

14/3
17-
13/20

9709240059

SKAGIT KATLYN HILL
'97 SEP 17 AIO:22
TO: DEED
FILED
Shirley Hill

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

9709170036

SPF
Box 2405
MOUNT VERNON, WA
98273

Gary Jones

'97 SEP 24 P2:27

SKAGIT KATLYN HILL

DOCUMENT TITLE: Deed of Conservation Easement

GRANTOR: Virgil P. Nelson and M. Jean Nelson, husband and wife

GRANTEE: Skagitians to Preserve Farmland, a Washington nonprofit corporation

ABBREVIATED LEGAL DESCRIPTION

Sec 12, T 34, R 2E part 1

ASSESSOR'S TAX PARCEL NUMBER(S):

SKAGIT COUNTY WASHINGTON
Real Estate Tax

P19663 AUG - 6 1997

Amount Paid \$ 0
By DO Skagit Co. Treasurer Deputy

RERECORDED TO CURE OMISSION OF EXHIBITS
"A" AND "B" AND RANGE ERROR

BK 1712 PG 167

9709240059

9709170036

BK 1709 PG 266

DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION Easement is made this 20th day of July, 1997, by VIRGIL P. NELSON and M. JEAN NELSON, whose address is 959 B Highway 20, Mount Vernon, WA 98273 ("Grantor"), in favor of SKAGITONIANS TO PRESERVE FARMLAND, a Washington nonprofit corporation having its principal office at 110 North First, Suite C, Mount Vernon, Washington 98273 ("Grantee").

WHEREAS, Grantor is the sole owner in fee simple of certain real property in Skagit County, Washington, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, ("the Property"); and

WHEREAS, the Property possesses agricultural and silvicultural values, collectively "conservation values," of great importance to the Grantor, the people of Skagit County, and the people of the State of Washington; and

WHEREAS, in particular the land has value for agricultural production as defined by Chapter 84.34 RCW because it is part of an estuarian lowland near Padilla Bay and Telegraph Slough and will continue to be farmed under this easement; and

WHEREAS, specific conservation values for agriculture and silvaculture associated with the Property are documented in an inventory of relevant features of the Property dated 5/13, 1997, on file at the office of SKAGITONIANS TO PRESERVE FARMLAND, a summary of which is attached hereto as Exhibit "B" and incorporated herein by this reference titled "Baseline Documentation," consisting of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the 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; and

WHEREAS, Grantor intends that the conservation values of the Property be preserved and maintained by the growing of hybrid poplar trees and other farmed products; and

WHEREAS, Grantor further intends, as owner of the Property, to convey to the Grantee the right to preserve and protect the conservation values of the Property in perpetuity; and

WHEREAS, Grantee is a publicly supported, tax exempt nonprofit corporation qualified under Sections 502(c)(3) and 170(h) of the Internal Revenue Code of 1986, whose primary purpose is the preservation, protection or enhancement of agricultural land;

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of the Grantor stated herein and to preserve and protect in perpetuity the conservation values of the Property for the benefit of this generation and future generations; and

9709170036

9709240059

BK 1709 PG 0267

BK 1712 PG 0168

WHEREAS, Grantor and Grantee acknowledge and agree this Easement has no market value.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants, terms, conditions, and restriction contained herein, and, pursuant to the laws of the State of Washington and in particular the Revised Code of Washington, Chapter 84.34, the Grantor hereby voluntarily grants and conveys to Grantee a Conservation Easement ("Easement") in perpetuity over the Property of the nature and character and to the extent hereinafter set forth.

1. Purpose. It is the purpose of this Easement to perpetuate its use as farmland and as a site for farm related structures and to prevent a use of the Property which will significantly impair or interfere with the conservation values of the Property and

2. Rights of Grantee. To accomplish the purpose of this easement, the following rights are conveyed to the grantee by this Easement;

a. To preserve and protect the conservation values of the Property;

b. To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement; provided the such entry shall be upon prior reasonable notice to Grantor or its successor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property for the purposes compatible with this Easement; and

c. To prevent any activity on or use of the Property that is inconsistent with the purposes of this Easement or the reserved rights set forth in paragraph 4 and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use pursuant to paragraph 6;

d. Grantee's exercise of its rights shall not prohibit Grantor from farming in the manner established at the time of this Easement or from adopting farm management practices which are accepted in the industry now or in the future for culture of hybrid poplars and other silvicultural or aquatic products.

3. Prohibited Uses. Any activity on or use of the Property inconsistent with the purposes of this Easement is prohibited. Without limiting the generality of the foregoing prohibition, the following activities and uses are forbidden;

a. Subdivision of the Property or its partition, provided, however, subdivision of the property or partition is permissible so long as the entire property continues to be used for the purposes described in paragraph 4 of this Easement. Any document of conveyance shall bear specific reference to this Conservation Easement.

b. Construction or placement of any residential structure.

c. Construction or placement of other structures on the Property, except as set forth in paragraph 4.

9709240059

9709170936

BK 1709 PG 0268

BK 1712 PG 0169

4. **Reserved Rights.** Grantor reserves to itself and to its personal representatives, heirs, successors, and assigns all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and that are consistent with the purpose of the Easement. Without limiting the generality of the foregoing reserved rights, the following uses are expressly allowed:

a. Agriculture, farming, dairying, pasturage, apiculture, horticulture, floriculture, animal husbandry, silviculture, and the cultivation, management and harvest of any crops;

b. Drainage structures, including ditches, tubes, pipes, pumps, gates or other facilities for enhancement of natural drainage; and

c. Construction or placement of other structures if not otherwise prohibited to build, rebuild or maintain appropriate improvements for agricultural use, accessory production, storage and processing facilities, as well as storage of equipment and other structures or improvements, including roads that are needed to carry out and that are compatible with the reserved rights of the Grantor.

5. **Notice of Intention to Undertake Certain Permitted Actions.** Grantor shall notify Grantee prior to filing or otherwise requesting government approval to construct agricultural buildings on the Property. However, notice shall not be required for maintenance and repair of structures or improvements existing prior to this Grant or any activity allowed by paragraph 2.d. When notice is required, the notice shall describe the proposed action in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the reserved rights of Grantor.

6. **Remedies.** If a dispute arises between the Grantor and the Grantee concerning either the consistency of any proposed action, activity, or use with the purpose of this Conservation Easement or any other circumstances not provided for in Section 6.2 below, 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. Within thirty (30) days of receipt of such a request, the parties shall select a single arbitrator to hear the matter. If the parties are unable to agree on the selection of the arbitrator, then the presiding judge of Skagit County Superior Court shall appoint one. The matter shall be settled in accordance with RCW 7.04 or the state arbitration statute then in effect, and a judgment on the arbitration award may be entered in any court having jurisdiction thereof. The substantially prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for all its costs and expenses related to such arbitration, including, without limitation, the fees and expenses of the arbitrator and attorneys' fees, which shall be determined by the arbitrator and any court of competent jurisdiction that may be called upon to enforce or review the award. The parties agree not to proceed with the proposed action, activity, or use pending resolution of the dispute.

6.1 In addition to Grantee's other remedies, including the arbitration provisions of this section, Grantee may, following reasonable written notice to Grantor, institute suits or actions to enjoin any violation of this agreement by injunction, including prohibitory and/or mandatory injunctive relief, and to require the restoration of the premises to the condition and appearance required under this Conservation Easement.

6.2 Should any person or entity, including the Grantor, its heirs, successors or assigns, undertake any activity in violation of the terms of this Conservation Easement, the Grantee shall have the right to force the restoration of that portion of the Protected Property affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the costs of such restoration and the Grantee's expenses, including Grantee's attorneys' fees, shall be borne by the Grantor or those of its heirs, successors, or assigns against whom a judgment is entered, or, in the event that the Grantor or those of its heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized activity.

6.3 Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the 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 Property resulting from such causes.

7. Access. No right of access by the general public to any portion of the Property is conveyed by this Easement.

8. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of any liens arising out of any work performed for, material furnished to, or obligations incurred by Grantor, PROVIDED, that pledge of the land and improvements subject to this Easement by the Grantor or Grantor's successors to secure a loan shall not be prohibited.

9. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the 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.

10. Hold Harmless. Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) the existence or administration of this easement or injury to, or death of, any person or physical damage to any property resulting from any act, omission, condition, or other matter relating to, occurring, or arising out of the property due to the negligence of Grantor, its agents, employees or invitees, unless due to the negligence of the indemnified party; and (2) the obligations specified in paragraphs 8 and 9.

11. Extinguishment or Modification. The terms of this Easement may be modified by the parties at any time by written agreement. Further, this Easement can be terminated or extinguished or modification may also occur by judicial proceeding in a court of competent jurisdiction if a change in conditions of the Property or surrounding property makes it impossible or impracticable to continue to exercise the reserved rights set forth in

9709240059

9709176036

BK 1709 PG 0270

BK 1712 PG 0171

paragraph 4.

12. Assignment.

12.1. Upon the written consent of the Grantor, consent for which shall not be unreasonably withheld, 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 when applicable, and the applicable regulations promulgated thereunder, and the qualified organization shall be authorized to acquire and hold conservation easements under the laws of the State of Washington or any successor provision when applicable. As a condition of such transfer, Grantee shall require that the conservation purposes of this grant continue to be carried out.

12.2 If Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code of 1986, as amended, or to be authorized to acquire and hold conservation easements under the laws of the State of Washington, and a prior assignment is not made pursuant to paragraph 12, then Grantee's rights and obligations under the Easement shall become immediately vested in San Juan Preservation Trust. If San Juan Preservation Trust is no longer in existence at the time the rights and obligations under this Easement would otherwise vest in it, or if San Juan Preservation Trust is not qualified or authorized to hold conservation easements as provided for an assignment pursuant to paragraph 12.1, or, if it shall refuse such rights and obligations, the rights and obligations under this Easement shall vest in such an organization as a court of competent jurisdiction shall direct pursuant to the applicable law and with due regard to the requirements for an assignment pursuant to paragraph 12.1.

13. Subsequent Transfers. All transfers shall acknowledge that this Conservation Easement is a real property interest created and conveyed under RCW 64.04.130. Subject to the provisions of paragraph 12, Grantor hereby agrees to incorporate the terms of this easement and any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the property, including, without limitation, a leasehold interest.

14. Estoppel Certificates. Upon request by Grantor, Grantee shall, within twenty (20) days, execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantor.

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

To Grantor:

VIRGIL P. and M. JEAN NELSON
959 B Highway 20
Mount Vernon, WA 98273

9709240059

~~9709170036~~

~~BK1709PG0271~~

BK1712PG0172

To Grantee:

SKAGITONIANS TO PRESERVE FARMLAND
P.O. Box 2405
110 N. First Street, Suite C
Mount Vernon, WA 98273

or to such other address as either party may from time to time shall have designated by written notice to the other.

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

17. 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 the laws of the State of Washington. 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.

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

f. 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 Property.

g. 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 Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

9709240059

MacMillan Bloedel/Conservation Easement

-7-

05/13/97 10:03 AM

9709170036

BK 1709 PG 0872

BK 1712 PG 173

h. **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.

i. **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.

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

IN WITNESS WHEREOF Grantor and Grantee have set their hands on the day and year first above written.

"Grantor"

Virgil P. Nelson
Virgil P. Nelson

M. Jean Nelson
M. Jean Nelson

"Grantee"

SKAGITONIANS TO PRESERVE
FARMLAND

By [Signature]

9709240059

MacMillan Bloedel/Conservation Easement

-8-

05/13/97 10:03 AM

~~9709174036~~

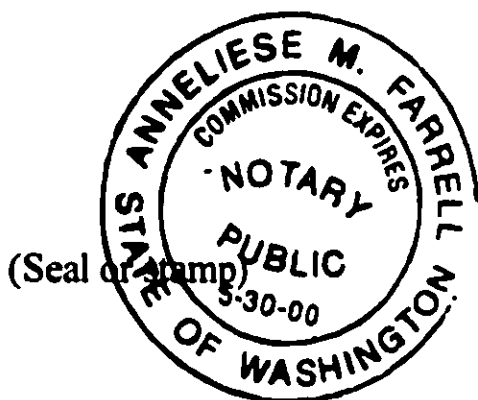
~~BK1708PG0273~~

BK1712PG0174

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that VIRGIL P. NELSON is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: July 21st, 1997.



Anneliese M. Farrell
(Signature)

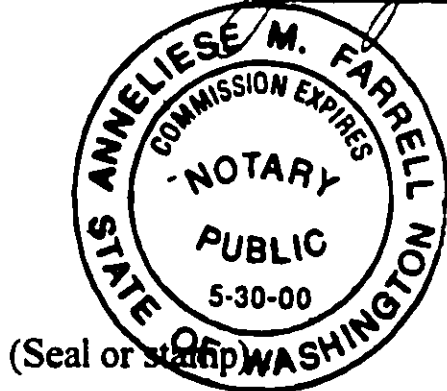
Anneliese M. Farrell

(Name legibly printed or stamped)
Notary Public in and for the State of
Washington, residing at Mt. Vernon
My appointment expires 5/30/00

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that M. JEAN NELSON is the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: July 21st, 1997.



Anneliese M. Farrell
(Signature)

Anneliese M. Farrell

(Name legibly printed or stamped)
Notary Public in and for the State of
Washington, residing at Mt. Vernon
My appointment expires 5/30/00

9709240059

9709170035

BK1709PG0274

BK1712PG0175

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

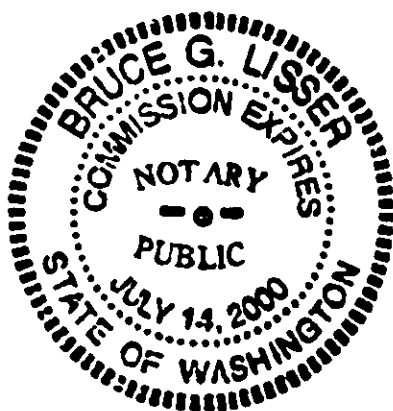
I certify that I know or have satisfactory evidence that Robert Rose is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the EXECUTIVE DIRECTOR of SKAGITONIANS TO PRESERVE FARMLAND to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 8/5/97

[Signature]
(Signature)

Bruce G. Lisser
(Name legibly printed or stamped)

(Seal or stamp)



Notary Public in and for the State of Washington,
residing at Mount Vernon.
My appointment expires 7-14-00.

9709240059

MacMillan Bloedel/Conservation Easement

-10-

05/13/97 10:03 AM

9709170035

BK1709PGD275

BK1712PG0176

Exhibit A

Lot 2, Skagit County Short Plat No. 97-0056, approved 8th of September, 1997, and recorded September 17, 1997, in volume 13 of Short Plats, Pages 36-38, under Skagit County Auditor's File No. 9709170034, records of Skagit County, Washington, being a portion of the Northeast $\frac{1}{4}$ of Section 12, Township 34 North, Range 2 East, W..M.

9709240059

EXHIBIT B

**CONSERVATION EASEMENT ABSTRACT
BASELINE DATA DOCUMENTATION**

DONOR INFORMATION

GRANTOR/NAME PROPERTY: Virgil P Nelson and M. Jean Nelson,
husband and wife

Owner: same Phone: (360) 466-3818

Address: 959 B Highway 20, Mount Vernon, WA 98273

Current Owner: Virgil and Jean Nelson Phone: same

Address: same

PROPERTY INFORMATION

Easement size (acres): 35 acres (+) Location: N. side of Hwy 20, west of
Telegraph Slough

Buildings (number, type, size): None

Recording Number (s) 9709170036

Date: SEPTEMBER 17, 1997

County Zoning : Natural Resource- Agriculture Property ID number
P 19663

Type of Ownership: Fee Simple

BACK-UP ORGANIZATION (if applicable)

Name: San Juan Preservation Trust

Phone: (360) 468-3202

Address: Box 327, Lopez Island, WA

PURPOSE OF EASEMENT:

To assure that the property will be retained in its condition for agricultural
production; to perpetuate its use as farmland.

SPECIAL FEATURES OF PROPERTY:

Property is visible from Highway 20, a major route for residents and tourists
to and from the San Juan Islands and Anacortes/ Whidbey Island. It has
historically been used for row-crop agriculture (see narrative in baseline
documents). Future agricultural use will be for production of hybrid poplar.

CONDITION OF PROPERTY: Open agricultural ground used historically for
agricultural purposes. No structures present.

RESTRICTIONS: Construction or placement of residential structures or structures not associated with an agricultural use.

RESERVED RIGHTS OR SPECIAL CONDITIONS: Agriculture, farming, dairying, pasturage, apiculture, horticulture, silviculture, animal husbandry, cultivation, drainage structures, facilities for enhancing natural drainage,

ATTACHMENTS:

- ☒ Topo Map with property boundaries drawn in
- ☒ DNR Aerial Orthophotos
- ☒ Soils maps and narrative
- ☒ Survey Plan
- ☒ On-site photographs
- ☒ Monitoring Inspection Record
- ☒ Assessor's Printout

9709240059

BK | 7 | 2 PG 0 | 79