

When recorded return to:

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

9712310091

SKAGIT COUNTY
KATHLEEN

'97 DEC 31 P12:30

RECORDED _____ FILED _____
REQUEST OF _____

Grantor: R. Milton Schayes and Sharon R. Schayes
Grantee: Skagit Land Trust

Legal Description: Lot 4-A as shown on Short Plat No. 45-84, approved February 15, 1985 and recorded in Volume 7 of Short Plats, page 8, under Skagit County Auditor's No. 8502200050 records of Skagit County, State of Washington, being a portion of Government Lot 1 of Section 28, Township 36 North, Range 2 East, W.M.

Assessor's Account / Tax Parcel Number: 360228-0-001-0300 / P47286

GRANT DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT is made this 31st day of DECEMBER, 1997, by R. Milton Schayes and Sharon R. Schayes, husband and wife, residing at 599 Pleasant Bay Road, Bellingham, WA 98226, hereinafter referred to as Grantors), 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 on the west side of Samish Island in Skagit County, State of Washington, more particularly described in Exhibit "A" (legal description) and shown on Exhibit "B" (site map), all of which are attached and made part hereof by this reference.

B. The Protected Property consists of approximately 5.8 acres which is forested with second and third growth trees. The species of trees include Douglas-fir, Grand Fir, Pacific madrone, big leaf maple and red alder.

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C. The Protected Property provides habitat for peregrine falcon and bald eagles, both threatened or endangered species protected under the Endangered Species Act. Bald eagles roost in the trees on the property, and nest on nearby property. Many other species of wildlife also use the Protected Property. Congress has found that encouraging conservation programs "...is a key to meeting the Nation's international commitments and to better safeguarding for the benefit of all citizens the Nation's heritage of fish, wildlife, and plants.

D. The Protected Property possesses ecological, open space, scenic, forest land, and shoreline values (collectively conservation values) of great importance to Grantor, Grantee, and the people of Skagit County and the State of Washington. The Protected Property enhances the open space character of Skagit County and provides a natural shoreline, and a wooded and open space setting that can be enjoyed from Guemes Island, Padilla Bay, the Samish Point Road, as well as from the neighboring properties.

E. The Protected Property includes approximately 600 feet of shoreline of Padilla Bay, a National Estuarine Research Reserve, and is a part of Puget Sound. The Washington State legislature in RCW 90.70.001 has recognized "that Puget Sound and related inland marine waterways of Washington state represent a unique and unparalleled resource. A rich and varied range of marine organisms composing an interdependent, sensitive communal ecosystem reside in these sheltered waters." The legislature has further recognized that residents of this region enjoy a way of life centered around the waters of Puget Sound which depends upon a clean and healthy marine resource. Restrictions on the uses of the Protected Property would benefit Padilla Bay and Puget Sound because of the protection afforded wildlife and decreased erosion and siltation due to the exclusion of logging and construction.

F. A goal of Skagit County as stated in the County-wide Regional Comprehensive Plan Policies, adopted in July 1992, Goal 9, is to: "Encourage the retention of open space and development of recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water and develop parks".

H. 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.

I. 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, under current zoning, for up to two residential sites, and other uses, in a manner which would

destroy or diminish the forestland, open-space and natural character of the Protected Property and its ecological value. Current zoning in this area is susceptible to change that could allow even greater densities in the future.

J. The specific Conservation Values of the Protected Property (forestland, open space, wildlife habitat, flora, and scenic quality) are documented in an inventory of relevant features of the Protected Property, dated DECEMBER 31, 1997, on file at the offices of Grantee and incorporated herein by this reference ("Baseline Documentation"/Exhibit C.), 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.

K. Grantor intends that the Conservation Values of the Protected Property be preserved and maintained by the continuation of land uses on the majority of the Protected Property that do not significantly impair or interfere with the Conservation Values. These current uses include: management and restoration of forest land and shoreline areas for wildlife habitat, native flora, open space and scenic quality; and are consistent with this Easement. Continuation of the Open Space Land classification for current use tax assessment is also consistent with this Easement.

L. 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.

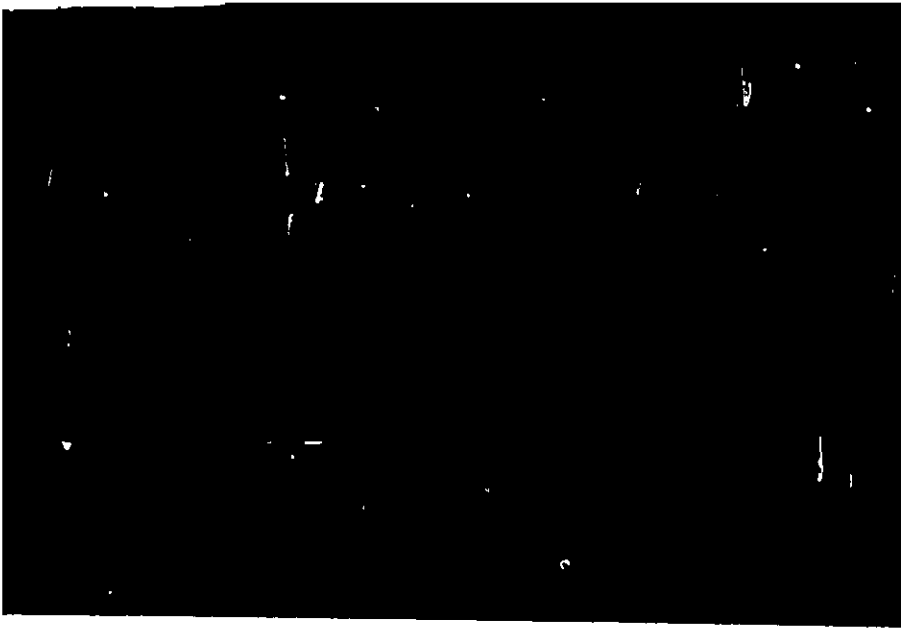
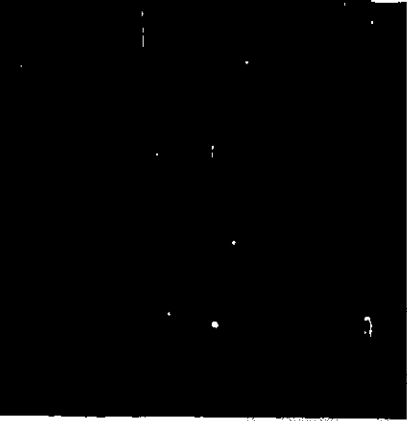
M. Grantee is a publicly supported, tax-exempt nonprofit organization, qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended, and also qualified as a nonprofit nature conservancy corporation under RCW 64.04.130 and 84.34.250, whose primary purpose is to preserve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

N. 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,

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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 scenic, open-space, natural character and ecological value of the Protected Property, and to preserve the natural forest and shoreline areas 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 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 physical access to any portion of the Protected Property.

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. Grantee and Grantee's representatives and agents may 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. Grantee and Grantee's representatives and agents may 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 must first make a written request for approval to enter upon the Protected Property from the grantor who shall not unreasonably withhold permission therefore. Such persons shall 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 set forth by the Grantor. Such persons shall hold harmless, and indemnify Grantor and Grantee from and against all injuries, liabilities, penalties, costs, losses or damages arising from such activities on the Protected Property, and Grantor may require that such persons waive all claims, injuries, liabilities, penalties, costs, losses or damages arising from such activities on the Protected Property.

D. Injunction and Restoration. To seek to enjoin any activity on, or use of, the Protected Property by any person or entity 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.

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 subdivision of the Protected Property, including but not limited to platting, replats, judicial partition or testamentary partition. Any subdivision potential which exists now or as created in the future shall be deemed to be extinguished.

C. Construction. The placement or construction of any buildings, structures, or other improvements of any kind (including, without limitation, roads, utilities and parking lots), except as permitted in Sections VI. 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 for the study of any incidental archeological findings or as is necessary for uses permitted in Sections VI. 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 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, topping, cutting down, or other destruction or removal of live and dead trees and other vegetation located on the Protected Property, except as deemed necessary by Grantor and Grantee to protect or preserve the Conservation Values of the Protected Property or for educational or research activities consistent with the purpose of the Easement, or as permitted in Sections VI. below, or to remove plants that are listed as noxious plants by the State of Washington Department of Agriculture. This prohibition includes commercial harvesting or cutting of trees for lumber, firewood or Christmas trees.

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 except as permitted in Sections VI. below.

I. Roads and Trails. The construction of roads, trails or paths for any use, except as permitted in Sections VI. below.

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

K. Hunting. Hunting, recreational firearm use 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 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 intentional disruption of wildlife breeding and nesting activities. This would include, but not limited to, any human activity or disruption by domestic animals, except as permitted in Section VI. below.

N. Domestic Animals. The keeping of domestic animals on the protected property, except as permitted in Section VI. below.

O. Introduced Vegetation. The introduction of nonnative invasive species on 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 equipment normally used for proper maintenance (such as chainsaws, lawnmowers and similar devices) and associated with activities permitted in Section VI.

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 the following uses and activities:

B. Residential Use. Building, maintaining, renovating, expanding, replacing, or relocating of one single family residence and associated structures, utilities, and access driveways. All such activities must be consistent with the Conservation Purposes of the Protected Property, and are subject to the following limitations:

- a) The total disturbed area for each residence and associated structures shall not exceed one acre, and this area shall be known as the residential homesite.
- b) Design and location of structures must be in compliance with federal, state and local regulations. The residential homesite and all structures shall be located more than 100 feet from the shoreline of the Protected Property. Location and design of the structures shall be determined in consultation with the Grantee, and must have appropriate siting, design, and exterior color treatment that blends with the natural surroundings.
- c) All structures shall be located within the residential homesite, and no more than

7,500 square feet of total surface area shall be covered with impervious surfaces.

d) Any new construction or replacement of a residence or building greater in size than 250 square feet shall be subject to prior written approval by the Grantee.

e) Grantor may clear brush, and prune, trim and remove trees within the Residential Homesite.

C. Recreation. To conduct recreational activities such as hiking, boating, bird watching and shellfish harvesting for personal use on the Protected Property, provided that such activities are conducted in a manner and intensity that does not adversely impact plant and wildlife habitat and trails on the Protected Property. No motorized recreational vehicles or other activities that could disrupt the wildlife or destroy essential habitat are allowed.

D. Access Driveways. To build, maintain, repair and replace access driveways, any new driveway as permitted in Section VI.B., and to relocate the existing access road to the water tower, as described in Exhibit B., provided, that any new construction or replacement shall be subject to the prior written approval of the Grantee.

E. Foot Trails. To maintain, renovate, expand, or replace existing foot trails or to construct new foot trails on the Protected Property, provided that such trails shall not exceed three feet in width. Construction and maintenance of the trails may not adversely impact the Conservation Values of the Protected Property, and provided, that any new trail construction shall be subject to the prior written approval of the Grantee.

F. Forest Management. Forest management practices designed to enhance or restore native wildlife habitat including thinning or topping of existing trees. Cut trees shall not be removed from the Protected Property, unless Grantor and Grantee mutually agree that the restoration of major windstorm damage would be greatly facilitated by removal of down trees. In this case, commercial sale of salvage logs may be allowed, provided that proceeds are used only for restoration of the Protected Property, and any remaining proceeds shall be donated to the Grantee's Stewardship Endowment Fund. Any such forest management activities shall be carried out in compliance with federal, state and local regulations, and shall be mutually agreed upon by both grantor and grantee. Prior to any such forest management activities, Grantor shall submit to Grantee, for review and approval, a forest management plan that describes the habitat enhancement objectives of the management plan and the specific practices proposed.

G. Hazard Trees. The trimming or removal of hazardous trees that pose a threat to property, public health and safety, neighbors, users of the Protected Property or surrounding forest areas, provided that any cut trees remain on the Protected Property. The planting of new trees and shrubs is permitted. A certified arborist shall arbitrate any disagreement

regarding the identification of hazardous or diseased trees.

H. Fences. To construct, repair, maintain or replace fences around the perimeter of the Protected Property to preserve or protect the Conservation Values of the Protected Property. Perimeter fences shall allow the safe passage of wildlife.

I. Gardening and Landscaping. To have a small scale garden and fruit tree plantings and to landscape, within the Residential Homesite, at a size and scale appropriate for and customarily associated with single-family residence.

J. Composting, Storage and Disposal of Wastes. To compost, use or burn 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.

K. Domestic Animals. The keeping of household pets on the Residential Homesite.

L. Signage. To place signs on the Protected Property to advertise for sale or rent or 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 trespassing, provided that such signs are built and located to protect and preserve the Conservation Values of the Protected Property.

M. Shoreline Erosion Control/Bank Stabilization. Construction of terraces, drainage improvements and planting of vegetation for the purpose of stabilizing eroding shoreline bluffs, provided that any such activities shall be carried out in compliance with federal, state and local regulations, and shall be mutually agreed upon by both grantor and grantee. Construction and maintenance of erosion control structures may not adversely impact the Conservation Values of the Protected Property. Prior to such erosion control activities, Grantor shall submit to Grantee, for review and approval a Geotechnical report prepared by a professional engineer or geologist.

N. 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., E., F. and M. 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 shall not be unreasonably withheld and 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 Grantors: R. Milton Schayes and Sharon R. Schayes
599 Pleasant Bay Road
Bellingham, WA 98226

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

All disputes between the parties concerning the construction or implementation of the rights and liabilities of the parties pursuant to this agreement shall be subject to this dispute resolution section.

1. Either party may give written notice to the other party of a dispute and request that the matter be subject to mediation with the mediator to be selected from those available from a recognized dispute resolution center or mediation service, with each party to pay 50% of the mediator's fees. Both parties shall meet in good faith as is reasonably requested by the mediator in an attempt to resolve the dispute. Thirty (30) days after appointment of a mediator, if no resolution has been reached to the mutual satisfaction of the parties, either party may pursue arbitration.
2. Any arbitration shall be conducted pursuant to Washington State statutes, Washington Superior Court Rules and Skagit County Local Rules for Mandatory Arbitration, no matter the amount in controversy or the remedy sought. The arbitrator shall have full powers in law and equity to award damages, declare rights and liabilities, prohibit acts, require that acts be performed or to enjoin any activity or use. To commence arbitration, a party must commence an action in Skagit County Superior Court to compel. The arbitrator's award shall include an award of attorney's fees and costs to the prevailing party and shall be subject to appeal only pursuant to the provisions of Chapter 7.04 RCW now or as hereafter amended. The prevailing party in any appeal shall receive its attorney's fees and costs. The court shall have full jurisdiction to enforce the arbitrator's decision, including Civil and Criminal contempt.
3. The foregoing notwithstanding, either party may commence an action in Superior Court (whether mediation or arbitration has commenced or not) to seek a temporary injunction or preliminary injunction pursuant to Washington State Laws and the Superior Court Rules. The Court shall have exclusive jurisdiction to hear such temporary or preliminary injunction matters and the Superior Court's decision with respect to such injunction requests shall stand until a hearing on the merits is conducted before the arbitrator and an arbitrator's award is made. The Court shall enter an injunction at any time it is shown by a preponderance of the evidence that a violation of the terms of this easement will cause any injury to the conservation values protected by this easement.

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 a violation within thirty (30) days after receipt of a notice thereof from grantee or under circumstances for which the violation cannot be reasonably cured within the thirty (30) day period, fails to commence curing such violation within thirty (30) days of notice; or fails to continue diligently to cure such violation until finally cured; Grantee may then invoke dispute resolution as set forth in Section VIII. above.

D. Grantee's Action. Pursuant to Section VIII., Grantee may bring action in Skagit County Superior Court to enforce the terms of this Easement, to enjoin the violation by temporary restraining order, or 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 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. Pursuant to Section VIII. above, in the event that Grantee successfully enforces the terms of this easement, the cost of restoration and Grantee's reasonable enforcement expenses, including attorney's fees, and costs shall be born by grantor or its heirs, successors or assigns, as the case may be. In the event that Grantee secures redress for an easement violation without initiating or completing the judicial proceeding, the cost of such restoration and grantee's reasonable expenses, including attorney's fees and costs, shall be born by grantor or its heirs, successors, or assigns, as the case may be.

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, adverse possession, 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 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.

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 adequate comprehensive general liability insurance coverage. Such insurance shall include Grantee's interest and name Grantee as an additional insured and provide for at least thirty (30) days notice to Grantee before cancellation and that the act or omission of one insured will not invalidate the policy as to the other insured party.

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
4. 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.

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 shall attempt 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 should 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 terms "grantor" and "grantee" whenever used herein, and any pronouns used in the place thereof shall mean and include, respectively, the above-named grantor, and its personal representatives, heirs, successors and assigns and the above-named grantee, and its personal representatives, heirs, successors and assigns. All covenants, terms, conditions, restrictions and rights 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.

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

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.

XVII. SCHEDULE OF EXHIBITS

- A. **Legal Description of Property Subject to Easement.**
- B. **Site Map.**
- C. **Baseline Documentation**

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

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this
31st day of DECEMBER, 1997.

R. Milton Schayes
R. Milton Schayes

Sharon R. Schayes
Sharon R. Schayes

State of Washington)
County of Skagit) ss.

On this day personally appeared before me R. Milton Schayes, 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.

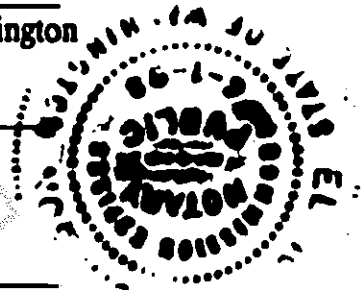
Given under my hand and official seal this 31st day of December, 1997.

Elliott W. Johnson
Notary Public in and for said State of Washington

Elliott W. Johnson
Printed Name

Residing at
Mount Vernon

My commission expires: 6-1-98



State of Washington)
County of Skagit) ss.

SKAGIT COUNTY WASHINGTON
Real Estate Excise Tax

DEC 31 1997

Amount Paid \$
By for Skagit Co. Treasurer Deputy

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

Given under my hand and official seal this 31st day of December, 19 97

Elliott W. Johnson
Notary Public in and for said State of Washington

Elliott W. Johnson
Printed Name

Residing at
Mount Vernon

My commission expires: 6-1-98

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

Dated: DECEMBER 31, 1997

SKAGIT LAND TRUST
Grantee

By Jerald R. Haegle
Its President

State of Washington)
County of Skagit) ss.

I certify that I know or have satisfactory evidence that Jerald R. Haegle 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: December 31, 1997

Elliott W. Johnson
Notary Public

Elliott W. Johnson
Printed Name
My appointment expires 6-1-98

EXHIBIT A: Legal Description of Property Subject to Easement.

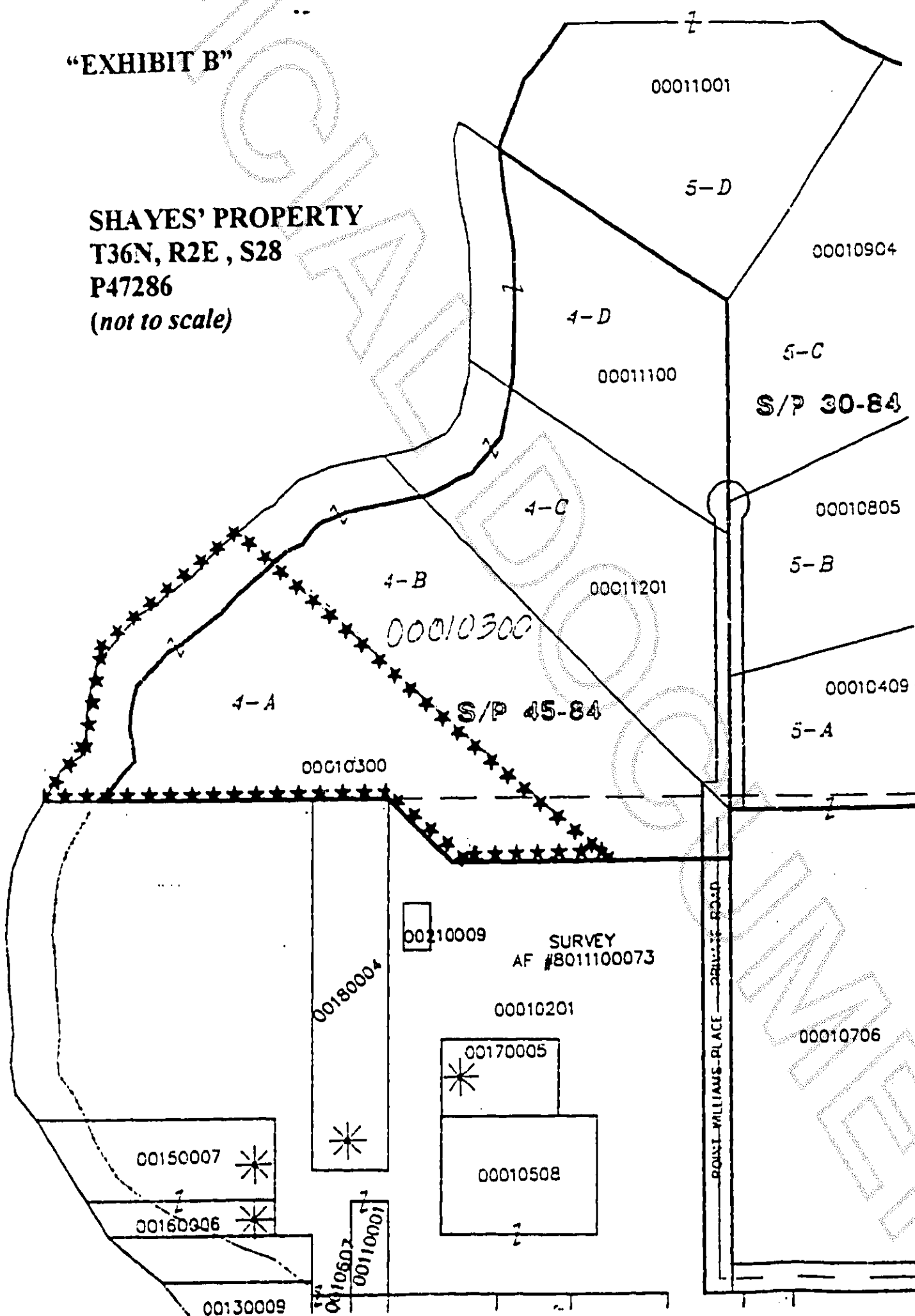
Lot 4-A as shown on Short Plat No. 45-84, approved February 15, 1985 and recorded in Volume 7 of Short Plats, page 8, under Skagit County Auditor's No. 8502200050 records of Skagit County, State of Washington, being a portion of Government Lot 1 of Section 28, Township 36 North, Range 2 East, W.M.

9712310091

BK | 750 PG 0423

"EXHIBIT B"

SHAYES' PROPERTY
T36N, R2E, S28
P47286
(not to scale)



9712310091

BK1750PG0424

SKAGIT LAND TRUST
CONSERVATION EASEMENT BASELINE DATA DOCUMENT

"EXHIBIT C"

Donor Information:

Name R. Milton and Sharon Schayes
Address 599 Pleasant Bay Road
City Bellingham, WA Zip 98226
Phone (360) 733-2540

Parcel Gov. Lot 1
Section : 28
Township: 36N
Range: 2E

Skagit Land Trust (Donee) Contact:

Name(s) Keith Wiggers / Martha Bray

Phone 757-0772 / 853-8495

Donor referred to Skagit Land Trust by: _____

Property Information:

Acres 5.8 Number of Buildings 0 Descriptions Attached Yes ☒ No

Percent Wetland _____ Percent Forest 100 Percent Farmland _____ Percent Other _____

Percent buildings and Grounds _____ County Zoning RI Property ID No. P47286

Type of Ownership FEE Mortgage Yes ☒ No Mtg. Holder _____

Special Features of Property : The property consists of mixed second and third growth low elevation forest. Tree species include Douglas-fir, red cedar, grand fir, Pacific madrone, big leaf maple, and red alder. The property includes approximately 600 feet of shoreline on Padilla Bay. It provides important habitat for peregrine falcon and bald eagle, both endangered or threatened species, and numerous other wildlife species use the forest and near shore habitat, including many raptors, woodpeckers, and wintering waterfowl. The property slopes gradually down to the northwest and toward the shoreline. The shoreline bluffs are abrupt, 15-40 feet high, and in places eroding. The soils are generally extremely thin and rocky, but with areas of moist seeps.

Condition of Property: The oldest trees on the site appear to be 70-90 years old, mostly Douglas fir, with some large cedar and grand fir. Some of these trees are 24" - 36" in diameter, widely spaced with sword-fern and salal understory. Approximately 2-3 acres of the trees on the property were blown down in a windstorm in 1990; the down trees were salvaged and sold. This area has now re-generated in dense red-alder. Douglas fir was planted directly after the blow-down, and many of these seedlings survived and are now growing vigorously, having attained heights of 10-15 feet.

In compliance with Section 1.170A-14(g)(5) of the federal tax regulations, this natural resources inventory is an accurate representation of the property at the time of conservation easement donation.

R. Milton and Sharon Schayes 12-31-97
Donor Date

Sharon R. Schayes 12-31-97
Donor Date

Donald R. Haysle
Skagit Land Trust (Donee)
12-31-97
Date

Attachments: ☐ Aerial Photos/Map ☐ On-site Photographs ☐ Appraisal
☒ Assessor Printout ☐ Title Search/Insurance ☐ Vegetation Inventory

9712310091

BK1750PG0425