shall be deemed to have been sufficiently given for all purposes when delivered or mailed by first class postage or certified mail, postage prepaid, addressed as follows:

A. Notice to Clark County

TO: Conservation Futures Program Manager
Clark County Public Works Department
Parks and Lands Division
4700 NE 78th Street
Vancouver, Washington 98665

B. Notice to La Center

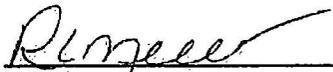
TO: Naomi Hansen
Permit Specialist
La Center Public Works
305 NW Pacific Highway
La Center, WA 98629

Naomi Hansen serves in the capacity of Permit Specialist for the City of La Center and has been designated as the City's liaison officer for the purposes of this agreement.

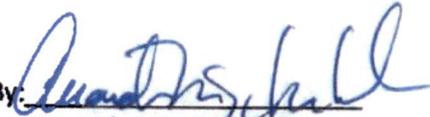
Attest: 
Greg Thornton, Mayor

ADOPTED this 27th day of Feb., 2018.

ATTEST:

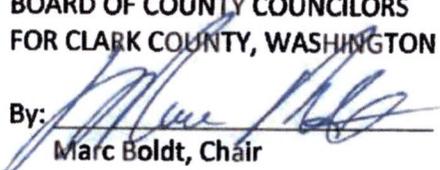

Rebecca ~~Hilton~~ Messinger
Clerk to the Board

APPROVED AS TO FORM, ONLY
Anthony F. Golik
Prosecuting Attorney

By: 
Amanda Migchebrink
Deputy Civil Prosecutor



BOARD OF COUNTY COUNCILORS
FOR CLARK COUNTY, WASHINGTON

By: 
Marc Boldt, Chair

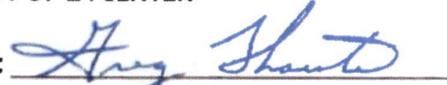
By: _____
Jeanne Steward, Councilor

By: _____
Julie Olson, Councilor

By: _____
John Blom, Councilor

By: _____
Eileen Quiring, Councilor

CITY OF LA CENTER

By: 
Greg Thornton, Mayor

ATTEST: 
Finance Director / City Clerk

APPROVED AS TO FORM, ONLY:


Daniel Kearns, City Attorney

DEED OF RIGHT

For Public Use of Land Acquired Under the Clark County Conservation Futures Program

The City of La Center, for and in consideration of monies coming in whole or in part from the Conservation Futures Account, as established by Chapter 3.24 of the Clark County Code, and in fulfillment of terms contained in the Interlocal Agreement identified below, conveys and grants to Clark County, Washington, individually and as the representative of all the people of Clark County, the right to use the real property described below forever for those purposes described in the Interlocal Agreement signed by the City of La Center on the 27th day of DECEMBER and by Clark County on the 27th day of Feb., 2018, and which is entitled Bolen Creek Habitat/Trail Corridor.

The City of La Center will not make or permit to be made any use of the real property described in its deed, or any part of it, which is inconsistent with those chapters of the Clark County Code and Revised Code of Washington that govern the use of Conservation Futures Funds, or any use which is inconsistent with the purposes and improvements as described in the City's project application at the time of funding approval, unless the Board of Clark County Councilors consents to the inconsistent use. Clark County shall approve any such conversion only upon conditions where the City of La Center can assure it will acquire substitute properties which are of equal or greater value at the time of conversion, which, to the extent feasible, are equivalent in usefulness and location, and which also meet the goals and objectives of the Conservation Futures Program.

The real property covered by this deed is described in Exhibit A attached hereto and is incorporated by this reference.

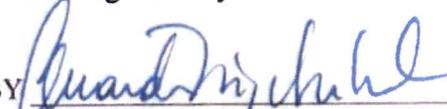
This deed shall in no way modify or extinguish the functions of the signatory parties under the terms and conditions set forth in the aforementioned interlocal Agreement.

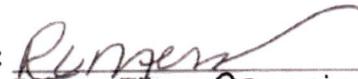
Dated this 27th day of DECEMBER, 2017.



Greg Thornton, Mayor
City of La Center

Approved as to Form, Only
Anthony F. Golik
Prosecuting Attorney

BY 
Amanda Migchelbrink
Deputy Civil Prosecutor

Attest: 
Rebecca Tilton
Clerk to the Board

Conservation Futures Bolen Creek Trail Corridor

Public Works



Background

- In November 2017, the Clark County Council approved a resolution authorizing the use of Conservation Futures revenue to assist the City of La Center in acquiring a trail corridor along Bolen Creek on a 5.48-acre parcel
- The project was approved as part of the \$7.3 million Conservation Futures bond
- An interlocal agreement was executed in February 2018 to provide \$139,000 Conservation Futures revenue to the city for the project



Request

- Provision IX of the agreement enables the council to extend the duration of the agreements upon written request by the City of La Center
- On February 7, 2020, the city provided a letter to the county requesting an extension of the project in order to complete the acquisition
- Public Works requests council authorization for the county manager to execute an amendment to extend the duration of the agreement to February 28, 2021

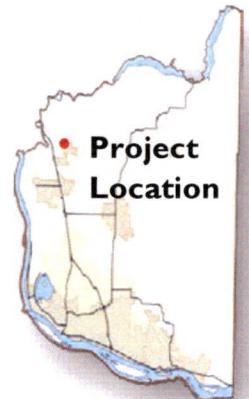
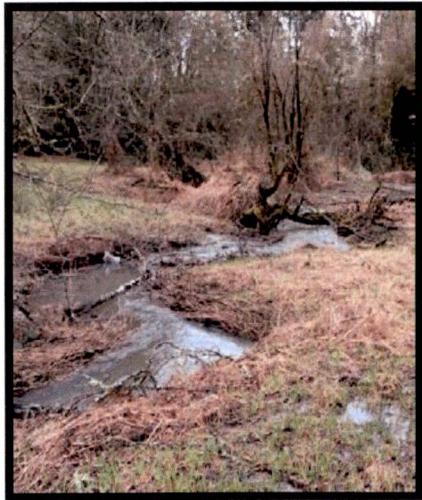
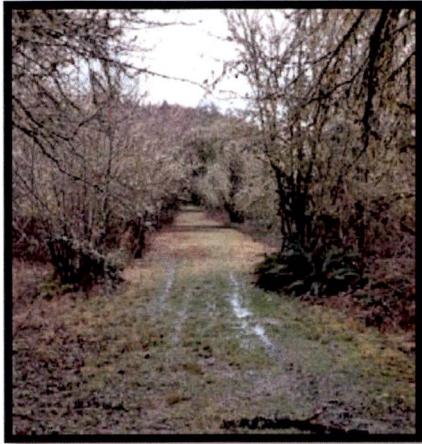


Bolen Creek Habitat / Trail Acquisition

Sponsor: City of La Center

Conservation Futures 2017

Acres: 5.48



Total Cost: \$154,000

CF Request: \$139,000

Sponsor Match:
\$15,000

Grant Potential: N/A



Primary Objective: Acquire a key link in the City's Trails and Pathway Plan that connects northern portions of the city to the East Fork Lewis River.