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JERRY MCINTURFF
SKAGIT COUNTY WASHINGTON
DEC 24 1992

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When recorded return to:

The San Juan Preservation Trust
P.O. Box 327
Lopez, WA 98261

6080
SKAGIT COUNTY WASHINGTON
DEC 24 1992
Audited For
SKAGIT CO. Treasurer
By [Signature]

GRANT DEED OF CONSERVATION EASEMENT

This Grant Deed of Conservation Easement, by and between JOOST A. BUSINGER and MARIANNE KOOLMAN, husband and wife (hereinafter referred to as "Grantor"), and THE SAN JUAN PRESERVATION TRUST, a Washington non-profit corporation (hereinafter referred to as "Grantee"), is made with reference to the following facts:

1 RECITALS

- 1.1 Grantor is the owner in fee of that certain real property (hereinafter the "Protected Property"), situated on Guemes Island in Skagit County, State of Washington, and more particularly described in Exhibit "A" and Exhibit "B", which are attached and made a part hereof by this reference.
- 1.2 The Protected Property is part of a significant coastal ecosystem, the San Juan Islands, which is relatively intact and major portions of which remain undeveloped. The Protected Property includes approximately 2,200 linear feet of waterfront and rock terraces open to public view from the waters of Padilla Bay. The upland acreage of natural mixed forest has been partially logged over 50 years ago and consists of old conifers more than 100 years old, madrona, alder, bigleaf maple, and other native trees and shrubs. The Protected Property shares a 400 foot common border with the Washington State Department of Wildlife's Square Harbor Wildlife Preserve to the south and a 500 foot common western border with the Grantee's Wagley Guemes Island Raptor Preserve area. The Protected Property is significant habitat for the Peregrine falcon, recognized as a federal and state endangered species, and the Bald eagle recognized as a federal and state threatened species. Both species perch, nest, and hunt on or near the waterfront area of the Protected Property.

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- 1.3 The Protected Property's ecological, coastal, forestland and open space values are of great importance to Grantor, Grantee and the people of Guemes Island, Skagit County, and the State of Washington.
- 1.4 The goals and policies of the Skagit County Zoning Ordinance provide for the conservation of natural resources and value of property. The Skagit County Countywide Comprehensive Plan encourages the retention of open space and wildlife habitat by conservation easements.
- 1.5 The legislatively declared policies of the State of Washington, in the Revised Code of Washington (hereinafter "RCW") Chapter 84.34, provide that it is in the best interest of the state to maintain, preserve, conserve, and otherwise continue in existence, adequate open-space, and to assure the use and enjoyment of natural resources, shorelines, and scenic beauty for the economic and social well-being of the state and its citizens. The Protected Property constitutes "open space land" as defined in such statute.
- 1.6 The Protected Property would also be desirable property for substantial additional residential and other development because of its location and orientation. In the absence of a Grant Deed of Conservation Easement, the Protected Property could be developed in the future for residential and other uses in a manner which would destroy the forestland, open-space, and natural coastal character of the Protected Property and its ecological value.
- 1.7 Grantor, as owner of the Protected Property, possesses the affirmative right to identify, preserve, and protect in perpetuity the natural elements and processes and the ecological, forestland, coastal, and open-space value of the Protected Property, and desires to transfer such rights to the Grantee.
- 1.8 Grantee is a "non-profit nature conservancy corporation" as defined by RCW 64.04.130 and RCW 84.34.250, and described in Sections 501(c)(3) and 170(b)(1)(A) of the Internal Revenue Code of 1986 (hereinafter "IRC").

2 CONVEYANCE AND CONSIDERATION

- 2.1 For the reasons stated above, and in consideration of the mutual covenants contained herein, the Grantor does hereby voluntarily convey and warrant to Grantee a perpetual Conservation Easement, consisting of the rights in the Protected Property, hereinafter enumerated, subject only to the restrictions set forth herein.
- 2.2 This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130, and is made as an absolute, unconditional, unqualified, and completed

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gift subject only to the mutual covenants and restrictions hereinafter set forth, and for no other consideration whatsoever.

3 PURPOSE

- 3.1 It is the exclusive purpose of this Conservation Easement to preserve and protect the open-space, natural character of the Protected Property. To this end, Grantor and Grantee agree that the Baseline Data consisting of maps, photographs, and other documentation on file at the offices of Grantor and already provided to Grantee by Grantor provide, collectively, an accurate representation of the Protected Property at the time of this Grant and are hereby incorporated by this reference. A partial list of wild plants, birds, and animals found on the Protected Property are described in Exhibit "C," which is attached hereto and made a part hereof by this reference. Grantor and Grantee further agree that within twelve (12) months of the execution hereof, a collection of additional Baseline Data shall be compiled by Grantee, attached hereto as an exhibit, and incorporated herein by this reference. The Baseline Data shall be relied upon by the Grantor and the Grantee as the descriptive base to establish the present condition and guide in the future uses of the Protected Property. Failure to timely compile the additional Baseline Data shall not affect the enforceability or validity of any other provision hereof.
- 3.2 Grantor intends that the Protected Property shall not be converted nor directed to any uses other than those provided herein.
- 3.3 Unless specifically provided, nothing contained herein shall be construed as affording to the general public access to any portion of the land subject to this Conservation Easement.

4 GRANTEE'S RIGHTS

- 4.1 The rights conveyed to Grantee by this Conservation Easement are the following:
- 4.1.1 To identify, to preserve, and protect in perpetuity, and to maintain the open-space, coastal, natural, forest character of the Protected Property for the benefit and enjoyment of the general public;
- 4.1.2 To enter upon the Protected Property annually, and upon prior written notice to the Grantor, for the purpose of making a general inspection to assure compliance with this Conservation Easement;
- 4.1.3 To enter upon the Protected Property at such other times as are necessary if there is reason to believe that a violation of the Easement is occurring, for the purposes of enforcing the provisions of this Conservation Easement;

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4.1.4 To enjoin any activity on, or use of, the Protected Property which is inconsistent with this Conservation Easement, including trespasses by members of the public, and undertake or cause to be undertaken the restoration of such areas or features of the Protected Property as may be damaged by activities contrary to the provisions hereof;

4.1.5 The Grantor agrees to notify the Grantee, in writing, before exercising any reserved right, the exercise of which may have an adverse impact on the conservation interests associated with the Protected Property.

4.2 Enforcement of the terms and conditions of this Conservation Easement shall be at the discretion of the Grantee. Any forbearance on its behalf to exercise its rights hereunder in the event of any breach of this Easement by Grantor, its heirs, successors or assigns, shall not be deemed or construed to be a waiver of the Grantee's rights hereunder in the event of any subsequent breach.

5 **PERMITTED USES.** Grantor reserves the right to use the Protected Property for the uses which are consistent with the purposes of this Conservation Easement, including the following uses:

5.1 To manage the Protected Property as a natural coastal wildlife preserve consistent with the adjoining preserves of the Grantee and the Washington State Department of Wildlife.

5.2 To establish and maintain walking trails on the Protected Property.

5.3 To gather firewood from fallen trees for personal use and remove dangerous trees along walking trails consistent with the "open space" designation of the Protected Property.

6 **PROHIBITED USES.** The following uses and practices on the Protected Property, though not an exhaustive recital of inconsistent uses and practices, are inconsistent with the purposes of this Conservation Easement and shall be prohibited:

6.1 The change, disturbance, alteration, or impairment of the Protected Property, except as provided herein.

6.2 The construction of any buildings, fences or other structures.

6.3 The division, subdivision, or de facto division of the Protected Property.

6.4 The construction or placement of commercial signs, billboards or other advertising material on the Protected Property.

6.5 The change in the topography of the land through the placing on the premises of soil, dredging spoils, landfill, or other material, except as provided in Section 5.2.

6.6 The construction of any additional roads, trails or paths for vehicular use.

6.7 The dumping of used vehicles, old machinery, or other unsightly or offensive material.

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- 6.8 The removal or destruction of trees or other vegetation, including clearcutting, "selective" cutting, or any other form of commercial logging or gathering of wood, except as provided in Section 5.3 above.
- 6.9 The cutting of snags and over-mature trees, unless dangerously close to walking paths.
- 6.10 The exploration for or extraction of minerals, hydrocarbons, soils, or other materials, except water and archeological remains, on or below the surface of the Protected Property.
- 6.11 The operation of motorcycles, dune buggies, or other types of noisy motorized vehicles for recreational purposes or the operation of other sources of excessive noise pollution.
- 6.12 Hunting or trapping, except to the extent approved by Grantee as necessary to preserve or protect the conservation values of the Protected Property.
- 6.13 Daytime or overnight commercial camping on the Protected Property.

7 REMEDIES

- 7.1 Should Grantor, its heirs, successors or assigns, undertake any activity in violation of the terms of this Conservation Easement, the Grantee shall have the right to force the restoration of that portion of the Protected Property affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the costs of such restoration and the Grantee's expenses, including attorneys' fees, shall be borne by Grantor or those of its heirs, successors, or assigns, against whom a judgment is entered, or in the event that the Grantee secures redress without initiating or completing a judicial proceeding, by Grantor and those of its heirs, successors or assigns, who are otherwise determined to be responsible for the unauthorized activity.
- 7.2 Should the ownership of the Protected Property become vested in more than one heir, successor or assign of the Grantor, and should one or more heir, successor, or assign undertake any activity in violation of the terms of this Conservation Easement, any other heir, successor or assign shall have the right to force the restoration of that portion of the Protected Property affected by such undertaking to the condition that existed prior to the undertaking if such unauthorized activity, in the event the Grantee elects not to exercise the remedy provided for in Section 7.1. In such case, the costs of such restoration and the expenses, including attorneys' fees, of the heir, successor or assign that forces the restoration shall be borne by those heirs, successors or assigns against whom a judgment is entered, or in the event that the heir, successor or assign forcing the restoration secured redress without initiating or completing judicial proceeding, by those heirs, successors or assigns who are otherwise determined to be responsible for the unauthorized activity.

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8 **SUCCESSION.** If at any time it becomes impossible for the Grantee to ensure compliance with the covenants contained herein and the Grantee has not named a successor or successor organization, or the Grantee shall cease to exist, then its rights and duties hereunder shall become vested and fall upon the following-named entities to the extent that they shall accept this Conservation Easement, in the following order:

- (1) The Nature Conservancy, a District of Columbia non-profit corporation, having its principal office at 1815 North Lynn Street, Arlington, VA 22209;
- (2) Such other entity, with purposes similar to the San Juan Preservation Trust, constituting a "qualified organization" within the meaning of the Internal Revenue Code of 1986, or corresponding provisions of any future statute.

The benefits of this Easement shall be in gross and assignable but only to a qualified organization within the meaning of Section 170(h)(3) of the Internal Revenue Code, which is organized or operated primarily or substantially for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code. Any assignment of benefits by the Grantee (or successor) must require the transferee to carry out the purposes of this Conservation Easement. The Grantee shall notify the Grantor in writing, at Grantor's last known address, in advance of such assignment.




9 **TAXES AND EXPENSES**

9.1 Grantor agrees to pay any and all real property taxes and/or assessments levied by competent authority on the Protected Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Protected Property, Grantor will reimburse Grantee for same.

9.2 Grantor shall bear all the costs of maintenance of the Protected Property, and does hereby indemnify the Grantee therefrom.

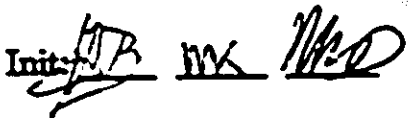
10 **PROPORTIONATE VALUE; EMINENT DOMAIN**

10.1 The Grantor and the Grantee agree that the donation of the Conservation Easement gives rise, for purposes of this paragraph, to a property right immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that the Conservation Easement, determined at the time of the gift, bears to the value of the Protected Property at that time. That proportionate value of the Grantee's property rights shall remain constant. If a change in conditions gives rise to extinguishment of the Conservation Easement, the Grantee, on a subsequent sale, exchange or involuntary conversion of the Protected Property, must be entitled to a portion of the proceeds at least

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equal to that proportionate value of the Conservation Easement. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein.

- 10.2 If ever all or part of the Protected Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Grantee 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; all expenses incurred by the Grantor and the Grantee in this action shall be paid out of the recovered proceeds.
- 11 **HOLD HARMLESS.** Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' 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 Protected Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the obligations specified in paragraphs 9.1 and 9.2; and (3) the existence or administration of this Easement.
- 12 **COVENANTS.** It is the express intent of the Grantor and Grantee that the provisions of this Conservation Easement shall run with and burden title to the Protected Property in perpetuity, and shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the parties hereto.
- 13 **"GRANTOR" - "GRANTEE".** The terms "Grantor" and "Grantee", wherever used herein, and any pronouns used in place thereof, shall be held to mean and to include, respectively the above-named Grantor, and heirs, successors, personal representatives, and assigns of said Grantor, and each of them, and the above-named Grantee, its successors and assigns.
- 14 **SEVERABILITY.** In the event that any provision of this grant or the application thereof to any person or circumstance shall be determined to be invalid or unenforceable, the remainder of the provisions hereof, and the application of such provisions to persons or circumstances other than those as to which it is determined to be invalid, shall not be affected thereby.

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15 **SUBSEQUENT TRANSFERS.** Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Protected Property, including without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

16 **NOTICES.** All notices required or permitted to be given under the terms of this Conservation Easement shall be in writing and addressed as set forth below:

16.1 All notices to be given to Grantor shall be addressed as follows:

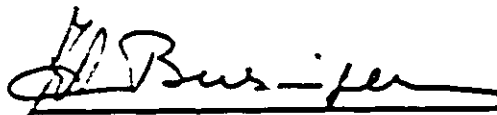
Joost A. Businger
Marianne Kooiman
650 Square Harbor Lane
Anacortes, WA 98221

16.2 All notices to be given to the Grantee shall be addressed as follows:


The San Juan Preservation Trust
Box 327
Lopez Island, WA 98261

Either Grantor or Grantee may, by proper notice to the other, designate another address for the giving of notices. All notices shall be deemed given on the third day following the day the notice is mailed in accordance with this Section 16.

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 22
day of Dec., 1992






JOOST A. BUSINGER



MARIANNE KOOIMAN

sjpt/conesm44
December 16, 1992

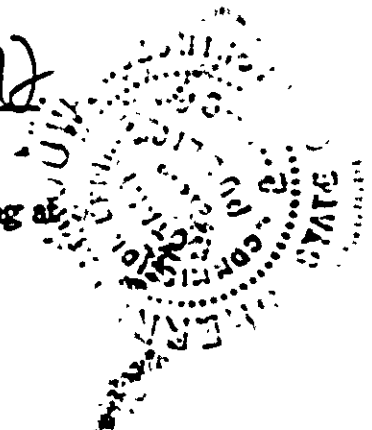
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State of Washington)
County of Shagit) ss.

On this day, personally appeared before me JOOST A. BUSINGER and MARIANNE KOOLMAN, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 22nd day of December, 1992.

William F. Moore
Notary Public in and for said state, residing at:
Chico, WA



THE SAN JUAN PRESERVATION TRUST does hereby accept the above Conservation Easement.

THE SAN JUAN PRESERVATION TRUST

Dated: 12-23-92

By Man V. Dalton
Treasurer

SUBSCRIBED AND SWORN TO before me this 23rd day of December, 1992.

Joost A. Businger
Notary Public for the State of Washington, residing at:

Lopez
My Commission expires: 6-30-93



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Exhibit "A"

Legal Description

Businger/Kooiman Conservation Easement

The east 513.902 feet of Government Lot 1,
AND the east 400 feet of Government Lot 2,
AND that portion of Government Lot 2 lying within 100 feet from the
line of ordinary high tide of said Government Lot 2,
ALL in Section 5, Township 35 North, Range 2 East W.M., situate in
Skagit County, Washington.

TOGETHER WITH easements and restrictions of record on above described
property.

[Handwritten initials]

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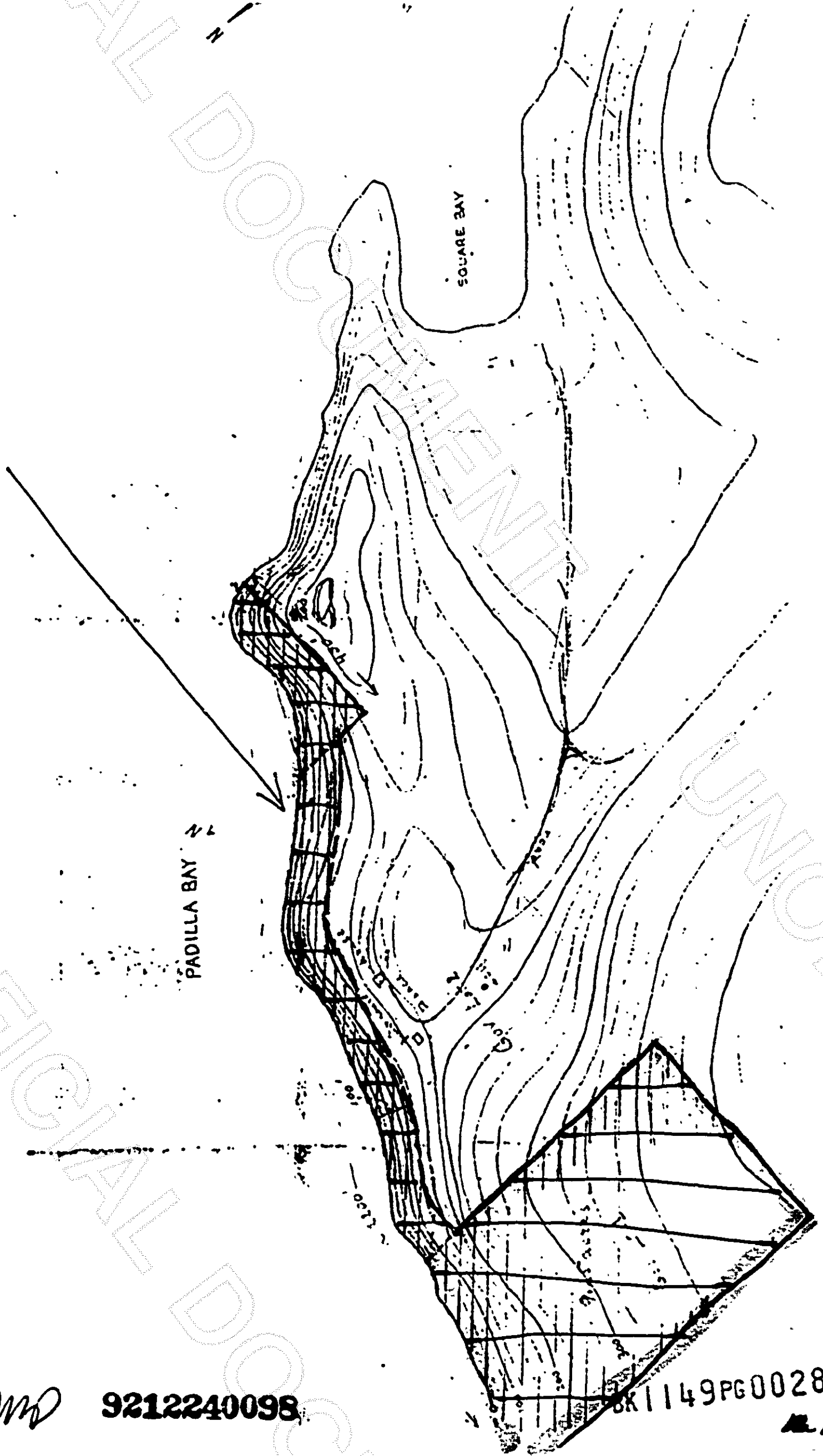
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Exhibit "B"

Businger/Koifman Conservation Easement

Guemes Island



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Exhibit "C" - Businger/Kooiman Conservation Easement

The Eyrle, Guemes Island

Trees:

<i>Abies grandis</i>	grand fir
<i>Acer macrophyllum</i>	bigleaf maple
<i>Acer glabrum</i>	Douglas' maple
<i>Alnus sinuata</i>	Sitka alder
<i>Alnus rubra</i>	red alder
<i>Arbutus menziesii</i>	Pacific madrona
<i>Prunus emarginata</i>	bitter cherry
<i>Pseudotsuga menziesii</i>	Douglas-fir
<i>Salix</i> spp.	willow spp.
<i>Taxus brevifolia</i>	Pacific yew
<i>Thuja plicata</i>	western red cedar
<i>Tsuga heterophylla</i>	western hemlock

Shrubs:

<i>Amelanchier alnifolia</i>	western serviceberry
<i>Berberis nervosa</i>	low Oregon grape
<i>Berberis aquifolium</i>	tall Oregon grape
<i>Gaultheria shallon</i>	salal
<i>Holodiscus lanata</i>	ocean spray
<i>Lonicera ciliosa</i>	orange honeysuckle
<i>Pachistima myrsinites</i>	mountain lover
<i>Ribes divaricatum</i>	coast black gooseberry
<i>Ribes sanguineum</i>	red-flowering currant
<i>Rosa gymnocarpa</i>	little wild rose
<i>Rubus spectabilis</i>	salmonberry
<i>Rubus ursinus</i>	trailing blackberry
<i>Sambucus racemosus</i>	coast red elderberry
<i>Symphoricarpos albus</i>	common snowberry
<i>Vaccinium parvifolium</i>	red huckleberry

Plants:

<i>Calypso bulbosa</i>	Calypso orchid
<i>Castilleja hispida</i>	hairy paintbrush
<i>Corallorhiza maculata</i>	spotted coralroot
<i>Galium triflorum</i>	fragrant bedstraw
<i>Linnaea borealis</i>	twinflower
<i>Monotropa uniflora</i>	Indian pipe
<i>Montia sibirica</i>	Siberian miner's lettuce
<i>Montia perfoliata</i>	miner's lettuce
<i>Satureja douglasii</i>	yerba buena
<i>Tellima grandiflora</i>	fringe cup
<i>Tiarella trifoliata</i>	western foam flower
<i>Trientalis latifolia</i>	broad-leaved star flower
<i>Urtica dioica</i>	stinging nettle
<i>Veronica</i> spp. (> 3)	Veronica spp.
mosses, ferns, grasses, etc.	

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Exhibit "C" - Businger/Kooiman Conservation Easement

Fyrie, Guemes Island

Animals:

bat
black-tailed deer
chipmunk
mice, vole, etc.
squirrel
1 feral white cat

Birds:

bald eagle
peregrine falcon
red-tailed hawk
hawk spp.
raven
crow
pileated woodpecker
hairy woodpecker
downy woodpecker
flicker
wood pigeon
kingfisher
robin
thrush
towhee
brown creeper
nuthatch
chickadee
golden-crowned kinglet
junco
sparrow
wren spp.

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