

UNOFFICIAL

233.00
26.00

KATHY HILL
SKAGIT COUNTY ASSESSOR
DEC -9 13:22

When recorded return to:

Skagit Land Trust
P. O. Box 1017
Mt. Vernon, WA 98273

9612090089

SKAGIT COUNTY WASHINGTON
Real Estate Excise Tax

DEC - 9 1996

Amount Paid \$ 0-00
Skagit Co. Treasurer
By Deputy

GRANT DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT is made this 6th day of December, 1996, by Charles M. Shaw, (hereinafter referred to as "Grantor"), in favor of the Skagit Land Trust, a Washington nonprofit corporation qualified to do business in Washington, having an address at P. O. Box 1017, Mt. Vernon, WA 98273 (hereinafter referred to as "Grantee").

I. RECITALS

A. Grantor is the owner in fee of that certain real property inclusive of all standing and down timber (hereinafter referred to as "Protected Property"), situated south of the South Skagit Highway approximately four miles Southeast of the City of Sedro Woolley 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 possesses ecological, open space, scenic, recreational and forest land values (collectively "conservation values") of great importance to Grantor, Grantee, and the people of Mount Vernon and Skagit County and the State of Washington. The Protected Property enhances the open space character of Skagit County and provides a natural wooded and open space setting. The Protected Property provides excellent scenic quality, open space, forestland and diversified wildlife habitat. Many birds including passerines (song birds) and woodpeckers use the Protected Property as do coyotes, deer and other small mammals. Approximately 2800 lineal feet along the South Skagit Highway of the Protected Property is visible from the South Skagit Highway and various other county roads on the north side of the Skagit River and can be enjoyed visually by the general public.

C. The Protected Property consists of approximately 23.46 forested acres. The forest is a mixed stand of trees that consists of fir, cedar, hemlock, alder and cottonwood. The age of the trees range from 20-60 years. The forest is contiguous with the forestland on the adjacent acreage.

D. The legislatively declared policies of the State of Washington, in the Revised Code of Washington (hereinafter referred to as "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 lands and to assure the use and enjoyment of natural resources, wetlands, farmlands,

riparian areas and scenic beauty for the economic and social well-being of the state and its citizens. The subject property constitutes "open-space land" as defined in such statute.

E. The Protected Property would also be extremely desirable property for residential and other development because of its location and orientation. In the absence of this 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, ecological value and natural character of the Protected Property.

F. The specific Conservation Values of the Protected Property (forestland, open space, wildlife habitat, flora, wetlands and scenic quality) are documented in an inventory of relevant features of the Protected Property, dated December 6, 1996, on file at the offices of Grantee and incorporated herein by this reference ("Baseline Documentation"), which 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 Documentation may be compiled by Grantee, and incorporated herein by this reference. Failure to timely compile the additional Baseline Documentation shall not affect the enforceability or validity of any other provision hereof.

G. 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. These current uses include maintenance of the forestland for wildlife, flora, wetlands, open spaces and scenic quality and are consistent with this Easement.

H. 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.

I. 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.

J. 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 grants, conveys, and warrants 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").

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.

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 natural character, open-space, forested, scenic and ecological value of the Protected Property, and to preserve the natural forest of the 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 forest on the Protected Property will enhance the general public's visual access to natural, undeveloped environments.

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, at a mutually agreeable time and 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. 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 to 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.

D. 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. Commercial Commodity Production. The commercial production of agricultural, mining and/or forest commodities. This provision includes the prohibition of commercial harvest of timber and any land clearing operation that is designed to convert the Protected Property from its existing use to commercial commodity production.

C. Construction. The placement or construction of any buildings, structures, or other improvements of any kind (including, without limitation, fences, roads, trails, utilities and parking lots), except as permitted in Sections VI. B., C., D., E. and F. below.

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. B., C., D., E. and F. 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, ditching, or diking of wetland areas, the alteration or manipulation of ponds and water courses, or the creation of new wetlands, water impoundment's, or water courses, except as necessary to protect public health or safety or property on the Protected Property or adjacent property, or 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 in the Protected Property, except as deemed necessary by Grantee to protect or preserve the Conservation Values of the Protected Property or as permitted in Sections VI. B., C., D., E., and F., below, or to remove plants that are listed as noxious plants by the State of Washington Department of Agriculture. This includes the prohibition of harvesting or cutting of trees for lumber.

H. Waste Disposal. The disposal or storage of rubbish, garbage, debris, hydrocarbons, abandoned vehicles or equipment or parts thereof or other unsightly, offensive, or hazardous waste or material on the Protected Property.

I. Construction of Additional Roads. The construction of roads for any purpose, other than for access to one building site and to one-half acre gravel/rock site referred in VI. B, C, and D.

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

K. Shooting. The discharge of any firearm for any reason on the Protected Property.

L. Hunting and Trapping. Public access for the purpose of hunting or trapping is expressly prohibited.

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

N. 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.

O. Domestic Animals. The keeping of domestic animals other than personal pets on the Protected Property.

P. Introduced Vegetation. The introduction of nonnative invasive species on the Protected Property. Nonnative invasive species may be defined by the Washington State University Cooperative Extension Service.

Q. Harvesting of Native Plants. The gathering, picking, taking or harvesting of native plants by the public from the Protected Property.

R. Off-Road Vehicles and Excessive Noise. The operation of bicycles, motorcycles, dune buggies, snow mobiles, or other type of off-road motorized recreational vehicles or the operation of other sources of excessive noise pollution on the Protected Property.

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, but is not obligated to undertake any of these:

1. Recreational. To conduct recreational activities such as hiking, bird watching, etc. 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 or the Grantor's quiet enjoyment of the property.
2. Trail Use. Limited to human foot traffic only. No horses, motorized vehicles or bicycles are permitted.

B. Building Site. A single, two acre residential building site is allowed. The location of this two acre building site may be anywhere on the 23.46 acre property, provided that the location be subject to the prior written approval of the Grantee.

C. River Access. A non-exclusive recorded easement (as described in Exhibit A) 100 feet in width over and across that portion of the East 100 feet of the Northeast 1/4 of the Northeast 1/4 of Sec 33, T35N, RN5E W.M., lying Northerly of the County road and over and across the East 100 feet of Gov. Lot 16 of Sec 28, T33N, RN 5E W.M., lying southerly of the Skagit River. Said easement to be for ingress, egress, parking, picnicking and general recreation purposes to provide access to the Skagit River.

D. Gravel Extraction. To extract construction materials such as rock, dirt, sand and gravel from a site (limited to one half acre) on the Protected Property in quantities sufficient only for the purpose of trail and road construction and maintenance, provided that such extraction does not adversely impact the conservation values of the Protected Property. Any such extraction shall be subject to the prior written approval of the Grantee. Any construction materials extracted from the site must be used on the Protected Property or on the river access easement described in Exhibit A and may not be sold.

E. Signage. To place signs on the Protected Property to declare that a Conservation Easement has been placed on the property or to post notice of a wildlife area or to state the conditions of access to the Protected Property such as no hunting or shooting or to state that the Protected Property is for sale, provided that such signs are built and located to protect and preserve, as much as possible, the Conservation Values of the Protected Property. Signs in excess of sixteen (16) square feet in area shall be subject to the prior written approval of the Grantee.

F. Hazardous Tree Removal. The trimming or removal of trees or other vegetation that pose a threat to property, public health and safety of neighbors, general public or users of the Protected Property or surrounding forest areas. A certified arborist shall arbitrate any disagreement regarding the identification of hazardous trees.

G. Firewood. All firewood removal is expressly prohibited except from the two acre building site and the one-half acre gravel/rock site when location of each is defined.

H. Utility Easement. A utility easement is allowed along the north side of the Protected Property, adjacent to the South Skagit Highway.

I. Emergencies. To undertake other activities necessary to protect public health or safety on the Protected Property or adjacent 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 in a manner that protects the Conservation Values of the Protected Property to the greatest practicable extent, taking into account all the surrounding circumstances.

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., D., and E. 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 (30) 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 which must be satisfied in undertaking the proposed use or activity. If Grantor must undertake emergency action to protect health or safety on the 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 Grantor: Charles M. Shaw
8-B Eagles Nest Drive
LaConner, WA 98257

To Grantee: Skagit Land Trust
P. O. Box 1017
Mt. Vernon, WA 98273

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 mediation or arbitration by request made in writing upon the other. Within thirty (30) days after receipt of a written request for arbitration the parties agree to select a single arbiter from the list of approved arbiters maintained by the Court Administrator for Skagit County Superior Court to hear the matter. If the matter is not settled by mediation or negotiation prior to the date set for hearing pursuant to the Mandatory Arbitration Rules of the Skagit County Superior Court and RCW 7.04, the arbiter shall decide the case and the prevailing party shall have the right to enter a judgment in the Skagit County Superior Court on the arbiter's award subject to the rights of appeal provided by the Mandatory Arbitration Rules of the Superior Court. If an appeal from arbitration is pursued, the prevailing party shall be entitled according to court rules then in effect, to such additional relief, including reasonable costs and attorneys fees, as may be allowed by law for successfully defending the arbiter's award. Either party may apply to the duly appointed arbiter for an injunction against the use or activity pending hearing on the dispute notwithstanding the general limitation of arbiter's power under the mandatory arbitration rules.

IX. GRANTEE'S REMEDIES

A. General. Grantor and Grantee are presumed to have a common interest in the reasonable application of the terms of this Easement to the Protected Property and the parties undertake the grant and acceptance of the Easement in a spirit of cooperation which presupposes regular consultation between Grantor and Grantee, not less frequently than annually. Grantor and

Grantee shall be bound by agreements as to the interpretation of this Easement that are set forth in writing and recorded in the minutes and records of the Skagit Land Trust or its successor.

B. 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.

C. 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 reasonably 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 D.

D. 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.

E. 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.

F. 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 proving 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.

G. 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 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.

H. 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 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.

I. 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 Grant Deed of Conservation Easement, Grantor hereby waives any claim or defense it may have against Grantee or its successors in interest under or pertaining to this Grant Deed of Conservation Easement based upon waiver, laches, estoppel or prescription, except as contemplated by paragraph IX. K., the estoppel certificate procedure, and except as affected by written agreements prepared pursuant to paragraph IX. A.

J. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the 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.

K. 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 the Protected Property.

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, including the maintenance of comprehensive general liability insurance coverage.

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.

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;
2. There has been no release, dumping, burying or abandonment on the Protected Property of any substances, materials, or wastes which are hazardous, toxic, harmful or dangerous, or are designated as, 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 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 which will materially impair the value or 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. Indemnification. 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 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 Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties;
2. The obligations specified in subsections A and B of this section,
3. The breach of the environmental representation and warranties specified in subsection C of this section; or

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.

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

2. Such other entity, with purposes similar to the Skagit Land 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.

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.

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 6th day of Dec., 1996.

Charles M. Shaw
Grantor

State of Washington)
County of Skagit) ss.

On this day personally appeared before me Charles M. Shaw to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 6th day of December, 1996.

Janice M. Lisherness
Notary Public in and for said State of Washington

Janice M. Lisherness
Printed Name

Residing at
620 Morris St.
La Conner, WA 98257

My commission expires: 1-15-99

State of Washington)
County of Skagit) ss.



UNRECORDED

On this day personally appeared before me _____
to me known to be the individual described in and who executed the within and foregoing
instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for
the uses and purposes therein mentioned.

Given under my hand and official seal this _____ day of _____, 19____.

Notary Public in and for said State of Washington

Printed Name

Residing at

My commission expires:

THE SKAGIT LAND TRUST does hereby accept the above Grant Deed of Conservation
Easement.

Dated: 12/9/96 _____ Bill Henry Grantee

By BILL HENRY

Its PRESIDENT, SKAGIT LAND TRUST

State of Washington
County of Skagit

)
) ss.

I certify that I know or have satisfactory evidence that Bill Henry
is the person who appeared before me, and said person acknowledged that he signed this
instrument, on oath stated that he was authorized to execute the instrument and acknowledged it
as the President of the Skagit Land Trust to be the free and voluntary act of such party for the
uses and purposes mentioned in the instrument.

Dated: 12-9-96

Rose Mary Wilson
Notary Public in and for said State of Washington

Rose Mary Wilson
Printed Name

My appointment expires 07-03-2000

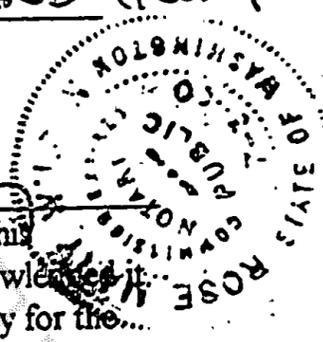


EXHIBIT "A"

Legal Description of Tract 58:

Tract 58 of the unrecorded Survey of Steelhead Bend, also known as Panorama, more particularly described as follows:

That portion of the West 880.00 feet of the West half of the Northwest quarter of Section 34, Township 35 North, Range 5 East W.M., lying Southerly of the Skagit Highway right of way. EXCEPT the South 1,980.00 feet and the West 240.00 feet thereof. Situate in the County of Skagit, State of Washington.

Legal Description:

Tracts 59 through 62, inclusive, of the unrecorded Survey of Steelhead Bend, more particularly described as follows:

That portion of the Northeast $\frac{1}{4}$ of Section 33, Township 35 North, Range 5 East W.M., and the Northwest $\frac{1}{4}$ of Section 34, Township 35 North, Range 5 East W.M., lying Southerly of the South Skagit Highway and described as follows:

Beginning at the Northeast corner of said Section 33; thence South $88^{\circ}26'49''$ West along the North line of said Section 33, a distance of 2060 feet; thence South $00^{\circ}33'37''$ West, 80.60 feet to the North margin of the South Skagit Highway; thence North $87^{\circ}28'30''$ East along said Highway 650.50 feet; thence South $00^{\circ}33'37''$ West 616.61 feet; thence North $89^{\circ}25'29''$ East 1409.32 feet to the East line of said Section 33; thence North $88^{\circ}07'47''$ East 240 feet to the West line of that certain tract of land conveyed to Gailen Edward Kitchens, by instrument recorded July 11, 1977 under Auditor's File No. 860229, records of Skagit County, Washington; thence North along the West line of said Kitchens tract to the South margin of the South Skagit Highway; thence Westerly along said South margin to the East line of Section 33, Township 35 North, Range 5 East W.M.; thence North $00^{\circ}33'37''$ East 160.77 feet along said East line to the point of beginning; EXCEPT that portion deeded to Skagit County for highway purposes; AND EXCEPT that portion, if any, lying within those tracts conveyed by Auditor's File Nos. 784879 (Tracts 63 and 64), 800506 (Tract 37), 806992 (Tract 42), 809165 (Tract 39), 809437 (Tract 41), 809179 (Tract 38), 810478 (Tract 40), records of Skagit County, Washington.

EXCEPT from the above described parcel, all County roads and rights of way therefor and any portions thereof lying within the present bed and shores of the Skagit River.

TOGETHER WITH a non-exclusive easement 100 feet in width over and across that portion of the East 100 feet of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 33, Township 35 North, Range 5 East W.M., lying Northerly of the County road and over and across the East 100 feet of Government Lot 16 of Section 28, Township 35 North, Range 5 East W.M., lying Southerly of the Skagit River. Said easement to be for ingress, egress, parking, picnicking and general recreational purposes and to provide access to the Skagit River.

Situate in the County of Skagit, State of Washington.

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