

Fleagle Conservation Easement

Easement Only
SKAGIT COUNTY WASHINGTON
Real Estate Excise Tax
PAID

DEC 26 1995

Amount Paid \$
By: *[Signature]*
Skagit County Treasurer
Deputy

SKAGIT COUNTY WASHINGTON
KATHY HILL

95 DEC 26 P2:48

RECORDED _____ FILED _____
REQUEST OF _____

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When recorded return to:

The San Juan Preservation Trust
Box 327
Lopez WA 98261

GRANT DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT is made this 21 day of December, 1995, by ROBERT G. FLEAGLE and MARIANNE D. FLEAGLE, husband and wife, having an address at 7858 - 56th Place NE, Seattle, WA 98115, (hereinafter referred to as "Grantor"), in favor of THE SAN JUAN PRESERVATION TRUST, a Washington nonprofit corporation qualified to do business in Washington, having an address at Box 327, Lopez WA 98261, (hereinafter referred to as "Grantee").

I. RECITALS

A. Grantor is the owner in fee simple of that certain real property (hereinafter the "Protected Property") situated on the southeastern portion of Guemes Island, in Skagit County, State of Washington, more particularly described in Exhibit "A" and shown on Exhibit "B," both of which are attached and made part hereof by this reference.

B. The Protected Property's open space, ecological and forestland conservation values are of great importance to Grantor, Grantee, and the people of Skagit County and the State of Washington. The Protected Property enhances the rural character of Skagit County and provides a natural forest setting. The Protected Property adjoins along its northeastern border the Washington State Department of Wildlife Square Harbor Preserve set aside to protect nesting habitat for the threatened and endangered Peregrine falcon. The Protected Property also provides perch sites for the Bald eagle, a threatened species, and other raptors. Many other species of birds use the Protected Property for foraging and nesting, including the Pileated woodpecker.

C. The Protected Property consists of approximately 20 acres, is primarily forested and is near the salt water of Padilla Bay and Guemes Channel and is part of the San Juan Island archipelago. Much of the nearby forested areas is relatively intact and major portions remain undeveloped. The Protected Property includes forest lands of mixed species of trees (including Douglas fir, Pacific madrone, big leaf maple and alder) that are predominantly non-deciduous that provide a rich habitat for forestland species of wildlife. There are no buildings on the Protected Property.

D. The goals and policies of the Skagit County Zoning Ordinance (Chapter 14.04) provide for the conservation of natural resources and value of property and encourage the most suitable and compatible uses of land. The Skagit County Countywide Comprehensive Plan encourages the retention of open space and wildlife habitat by conservation easements.

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E. The legislatively declared policies of the State of Washington in the Washington State Open Space Tax Act, Chapter 84.34 RCW, provide "...that it is in the best interest of the state to maintain, preserve, conserve, and otherwise continue in existence adequate open space lands for the production of food, fiber and forest crop, and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well being of the state and its citizens." Under the Open Space Act, lands eligible for preferential real property tax treatment include lands designated by the County or lands such as the subject Protected Property where the preservation in its present use would conserve and enhance natural resources and promote conservation of forestlands and wildlife habitat.

F. The Protected Property is visible from the city of Anacortes, Saddlebag Island, Hat Island, Samish Island, Bayview, March Point and much of the Samish Flats, and from the waters of Padilla Bay and Guemes Channel, providing scenic values to the people of Washington that use the public roads and waterways in these areas.

G. The Protected Property would also be extremely desirable property for substantial residential development because of its location and orientation. In the absence of a grant deed of conservation easement, the Protected Property could be developed in a manner that would destroy the open-space, forestland, wildlife habitat and scenic quality of the Protected Property and its ecological value.

H. The specific Conservation Values of the Protected Property are documented in an inventory of relevant features of the Protected Property, dated December 14, 1995, on file at the offices of Grantee and incorporated herein by this reference ("Baseline Documentation"). This Baseline Documentation consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. Grantor and Grantee further agree that, within twelve (12) months of the execution hereof, a collection of additional baseline data may be compiled by Grantee, and incorporated herein by this reference. Failure to timely compile the additional baseline data shall not affect the enforceability or validity of any other provision hereof.

I. Grantor intends that the Conservation Values of the Protected Property be preserved and maintained by the continuation of land uses on the Protected Property that do not significantly impair or interfere with those Conservation Values.

J. Grantor, owner in fee of the Protected Property, has the right to identify, protect, and preserve in perpetuity the Conservation Values of the Protected Property, and desires to transfer such rights to Grantee.

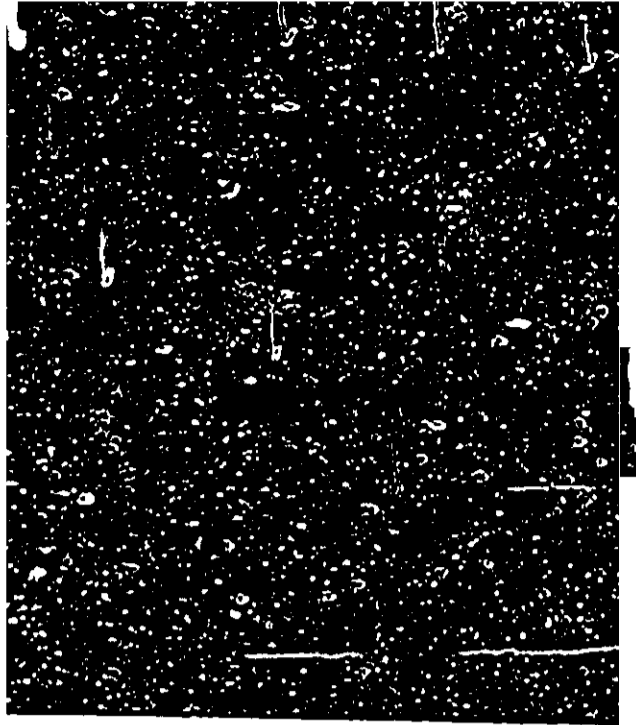
K. Grantee is a publicly supported, tax-exempt nonprofit organization, qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended, and also qualified as a nonprofit nature conservancy corporation under RCW 64.04.130 and 84.34.250, whose primary purpose is to preserve open space, wildlife habitat, wetlands, forestland, farmland, shoreline and scenic views.

L. Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Protected Property for the benefit of this generation and the generations to come.

II. CONVEYANCE AND CONSIDERATION

A. For the reasons stated above, and in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, Grantor hereby voluntarily conveys to Grantee a conservation easement in perpetuity over the Protected Property, consisting of the rights in the Protected Property, hereinafter enumerated, subject only to the restrictions set forth herein ("Easement").

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

C. Grantor expressly intends that this Easement runs with the land and that this Easement shall be binding upon Grantor's personal representatives, heirs, successors, and assigns.

III. PURPOSE

A. It is the purpose of this Easement to preserve and protect the scenic, open-space, and natural character and ecological value of the Protected Property, to preserve the natural forest character of the Protected Property, to maintain a forest with trees over eighteen (18) inches in diameter at breast height ("dbh") and trees over one hundred (100) years of age, and limit future development on the Protected Property to two(2) one(1)-acre residential homesites on the entire Protected Property.

B. Grantor intends that the Protected Property shall not be converted nor directed to any uses other than those provided herein.

C. Preservation of the Protected Property will enhance the general public's visual access to natural, undeveloped environments. Nothing contained herein, however, shall be construed as affording the general public access to any portion of the land subject to this Easement

IV. RIGHTS CONVEYED TO GRANTEE

To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

A. Identification and Protection. To identify, preserve and protect in perpetuity and to enhance by mutual agreement the Conservation Values of the Protected Property;

B. Access.

1. To enter upon the Protected Property annually, upon prior written notice to the Grantor, for the purpose of making a general inspection to assure compliance with this Easement.

2. 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 Easement.

C. Scientific/Educational Use. For the benefit of the public, to allow persons or groups to enter upon the Protected Property for educational, scientific and biological purposes to observe and study on the Protected Property, provided that any such persons or groups first are approved by the Grantor, make prior arrangements with the Grantor, agree to provide the Grantor with copies of any data or reports resulting from such research, and agree to abide by any restrictions on access and use set forth by the Grantor.

D. Injunction and Restoration. To enjoin any activity on, or use of, the Protected Property which is inconsistent with this 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, all in accordance with Section IX.

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E. Assignment. To assign, convey, or otherwise transfer Grantee's interest in the Protected Property in accordance with Section XIV herein.

V. PROHIBITED USES

A. General. Any use of, or activity on, the Protected Property inconsistent with the purposes of the Easement is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in or permit any such use or activity. Without limiting the generality of the foregoing, the following uses of, or activities on, the Protected Property, though not an exhaustive list of inconsistent uses or activities, are inconsistent with the purposes of this Easement and shall be prohibited, except as expressly provided in Section VI below:

B. Subdivision. The legal or "de facto" subdivision of the Protected Property into more than two legal parcels as permitted in Section VI .B. below.

C. Construction. The placement or construction of any buildings, structures, or other improvements of any kind (including, without limitation, fences, roads and residences), except as permitted in Sections VI. C., D., E., F., and M. below or as deemed necessary by Grantee to preserve or protect the Conservation Values of the Protected Property.

D. Alteration of Land. The alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat, or sod, except as deemed necessary by Grantee to preserve or protect the Conservation Values of the Protected Property, or as is necessary for uses permitted in Sections VI. C., D. and E., below.

E. Erosion or Water Pollution. Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters.

F. Alteration of Water Courses. The draining, filling, dredging or ditching of wetland areas, the alteration or manipulation of ponds and water courses, or the creation of new wetlands, water impoundments, or water courses, except as deemed necessary by Grantee to preserve or protect the Conservation Values of the Protected Property.

G. Removal of Trees and Other Vegetation. The pruning, cutting down, or other destruction or removal of live and dead trees and other vegetation located on the Protected Property for private or commercial use, except as deemed necessary by Grantee to preserve or protect the Conservation Values of the Protected Property or to conduct educational or research activities consistent with the purpose of the Easement or as permitted in Sections VI. C., G., H., I., and O. below. Clearcutting or harvesting of trees over 18 inches dbh or over 100 years of age is prohibited.

H. Waste Disposal. The disposal or storage of rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or hazardous waste or material on the Protected Property, except as permitted in VI. L. below.

I. Construction of Additional Roads. The construction of any additional roads, trails or paths for vehicular use, except for access to each of the Residential Homesites and as permitted in Sections VI. C. and F. below.

J. Signs. The placement of commercial signs, billboards, or other advertising material on the Protected Property, except as permitted in Section VI. M. below.

K. - Hunting. Hunting or trapping, except to the extent determined necessary by Grantee to preserve or protect the Conservation Values of the Protected Property. Feral domestic mammals and individuals from the

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family Muridae of the order Rodentia (old world rats and mice) may be killed without approval of Grantee if done in a manner so as not to impact the native plants and animals.

L. Mining. The exploration for, or development and extraction of minerals and hydrocarbons on or below the surface of the Protected Property.

M. Wildlife Disruption. The disruption of wildlife breeding and nesting activities. This would include, but not limited to, any human activity or disruption by domestic animals.

N. Domestic Animals. The keeping or grazing of domestic animals on the Protected Property, provided that commonly accepted family pets shall be permitted on the Protected Property; and provided that homeowners shall take all reasonable efforts to restrict pets to the Residential Homesite areas of the Protected Property and shall not allow pets to disrupt the wildlife or interfere with the Conservation Values of the Protected Property.

O. Introduced Vegetation. The introduction of non-native plants and non-native invasive species on the Protected Property, except as deemed necessary by the Grantee to enhance the Conservation Values of the Protected Property.

P. Off-Road Vehicles and Excessive Noise. The operation of motorcycles, dune buggies, snow mobiles, or other type of off-road motorized recreational vehicles or the operation of other sources of excessive noise pollution, except for normal equipment used for proper maintenance (such as chainsaws, lawnmowers and similar devices) and for wood hauling as permitted in Section VI. I. below.

Q. Commercial Overnight Camping. The operation of an overnight campground.

VI PERMITTED USES

A. General. Grantor reserves for itself and its heirs, successors, and assigns, any use of, or activity on, the Protected Property which is not inconsistent with the purposes of the Easement and which is not prohibited herein. Without limiting the generality of the foregoing, Grantor specifically reserves for itself and its heirs, successors, and assigns, the following uses and activities:

B. Subdivision. To divide the Protected Property one (1) time only into two (2) legal parcels of one (1) residence each. Grantor agrees to inform Grantee of said division.

C. Residential Use. Two (2) Residential Homesites and their associated uses are permitted on the Protected Property as follows:

1. One (1) Residential Homesite is permitted on each of the two permitted parcels.
2. Each Residential Homesite shall not occupy more than one (1) acre.
3. A septic system for each of the Residential Homesites is permitted on the Protected Property if a functional site within each of the one-acre homesites cannot be found.

4. To construct, maintain, renovate, expand, replace, or relocate one (1) single-family residence, one (1) guest house, and associated structures on each of the one-acre homesite areas, provided that in the event of any relocation of any Residential Homesite and the redesign and relocation of any driveways shall be subject to the prior written approval of the Grantee.

5. Grantor is permitted to clear brush, and prune, trim and remove trees for residential and view purposes on the one-acre Residential Homesites.

D. Foot Path/Trails. To maintain, renovate, expand, or replace existing trails or to construct new trails on the Protected Property, provided that such trails shall not exceed five feet in width. The design, location,

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maintenance, and construction materials used for any of the trails may not adversely impact the Conservation Values of the Protected Property

E. Fences. A perimeter fence may be constructed if deemed necessary by Grantor to preserve or protect the Conservation Values of the Protected Property, provided, that any such perimeter fence shall be subject to the prior written approval of the Grantee. Grantor may construct, repair or replace fences around or within the two one-acre designated Residential Homesites.

F. Access Driveways. To maintain, repair and replace the existing access driveways and existing paths, provided, that any replacement of said access driveways shall be subject to the prior written approval of the Grantee.

G. Manage Forest Lands. To carry out only those forest management practices that preserve and protect the forest lands and habitat of the Protected Property and that are consistent with a forest management plan that both 1) may be required by county or state offices and that 2) preserves all trees over 18 inches dbh and all trees over 100 year of age. Said management plan shall be approved in advance and in writing by Grantee to protect forest, wildlife habitat, and the open space character of the Protected Property consistent with this Easement. Grantor further agrees to notify Grantee in advance and in writing before carrying out any tree cutting that may be permitted by said management plan.

H. Remove Dangerous Trees. To trim or remove dangerous trees near any roadway, driveway, building or trail.

I. Trees. To plant new trees and bushes and to cut and remove windfall trees, provided that the removal and hauling does not adversely impact the Conservation Values of the Protected Property.

J. Recreational. To conduct recreational activities such as hiking and bird watching on the Protected Property; provided that such activities are conducted in a manner and intensity that does not adversely impact plant and wildlife habitat on the Protected Property. No motorized recreational vehicles or other activities that could disrupt the wildlife or destroy essential habitat are permitted.

K. Gardening. To have a small scale, non-commercial garden and fruit tree plantings of a size appropriate for and customarily associated with single-family residence on each of the Residential Homesites.

L. Composting and Storage of Wastes. To compost and use organic and vegetative waste resulting from permitted uses and activities on the Protected Property (such as trail clearing or removing dangerous trees), and to store other wastes generated by permitted uses and activities on the Protected Property; provided that such other wastes are stored only temporarily and in appropriate containment for removal at reasonable intervals and in compliance with applicable federal, state, and local laws, and provided that such composting, use, and storage shall not be located such that any wetlands or waterways are adversely effected.

M. Signage. To place signs on the Protected Property to advertise for sale or rent or declare that a Conservation Easement has been placed on the property or to post notice of a wildlife area such as a heron or eagle roosting or nesting area or to state the conditions of access to the Protected Property, provided that such signs are built and located to protect and preserve Conservation Values of the Protected Property.

N. Emergencies. To undertake other activities necessary to protect public health or safety on the Protected Property, or which are actively required by and subject to compulsion of any governmental agency with authority to require such activity, provided that any such activity shall be conducted so that interference with the Conservation Values of the Protected Property is avoided.

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O. Firewood. To gather and store on the Protected Property firewood from naturally fallen and removed danger trees, except from the natural areas that may be identified in a forest management plan where they should be left on the ground.

VII. NOTICE AND APPROVAL

A. Notice. Grantor shall notify Grantee and receive Grantee's written approval prior to undertaking certain permitted activities provided in Sections VI. B., C., E., F., and G. The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted uses and activities is to afford Grantee an opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the purposes of this Easement. Whenever notice is required, Grantor shall notify Grantee in writing not less than thirty-five (35) days prior to the date Grantor intends to undertake the use or activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

B. Approval. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request for approval. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purposes of this Easement. Grantee's approval may include reasonable conditions that must be satisfied in undertaking the proposed use or activity. If Grantor must undertake emergency action to protect health or safety on the Protected Property or must act by and subject to compulsion of any governmental agency, Grantor may proceed with such action without Grantee's approval only if Grantor notifies Grantee prior to taking such action and Grantee cannot provide its approval, with or without conditions, within such time as is reasonable under the circumstances.

C. Grantee's Failure to Approve Within the Required Time. Where Grantee's approval is required, and if Grantee does not grant or withhold its approval in the time period and manner set forth herein, Grantor may assume Grantee's approval of the permitted use or activity in question.

D. Addresses for Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing either served personally or sent by first class mail, postage prepaid, addressed to as follows:

To Grantors: Robert G. Fleagle
7858 - 56th Place NE
Seattle WA 98115

To Grantee: The San Juan Preservation Trust
Box 327
Lopez WA 98261

or to such other address as either party from time to time shall designate by written notices to the other.

VIII. DISPUTE RESOLUTION

If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Easement, the parties shall meet together to discuss the dispute and attempt resolution. Thereafter, either party may refer the dispute to arbitration by request made in writing upon the other. If within (30) days of the receipt of such a request the parties cannot agree on a single arbitrator, they shall then request pursuant to the

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arbitration statute then in effect that the Skagit County Superior Court appoint a single arbitrator. The matter shall be settled in accordance with the Washington State arbitration statute then in effect, and an arbitration award may be entered in any court having jurisdiction thereof. If arbitration is pursued, the prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for all its costs and expenses related to such arbitration, including, without limitation, the fees and expenses of the arbitrator and attorney's fees, which shall be determined by the arbitrator or any court of competent jurisdiction that may be called upon to enforce or review the award. The parties agree not to proceed with the use or activity pending resolution of the dispute.

IX. GRANTEE'S REMEDIES

A. Notice of Failure. If Grantee determines that the Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Protected Property so injured.

B. Grantor's Failure to Respond. If Grantor:

1. Fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee;
2. Under circumstances where the violation cannot reasonable be cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period; or
3. Fails to continue diligently to cure such violation until finally cured;

Grantee may bring an action as provided in subsection C.

C. Grantee's Action. Grantee may bring action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including damages for the loss of the Conservation Values; and to require the restoration of the Protected Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property.

D. Immediate Action Required. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire.

E. Nature of Remedy. Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

F. Costs of Enforcement. In the event Grantee must enforce the terms of this Easement, the costs of restoration and Grantee's reasonable enforcement expenses, including attorney's fees, shall be borne by Grantor or those of its heirs, successors, or assigns, against whom a judgment is entered. In the event that Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of such restoration and Grantee's reasonable expenses shall be borne by Grantor and those of its heirs, successors, or

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assigns who are otherwise determined to be responsible for the unauthorized activity or use. If Grantor prevails in any judicial proceeding initiated by Grantee to enforce the terms of the Easement, Grantor's cost of suit, including attorney's fees, shall be borne by Grantee.

G. Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of the Grantee, and any forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

H. Waiver of Certain Defenses. Grantor acknowledges that it has carefully reviewed this Grant Deed of Conservation Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Grantor hereby waives any claim or defense it may have against Grantee or its successors in interest under or pertaining to this Easement based upon waiver, laches, estoppel or prescription.

I. Acts Beyond Grantors Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

J. Estoppel Certificates. Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance or lack thereof with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as requested by Grantor.

X. ACCESS BY PUBLIC

Nothing contained herein, shall be construed as affording the general public access to any portion of the land subject to this Easement.

XI. COSTS, LIABILITIES, TAXES, AND INDEMNIFICATION

A. Liabilities and Insurance. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property. Grantor shall immediately cause to be satisfied or release any lien or claim of lien that may hereafter come to exist against the premises that might have priority over any of the rights, title, or interest hereunder of Grantee.

B. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantee is authorized, in the absence of any formal protest from the Grantor as to the validity of such taxes, but in no event obligated to make or advance any payment of taxes, upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by the Grantor at the maximum rate allowed by law.

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C. Environmental Representations and Warranties. Grantor represents and warrants that to the best of Grantor's knowledge:

1. There are no apparent or latent defects in or on the Protected Property to the extent due to the negligence of the Grantor;
2. There has been no release, dumping, burying or abandonment on the Protected Property of any substances, materials, or wastes which are, or are designated as, hazardous, toxic, harmful or dangerous, or contain components which are, or are designated as, hazardous, toxic, dangerous, or harmful and/or which are subject to regulation as hazardous or toxic, dangerous or as a pollutant by any federal, state or local law, regulation, statute, or ordinance;
3. Neither Grantor nor Grantor's predecessors in interest have disposed of any hazardous substances off-site, nor have they disposed of substances at sites designated or proposed to be designated as federal or state Superfund sites; and
4. There is no pending or threatened litigation affecting the Protected Property or any portion thereof that will materially impair the value of usefulness of the Protected Property or any portion thereof to the Grantee. No civil or criminal proceedings have been instigated or are pending against the Grantor or its predecessors by government agencies or third parties arising out of alleged violations of environmental laws, and neither Grantor nor its predecessors in interest have received any notices of violation, penalties, claims, demand letters, or other notifications relating to a breach of environmental laws.

D. Hold Harmless. Grantor shall hold harmless Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with:

1. Injury to or the 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 Grantee;
2. The obligations specified in subsections A. and B. of this section;
3. The existence or administration of this Easement.

XII. SUBSEQUENT TRANSFER OR EXTINGUISHMENT

A. Extinguishment. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at the time, in accordance with subsection B herein. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant.

B. Valuation. This Easement constitutes a real property interest immediately vested in Grantee, which, for the purpose of subsection A herein, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Protected Property unencumbered by the Easement (minus any increase in the value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the Protected Property, without deduction for the value of the Easement, at the time of this grant. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reasons of this grant, pursuant to section 170(h) of the Internal Revenue Code of 1986, as amended. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Protected Property unencumbered by the Easement shall remain constant.

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C. Condemnation. If the Easement is taken, in the whole or in the part, by the exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law.

D. Subsequent Transfers. Grantor agrees (1) to incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including without limitation, a leasehold interest, and (2) to describe this Easement in and append it to, any executory contract for the transfer of any interest in the Protected Property. Grantor further agrees to give written notice to the Grantee of the transfer of any interest of at least thirty (30) days prior to the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the prospective transferee or his or her representative. The failure of the Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

XIII. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that shall affect the qualification of this Easement or the status of Grantee under any applicable laws, including RCW 64.04.130, Chapter 84.34 RCW, or Section 170(h) of the Internal Revenue Code, as amended, and any amendment shall be consistent with the purpose of this Easement, and shall not affect its perceptual duration. Any such amendment shall be recorded in the official records of Skagit County, Washington, and any other jurisdiction in which such recording is required.

XIV. ASSIGNMENTS

A. Assignment. This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under RCW 64.04.130 or RCW 84.34.250 (or any successor provision then applicable). As a condition of such transfer, Grantee shall require that the Conservation Purposes that this Easement is intended to advance continue to be carried out by the transferee. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment.

B. Succession. If at any time it becomes impossible for Grantee to ensure compliance with the covenants contained herein and Grantee has not named a 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 Easement, in the following order:

1. Skagit Land Trust
Box 1017
Mount Vernon WA 98273

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 provision of any future statute); provided that if such vesting in the entities named above is deemed to be void under the Rule Against Perpetuities, the rights and obligations under this Easement shall vest in such organization as a court of competent jurisdiction shall direct, pursuant to the applicable Washington law and the Internal Revenue Code (or corresponding provision of any future statute) and with due regard to the purposes of this Easement.

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XV. RECORDATION

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

XVI. GENERAL PROVISIONS

A. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Washington.

B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of RCW 64.04.130 and Chapter 84.34.RCW. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section XIII herein.

E. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

F. "Grantor" - "Grantee". The term "Grantor" and "Grantee," wherever used herein, and any pronouns used in the place thereof, shall be held to mean and include, respectively the above-named Grantor, and its personal representatives, heirs, successors, and assigns, and the above-named Grantee, its successors and assigns.

G. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

H. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

I. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

J. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

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Fleagle Conservation Easement

XVII. SCHEDULE OF EXHIBITS

- A. Legal Description of Property Subject to Easement.
- B. Site Map.

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

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 21st day of Dec, 1995

Robert G. Fleagle Marianne D. Fleagle

Grantor

State of Washington)
County of King) ss.

On this day personally appeared before me Robert G. Fleagle and Marianne D. Fleagle, 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.

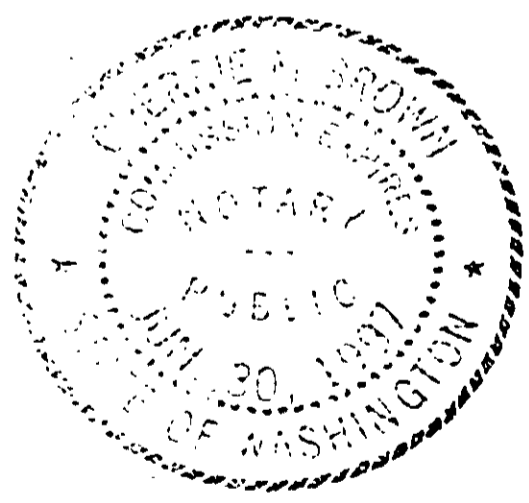
Given under my hand and official seal this 21st day of Dec, 1995.

Glennie M. Brown
Notary Public in and for said State of Washington

Glennie M. Brown
Printed Name

Residing at
Seattle

My commission expires: 6/30/97



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Fleagle Conservation Easement

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

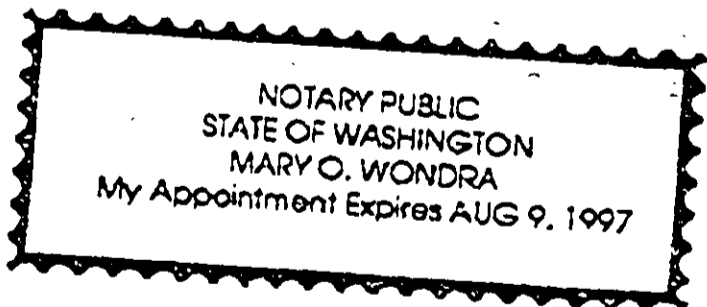
THE SAN JUAN PRESERVATION TRUST

By Morris V. Dalton
Its TREASURER

State of Washington)
County of San Juan) ss.

On this 22nd day of December, 1995, before me, personally appeared Morris V. Dalton and _____ to me known to be the (president, vice president, secretary, treasurer, or other authorized officer or agent, as the case may be) of the corporation that executed the within and foregoing instrument, and acknowledged that said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she/they was/were authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Mary O. Wondra
Notary Public in and for said state, residing
at Lopez
My commission expires: 8-9-97

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Fleagle Conservation Easement

EXHIBIT A

Legal Description of Protected Property Subject to Easement

Those portions of the SW 1/4 SW 1/4 and the SE 1/4 SW 1/4 of Section 5, Township 35 North, Range 2 East, W.M., described as follows:

Commencing at the SW corner of said SW 1/4 SW 1/4; Thence N 0°51'30" E - along the West line of said SW 1/4 SW 1/4 - 853.858 feet to the true point of beginning; Thence Continuing N 0°51'30" E - 472.939 feet to the NW corner of said SW 1/4 SW 1/4; Thence S 88°52'42" E - along the North line of said SW 1/4 SW 1/4 1814.336 feet to and then continuing along the center of a 60 ft. easement - recorded under Auditor's File No. 824056, in Volume 196 - pages 428-430, records of Skagit County, Washington; Thence S 04° 09'43" W - 169.252 feet; Thence S 32°35'34" E - 144.114 feet; Thence S 09°32'11" W - 150.781 feet; Thence S 02°30'34" E - 34.957 feet to the SE corner of said Tract No. 1 of this description; Thence N 88°52'42" W - parallel with said North line - 1863.326 feet to the true point of beginning containing 20.000 acres, more or less, situated in Skagit County, Washington. Subject to easements and restrictions, etc. of record.

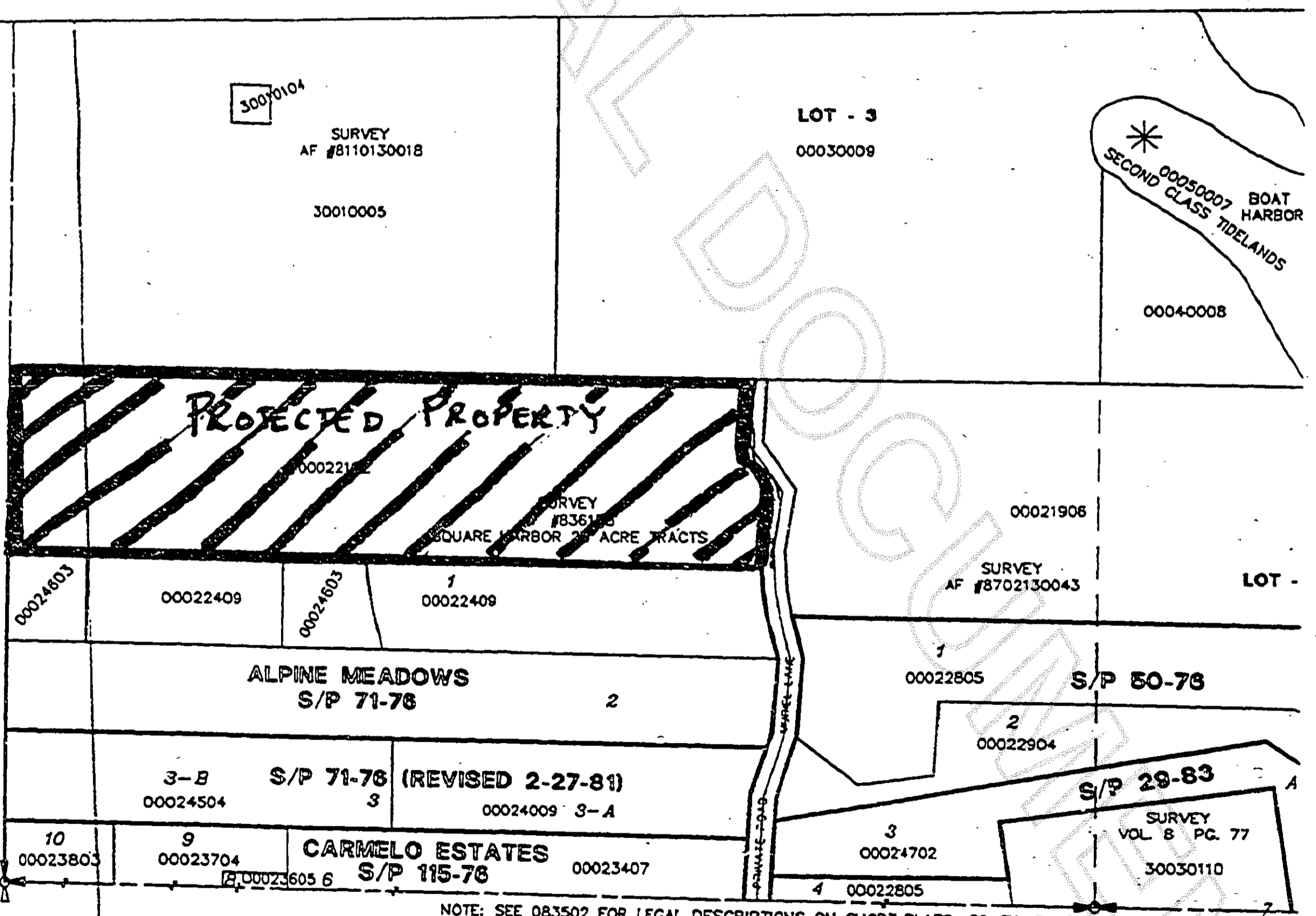
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Fleagle Conservation Easement

EXHIBIT B

Site Map of the Protected Property
(not to scale)



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