

KATHY HILL
SKAGIT COUNTY CLERK

'98 DEC 29 2:12:42

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When recorded return to:

Farmland Legacy
700 S. Second St., Rm 202
Mount Vernon, WA 98273

GRANT DEED OF CONSERVATION EASEMENT

Grantor: Vern Ivan Herdt and Evangeline A. Herdt

Grantee: Skagit County, Washington

Legal Description

Abbreviated form: A portion of Tracts 5 & 14 of the Burlington Acreage Property and a portion of the NE 1/4 of the NE 1/4, Sec. 33, Twp 35 N., Rge. 4E, W.M.

Additional legal at Exhibit A.

Assessor's Tax Parcel Number: P62369, P62372, P62283, P62282, P38226

SKAGIT COUNTY WASHINGTON

Real Estate Transfer Tax

DEC 29 1998

Amount Paid: \$50.98

Skagit Co. Treasurer

By

Dep't

THIS GRANT DEED OF CONSERVATION EASEMENT ("Easement") is made this 24 day of December 1998, by Vern Ivan Herdt and Evangeline A. Herdt, husband and wife, having an address at 933 Vernon Ave., Burlington, WA 98233 (collectively, hereinafter referred to as "Grantor"), in favor of Skagit County, a political subdivision of the State of Washington, having an address at Skagit County Conservation Futures Program, c/o Skagit County Board of Commissioners, County Administration Building, 700 South Second Street, Room 202, Mount Vernon, WA 98273 (hereinafter referred to as "Grantee").

I. RECITALS

A. Grantor is the sole owner in fee simple of that certain real property (the "Protected Property") in Skagit County, Washington, more particularly described in Exhibit A (legal description) and shown on Exhibit B (site plan), which are attached and incorporated into this Easement by this reference. The Protected Property is approximately 19.1 acres in size and is predominantly open farmland.

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B. The Protected Property is of significant agricultural and natural value to Grantor, the people of Skagit County and the people of the State of Washington (collectively, "Conservation Values"). The Conservation Values include protection of wetlands and Critical Areas as well as agricultural productivity.

C. The Protected Property is zoned Agricultural Natural Resource Land under the Skagit County Zoning Ordinance. Skagit County Zoning Ordinance 14.04.110 states that the goal of the Agricultural Natural Resource Land zone is to "provide land for continued farming activities, conserve agricultural land, and reaffirm Agricultural use, activities and operations as the primary use of the district."

D. The Protected Property includes a riparian area of approximately 0.75 acres and a Critical Area designated by Skagit County and referenced in Appendix B.

E. The specific Conservation Values and characteristics of the Protected Property are further documented in an inventory of relevant features of the Protected Property, dated December 23, 1998, on file at the offices of Grantee and incorporated into this Easement by this reference ("Baseline Documentation.") The Baseline Documentation consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. Exhibit B, included as part of the Baseline Documentation, is a scaled site map delineating the location of all buildings, the existing developed area, and other key features and improvements on the site at the time of this grant including wetlands and Critical Areas.

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

G. The foregoing recitals are incorporated into this Easement by this reference.

II. CONVEYANCE AND CONSIDERATION

A. For the reasons stated above, in consideration of the mutual covenants, terms, conditions, and restrictions contained in this Easement, and in consideration of payment of \$55,619.27 by Grantee to Grantor, the receipt of which is acknowledged, Grantor hereby grants, conveys and warrants to Grantee a conservation easement in perpetuity over the Protected Property, consisting of certain rights in the Protected Property, as defined in this Easement, subject only to the restrictions contained in this Easement.

B. This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130.

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

III. PURPOSE

It is the purpose of this Easement to assure that the Protected Property will be retained forever for (1) agricultural productivity and use, to ensure no net loss of agricultural lands, and (2) protection of wetlands and Critical Areas, and to prevent any use of, or activity on, the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property (the "Purpose.") Grantor intends that this Easement will confine the use of, or activity on, the Protected Property to such uses and activities that are consistent with this Purpose. This Easement shall not be construed as affording to the general public physical access to 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. **Protection.** To preserve and protect in perpetuity and to enhance by mutual agreement the Conservation Values of the Protected Property.
- B. **Access for Monitoring and Enforcement.**
1. To enter the Protected Property annually, at a mutually agreeable time and upon prior written notice to Grantor, for the purpose of making a general inspection to monitor compliance with this Easement.
 2. To enter the Protected Property at such other times as are necessary if Grantee has a reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of this Easement. Such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Protected Property.
- C. **Injunction and Restoration.** To enjoin any use of, or activity on, the Protected Property that is inconsistent with the Purpose of this Easement, including trespasses by members of the public, and to require the restoration of such areas or features of the Protected Property as may be damaged by uses or activities inconsistent with the provisions of this Easement, all in accordance with Section X.
- D. **Enforcement.** To enforce the terms of this Easement, consistent with Section X.
- E. **Assignment.** To assign, convey or otherwise transfer Grantee's interest in the Protected Property in accordance with Section XV.

V. PROHIBITED USES AND ACTIVITIES

- A. **General.** Any use of, or activity on, the Protected Property inconsistent with the Purpose of this 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 this subsection, the following uses of, or activities on, the Protected Property, though not an exhaustive list, are inconsistent with the Purpose of this Easement and shall be prohibited, except as expressly permitted in Section VI.
- B. **Subdivision and Development Rights.** The legal division, subdivision, or partitioning of the Protected Property is prohibited; except that boundary line adjustments are permitted. Grantor shall not exercise its development rights in the Protected Property, transfer such development rights to any other portion of the Protected Property as it is now or hereafter may be bounded or described or to any other property adjacent to the Protected Property or otherwise, nor use such development rights or the area of the Protected Property for the purpose of calculating permissible lot yield of the Protected Property or other property.
- C. **Construction.** The placement or construction of any residential buildings, structures, or other residential improvements of any kind is prohibited, except as expressly permitted in Section VII.B. and the placement or construction of any commercial or industrial buildings, structures, or other improvements of any kind is prohibited, except as permitted by the Skagit County Code regarding Agricultural Natural Resource Land, or successor provision and consistent with the terms of this Easement.

D. Impervious surface. The total area covered by structures of any kind and impervious surfaces such as asphalt, concrete or gravel shall be limited to 5% of the area of the Protected Property.

E. Recreation. The following forms of recreation are prohibited on the Protected Property: golf courses; commercial use of motorized or mechanized recreational vehicles such as motorcycles, snowmobiles and dune buggies; commercial overnight camping; athletic fields; use of the property for any commercial public recreation; and other developed recreational uses of the property which require special buildings, structures, or facilities. Undeveloped recreational uses, and the leasing of such uses for economic gain, may be permitted insofar as they are consistent with the Purpose and terms of this Easement.

F. Feedlots. The establishment and maintenance of a commercial feedlot is prohibited. For the purposes of this Easement, a commercial feedlot is a confined area or facility within which the land is not grazed or cropped at least annually and which is used to receive livestock that has been raised off the Protected Property for feeding and fattening for market.

G. 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 is prohibited. However, normal agricultural operations and practices consistent with best management practices, as defined by the Conservation District or Natural Resources Conservation Services, shall not be considered to be in violation of this section.

H. Waste Disposal. Except as expressly permitted in Section VI, the disposal or storage of rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or hazardous waste or material on the Protected Property is prohibited. Spreading of sludge on agricultural land is prohibited.

I. Commercial Signs. The placement of commercial signs, billboards, or other advertising material on the Protected Property is prohibited; except in connection with the on-site sale of agricultural products, sale or lease of the Protected Property, or to state the conditions of access to the Protected Property.

J. Mining. The exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Protected Property is prohibited. The extraction of rock, dirt, sand, and gravel shall be permitted only if removal of such material is necessary to carry out other permitted activities on the Protected Property and will not interfere with the Conservation Values of the Protected Property.

K. Kennels. Kennels as defined in the Skagit County Zoning Ordinance are prohibited.

L. Farm Worker Housing. Construction or placement of farm worker housing is prohibited.

M. Alteration of Wetlands and Watercourses. The draining or filling of wetland areas shown on Exhibit B, or any other action that would reduce the wetland area is prohibited.

VI. PERMITTED USES AND ACTIVITIES

A. General. Grantor reserves for itself and its personal representatives, heirs, successors and assigns, all rights accruing from ownership of the Protected Property, including the right to engage in, or permit or invite others to engage in, any use of, or activity on, the Protected Property that is not inconsistent with the Purpose of the Easement and that is not prohibited by this Easement. Without limiting the generality of this subsection, Grantor specifically reserves for itself and its personal representatives, heirs, successors, and assigns, the following uses and activities.

B. Agricultural Use. Grantor may maintain and practice agricultural activities and may construct agricultural buildings, structures and improvements on the Protected Property; provided that such activities and construction are carried out in compliance with federal, state, and local regulations, and are consistent with the terms of this Easement. Agricultural uses include: Agronomy, farming, dairying, pasturage, apiculture, horticulture, floriculture, animal and poultry husbandry, and the cultivation, management and harvest of forest crops. Prior to initiating any new construction, alteration or improvement which requires a development permit or approval from Skagit County, Grantor must submit a plan to Grantee for review. The plan must indicate the desired location and size of the improvements.

C. Roads. Grantor may maintain, renovate, expand or replace existing roads or construct new roads necessary to serve agricultural uses and activities on the Protected Property. The design and location of any such construction, renovation, expansion, or replacement shall be subject to the prior written notice of Grantee, and maintenance of the roads may not adversely impact the Conservation Values of the Protected Property.

D. Agriculture-Related Commercial Activities. Grantor may process, store and sell agricultural products produced principally on-site.

E. Fences. Grantor may construct and maintain fences on the Protected Property.

F. Composting, Use and Storage of Agricultural Wastes. Grantor may compost, use and store agricultural waste and by products on the Protected Property, consistent with the Purpose of this Easement; provided that any such wastes that are stored are stored temporarily 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 in the wetland or Critical Area shown in Exhibit B.

G. Drainage structures. Grantor may construct and maintain drainage structures, including ditches, tubes, pipes, pumps, gates or other facilities and appurtenances for enhancement of drainage systems.

H. Paving and Grading. Grantor may grade and/or pave portions of the Protected Property consistent with the Purpose of this Easement; provided that such grading and paving shall be limited to that necessary to serve agricultural uses and other permitted uses on the site. Prior to initiating any grading activities requiring a permit from Skagit County or any paving activities, the Grantor must provide written notice to the Grantee.

I. Creation of Mortgage Liens. Grantor may create consensual liens, whether by mortgage, deed of trust, or otherwise, for the purpose of indebtedness of Grantor, so long as such liens remain subordinate to the Easement.

J. Emergencies. Grantor may undertake other activities necessary to protect public health or safety on the Protected Property, or that are actively required by and subject to compulsion of any governmental agency with authority to require such activity; provided that any such activity shall be conducted so that interference with the Conservation Values of the Protected Property is avoided, or, if avoidance is not possible, minimized to the extent possible.

K. Utilities. Grantor may maintain, renovate, expand existing utilities or install new utilities to serve permitted uses on the Protected Property, provided that their installation will not conflict with the Purpose of this easement.

VII. STEWARDSHIP

Grantor agrees to maintain the Protected Property for long-term agricultural productivity, to protect the wetlands and Critical Areas on the site and conduct farming practices in accordance with a conservation plan that is developed utilizing the standards and specifications of the NRCS field office technical guide and is approved by the

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Conservation District. No activities violating sound agricultural soil and water conservation management practices shall be permitted. No activities, unless allowed under a Conservation Plan approved by the NRCS, which would damage the Conservation Values of the wetland and/or Critical Areas shown in Exhibit B shall be permitted.

VIII. NOTICE

A. Notice.

1. Grantor. The following permitted uses and activities require Grantor to notify Grantee in writing prior to undertaking the use or activity:

- a) construction of any buildings, structures or improvements requiring a permit from Skagit County;
- b) road construction (and Section VI.D);
- c) grading activities requiring a permit from Skagit County (and Section VI.H); and
- d) paving (and Section VI.H).

The purpose of requiring Grantor to notify Grantee prior to undertaking these permitted uses and activities is to afford Grantee an adequate opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the Purpose of this Easement. Whenever such 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. Grantor may notify Grantee at the time of permit application, for concurrent review, or may provide notice and initiate review prior to permit application, at the Grantor's discretion. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose of this Easement. If Grantee does not provide written objections within thirty (30) days after receipt of Grantor's notice, Grantee shall be deemed to have approved of the proposed activity for purposes of this easement only.

B. Optional Consultation. If Grantor is unsure whether a proposed use or activity is prohibited by this Easement, Grantor may consult Grantee by providing Grantee a written notice describing the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to the consistency with the Purpose of this Easement and to provide comments thereon to Grantor for the purposes of this easement only.

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

To Grantor: 933 Vernon Ave.
Burlington, WA 98233

To Grantee: Farmland Legacy Program
700 South Second St., Room 202
Mount Vernon, WA 98273

or to such other address as either party designates by written notice to the other.

IX. DISPUTE RESOLUTION: GRANTEE'S REMEDIES

A. Preventive Discussions. Grantor and Grantee will promptly give the other notice of problems or concerns arising in connection with the parties' actions under this Easement or the use of or activities or conditions on the Protected Property, and will meet as needed, but no later than 15 days after receipt of a written request for a meeting, to minimize the same.

B. **Optional Alternative Dispute Resolution.** If a dispute is not resolved through preventive discussions under subsection A, Grantor and Grantee may by mutual agreement submit the matter to mediation or arbitration upon such rules of mediation or arbitration as Grantor and Grantee may agree.

X. GRANTEE'S REMEDIES

A. **Notice of Violation, Corrective Action.** If Grantee determines that 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 to its prior condition in accordance with a plan approved by Grantee.

B. **Grantor's Failure to Respond.** Grantee may bring an action as provided in subsection C if Grantor:

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

C. **Grantee's Action.**

1. **Injunctive Relief.** Grantee may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Easement:

- a. To enjoin the violation, ex parte as necessary, by temporary or permanent injunction; and
- b. To require the restoration of the Protected Property to the condition that existed prior to any such injury.

2. **Damages.** Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of Conservation Values. Without limiting Grantor's liability in any way, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking corrective or restoration action on the Protected Property.

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

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

F. **Costs of Enforcement.** In the event Grantee must enforce the terms of this Easement, the costs of restoration necessitated by acts or omissions of Grantor, its agents, employees, contractors, family members, invitees or licensees in violation of the terms of this Easement and Grantee's reasonable enforcement expenses,

including attorneys' and consultants' fees, shall be borne by Grantor or those of its personal representatives, 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 personal representatives, heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized use or activity.

G. Grantee's Discretion. Grantee acknowledges its commitment to protect the Purpose of the Easement. Enforcement of the terms of the Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Grantee of such term or any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver of such term or any of Grantee's rights under this Easement. No grant by Grantor in its governmental or regulatory capacity of any building permit, grading permit, land use approval or other development approval shall be deemed or construed to be a waiver of any term or any of Grantee's rights under this Easement.

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

I. 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, natural changes, fire, flood, storm, or earth movement, or from acts of trespassers, that Grantor could not reasonably have anticipated or prevented 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. In the event the terms of this Easement are violated by acts of trespassers that Grantors could not reasonably have anticipated or prevented, Grantor agrees, at Grantee's option, to join in any suit, to assign its right of action to Grantee, or to appoint Grantee its attorney in fact, for the purpose of pursuing enforcement action against the responsible parties. Grantor's agreement to join in any such suit or other enforcement action shall not obligate Grantor to pay any of the expenses of any such enforcement action. Any such enforcement action, whether by suit or other process, shall be at Grantee's expense.

J. Estoppel Certificates. Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, that certifies, to the best of Grantee's knowledge, Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Protected Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within thirty (30) days of receipt of Grantor's written request.

XI. ACCESS BY PUBLIC NOT REQUIRED

This Easement does not provide and shall not be construed as providing, the general public access to any portion of the Protected Property.

XII. COSTS, LIABILITIES AND INSURANCE, TAXES, ENVIRONMENTAL COMPLIANCE, AND INDEMNIFICATION

A. Costs, Legal Requirements, 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 liability insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approval for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall prevent the perfection of any liens against the Protected Property arising out of any work performed for, material furnished to, or obligations incurred by Grantor.

B. Taxes. Grantor shall pay all taxes levied against the Protected Property by government authority as they become due, and shall furnish Grantee with satisfactory evidence of payment upon request. If Grantor fails to pay any taxes when due, Grantee is authorized, but in no event obligated, to make or advance such 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 Grantor at the maximum rate allowed by law.

C. Representations and Warranties. Grantor represents and warrants that, after reasonable investigation and to the best of Grantor's knowledge:

1. Grantor and the Protected Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Protected Property and its use;
2. There has been no release, dumping, burying, abandonment or migration from off-site on the Protected Property of any substances, materials, or wastes that are hazardous, toxic, dangerous, or harmful or are designated as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful in violation of 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 Superfund (42 U.S.C. § 9601 et seq.) or state Model Toxics Control Act (RCW 70.105D.010 et seq.) ("MTCA") sites; and
4. There is no pending or threatened litigation affecting the Protected Property or any portion of the Protected Property that will materially impair the Conservation Values of any portion of the Protected Property. No civil or criminal proceedings have been instigated or are pending against Grantor or its predecessors by government agencies or third parties arising out of alleged violations of environmental laws, and Grantor has not received any notices of violation, penalties, claims, demand letters, or other notifications relating to a breach of environmental laws.

D. Remediation. If, at any time, there occurs, or has occurred, a release in, on, or about the Protected Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic or dangerous to the air, water or soil, or in any way harmful or threatening to human health or environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee should be responsible for remediation.

E. Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of Grantor's activities on the Protected Property, or otherwise to become an operation with respect to the Protected Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"), and MTCA.

F. **Indemnification.** Grantor hereby agrees to release and hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the personal representatives, heirs, 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 Protected Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; and
2. The obligations, covenants, representations and warranties in subsections A, B, C, and D of this section.

XIII. EXTINGUISHMENT, CONDEMNATION AND SUBSEQUENT TRANSFER

A. **Extinguishment.** If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction and only upon a finding and declaration to that effect. 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 in accordance with Section XIII.B, Valuation, of this Easement.

B. **Valuation.** In the event of an extinguishment pursuant to Subsection A, the amount to be paid by the Grantor to the Grantee shall be determined by subtracting the value of the Protected Property subject to this Easement from the fair market value of the unrestricted Protected Property at the time of termination or extinguishment.

C. **Condemnation.** If all or any of the Protected Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to extinguish this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interest in the Protected Property subject to the taking or in lieu purchase and all direct or incidental damages resulting from the taking or in lieu purchase. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantor and Grantee agree that Grantee's share of the balance of the amount recovered shall be determined by the method described in Subsection B, with the remainder due to the Grantor.

D. **Application of Proceeds.** Grantee shall return any proceeds received under the circumstances described in this Section XIII to Skagit County's Conservation Futures Fund (or successor fund) for use in purchasing conservation easements or development rights on other eligible sites under the program (or successor program.)

E. **Subsequent Transfers.** Grantor agrees to:

1. Incorporate the terms of this Easement by reference 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;
2. Describe this Easement in and append it to any executory contract for the transfer of any interest in the Protected Property;
3. Obtain a certificate from the purchaser, leaseholder or other party gaining an interest in all or part of the Protected Property and any financier, acknowledging their awareness of this Easement and their intent to comply with it. Such certificate shall be appended to and recorded with any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Protected Property; and

4. Give written notice to Grantee of the transfer of any interest in all or a portion of the Protected Property no later than forty-five (45) 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 the prospective transferee's representative.

The failure of Grantor to perform any act required by this subsection shall not impair the validity of this Easement or limit its enforceability in any way.

F. Contingent Right in the United States of America. In the event that Skagit County, Washington fails to enforce any of the terms of this easement, as determined in the sole discretion of the Secretary of the United States Department of Agriculture, the said Secretary of Agriculture and his or her successors and assigns shall have the right to enforce the terms of the easement through any and all authorities available under Federal or State law. In the event that Skagit County, Washington attempts to terminate, transfer, or otherwise divest itself of any rights, title, or interests of this easement without the prior consent of the Secretary of the United States Department of Agriculture and payment of consideration to the United States, then, at the option of such Secretary, all right, title, and interest in this easement shall become vested in the UNITED STATES OF AMERICA.

XIV. AMENDMENT

This easement may be amended by the execution and delivery of an amended easement deed, but only with the written consent of both Grantor and Grantee. The Grantee's consent shall not be given without prior consultation with the authorized representative of the United States Secretary of Agriculture. 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 will diminish the effectiveness of this Easement in carrying out the Purpose of the Easement in any way and that only those amendments which strengthen the effectiveness of the Easement in carrying out the Purpose of the Easement shall be permitted. Any such amendment shall not affect the perpetual duration of the Easement and shall be recorded in the official records of Skagit County, Washington, and any other jurisdiction in which such recording is required.

XV. ASSIGNMENT

This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to the Grantee's judicial successor. As a condition of such transfer, Grantee shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

XVI. RECORDING

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.

XVII. 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 its application 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.

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

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

F. **"Grantor" - "Grantee".** The terms "Grantor" and "Grantee," wherever used in this Easement, and any pronouns used in their place, 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 personal representatives, successors and assigns.

G. **Successors and Assigns.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement 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. **Joint and Several.** The obligations imposed by this Easement upon Grantor shall be joint and several.

J. **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall 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.

XVIII. SCHEDULE OF EXHIBITS

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

STATE OF Washington }
County of Skagit } SS:

I certify that I know or have satisfactory evidence that Vern Ivan Herdt and
Evangeline A. Herdt

they are the person s who appeared before me, and said person s acknowledged that they
signed this instrument and acknowledge it to be their free and voluntary act for the uses and purposes
mentioned in this instrument.

Dated: December 29, 1998

Candace M. Taylor
Candace M. Taylor
Notary Public in and for the State of Washington
Residing at Mount Vernon
My appointment expires: 01/01/01

The BOARD OF COUNTY COMMISSIONERS does hereby accept the above Grant Deed of Conservation Easement.

Dated: 12-21-98

SKAGIT COUNTY, WASHINGTON

Robert Hart

Robert Hart, Chairman

Harvey Wolden

Harvey Wolden, Commissioner

Ted W. Anderson

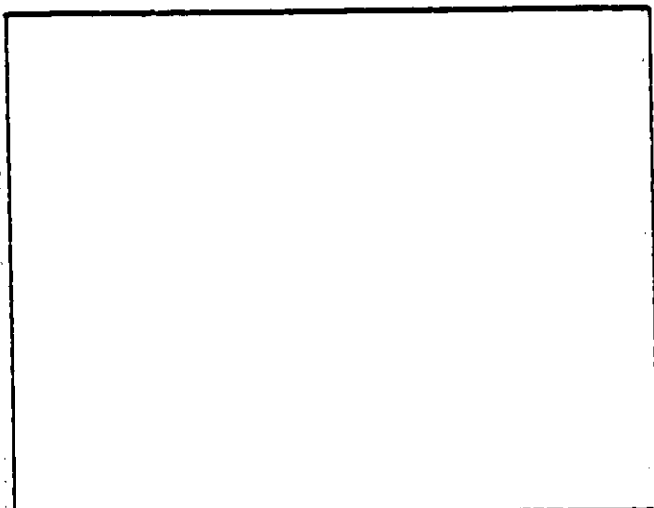
Ted W. Anderson, Commissioner

THIS EASEMENT HAS PREVIOUSLY BEEN APPROVED AS TO FORM BY THE SKAGIT COUNTY PROSECUTING ATTORNEY.

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that They (the above) ^{are} is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Board of Commissioners of Skagit County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 12-21-98



(Use this space for notarial stamp/seal)

Jean Terry
Notary Public
Print Name Jean Terry
My commission expires 4-7-2001

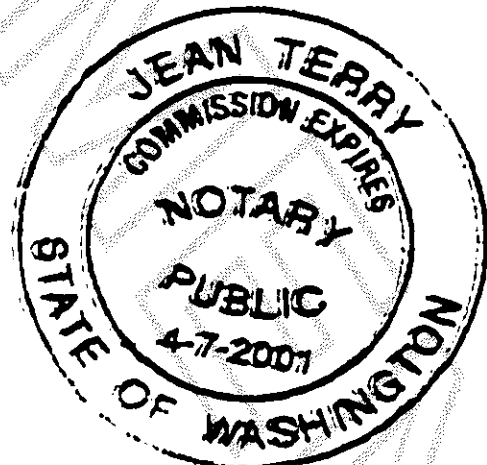


EXHIBIT A

Legal Description of Protected Property

PARCEL "A":

That portion of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 33, Township 35 North, Range 4 East, W.M., lying Northwesternly of the County road known as LaFayette Road.

Situate in the County of Skagit, State of Washington.

PARCEL "B":

That portion of the East $\frac{1}{2}$ of Tract 5, "PLAT OF THE BURLINGTON ACREAGE PROPERTY", as per plat recorded in Volume 1 of Plats, page 49, records of Skagit County, Washington, lying Southerly of the Great Northern Railway Company right of way.

Situate in the County of Skagit, State of Washington.

PARCEL "C":

That portion of the West $\frac{1}{2}$ of Tract 5, "PLAT OF THE BURLINGTON ACREAGE PROPERTY", as per plat recorded in Volume 1 of Plats, page 49, records of Skagit County, Washington, lying Easterly of the Great Northern Railway Company right of way.

Situate in the County of Skagit, State of Washington.

PARCEL "D":

That portion of Tract 14, "PLAT OF THE BURLINGTON ACREAGE PROPERTY", as per plat recorded in Volume 1 of Plats, page 49, records of Skagit County, Washington, lying Southerly of the Great Northern Railway Company right of way, EXCEPT roads, EXCEPT dike right of way, EXCEPT that portion of said premises conveyed to Dike District No. 12, by deed dated September 2, 1955, recorded September 13, 1955, under Auditor's File No. 523978 in Volume 273 of Deeds, page 300, AND EXCEPT that portion of said property described as follows:

The Westerly one-half acre of the following described portion of said Tract 14:
Beginning at the intersection of the West line of said Tract 14, and the Southerly line of the right of way of the Great Northern Railway Company;
thence South along said West line 132 feet;
thence Northeasterly and parallel with the Southerly line of said railway right of way to the North line of said Tract 14;
thence West along said North line to said Southerly line of said railroad right of way;
thence Westerly along said Southerly line to the point of beginning, being those premises reserved in Deed from Harry L. Jewell to Lars O. Larson, dated May 15, 1944, recorded May 20, 1944, under Auditor's File No. 371667 in Volume 193 of Deeds, page 460.

AND EXCEPT that portion of said Tract 14 lying Southeasterly of the County road and dike right of way running through the Southeast corner of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 33, Township 35 North, Range 4 East, W.M.

AND ALSO EXCEPT those portions of said Tract 14 described as follows:

- 1.) Beginning at the Northeast corner of said Tract 14;
thence South $0^{\circ}46'50''$ West along the East line of said Tract 14 a distance of 75.80 feet to the Westerly line of the LaFayette Road;
thence South $25^{\circ}28'10''$ West along said Westerly road line a distance of 281.26 feet to an $\frac{3}{4}$ inch iron pipe marking the true point of beginning for this description;
thence continue South $25^{\circ}28'10''$ West along said road line a distance of 23.37 feet to the beginning of a tangent curve to the right having a radius of 341.30 feet;
thence along the arc of said curve through a central angle of $49^{\circ}47'53''$ a distance of 296.64 feet;
thence South $75^{\circ}16'03''$ West along said road line a distance of 70.55 feet;
thence North $31^{\circ}54'12''$ West a distance of 124.03 feet;
thence North $42^{\circ}35'34''$ East a distance of 274.92 feet;
thence South $64^{\circ}31'50''$ East a distance of 198.40 feet to the true point of beginning.
- 2.) Beginning at the Northeast corner of said Tract 14;
thence South $0^{\circ}46'50''$ West along the East line of said Tract 14 a distance of 75.80 feet to the Westerly line of the LaFayette Road;
thence South $25^{\circ}28'10''$ West along said Westerly road line a distance of 281.26 feet to the true point of beginning of said point being the most Easterly corner of that certain tract of land conveyed to Jerry W. Schneider by Thomas E. Robbins and Donna D. Robbins, under Statutory Warranty Deed filed under Auditor's File No. 8307260061, records of Skagit County, Washington;
thence North $25^{\circ}28'10''$ East a distance of 100.00 feet;
thence North $64^{\circ}31'50''$ West a distance of 167.59 feet to a point that bears North $42^{\circ}35'34''$ East from the most Northerly corner of said Schneider Tract;
thence South $42^{\circ}35'34''$ West a distance of 104.64 feet to said most Northerly corner;
thence South $64^{\circ}31'50''$ East along the Northerly line of said Schneider Tract a distance of 198.40 feet to the true point of beginning.
- 3.) Beginning at the Northeast corner of said Tract 14;
thence South $0^{\circ}46'50''$ West along the East line of said Tract 14 a distance of 75.80 feet to the Westerly line of the LaFayette Road;
thence South $25^{\circ}28'10''$ West along said Westerly road line a distance of 281.26 feet to the most Easterly corner of that certain tract of land conveyed to Jerry W. Schneider by Thomas E. Robbins and Donna D. Robbins, under Statutory Warranty Deed filed under Auditor's File No. 8307260061, records of Skagit County, Washington;
thence continue South $25^{\circ}28'10''$ East a distance of 23.37 feet to the beginning of a curve to the right having a radius of 341.30 feet;
thence along the arc of said curve in a Southwesterly direction through a central angle of $49^{\circ}47'53''$ an arc length of 296.64 feet to a point of tangency;
thence South $75^{\circ}16'03''$ West a distance of 70.55 feet to the most Southerly corner of said Schneider tract, said point being the true point of beginning;
thence continue South $75^{\circ}16'03''$ West a distance of 221.38 feet to a point which bears South $42^{\circ}35'34''$ West from the most Westerly corner of said Schneider tract;
thence North $42^{\circ}35'34''$ East a distance of 219.50 feet to said Westerly corner of said Schneider tract;
thence South $31^{\circ}54'12''$ East along the Southwesterly line of said Schneider tract a distance of 124.03 feet to the true point of beginning.

SUBJECT TO easements of record.

Situated in Skagit County, Washington.

EXHIBIT B

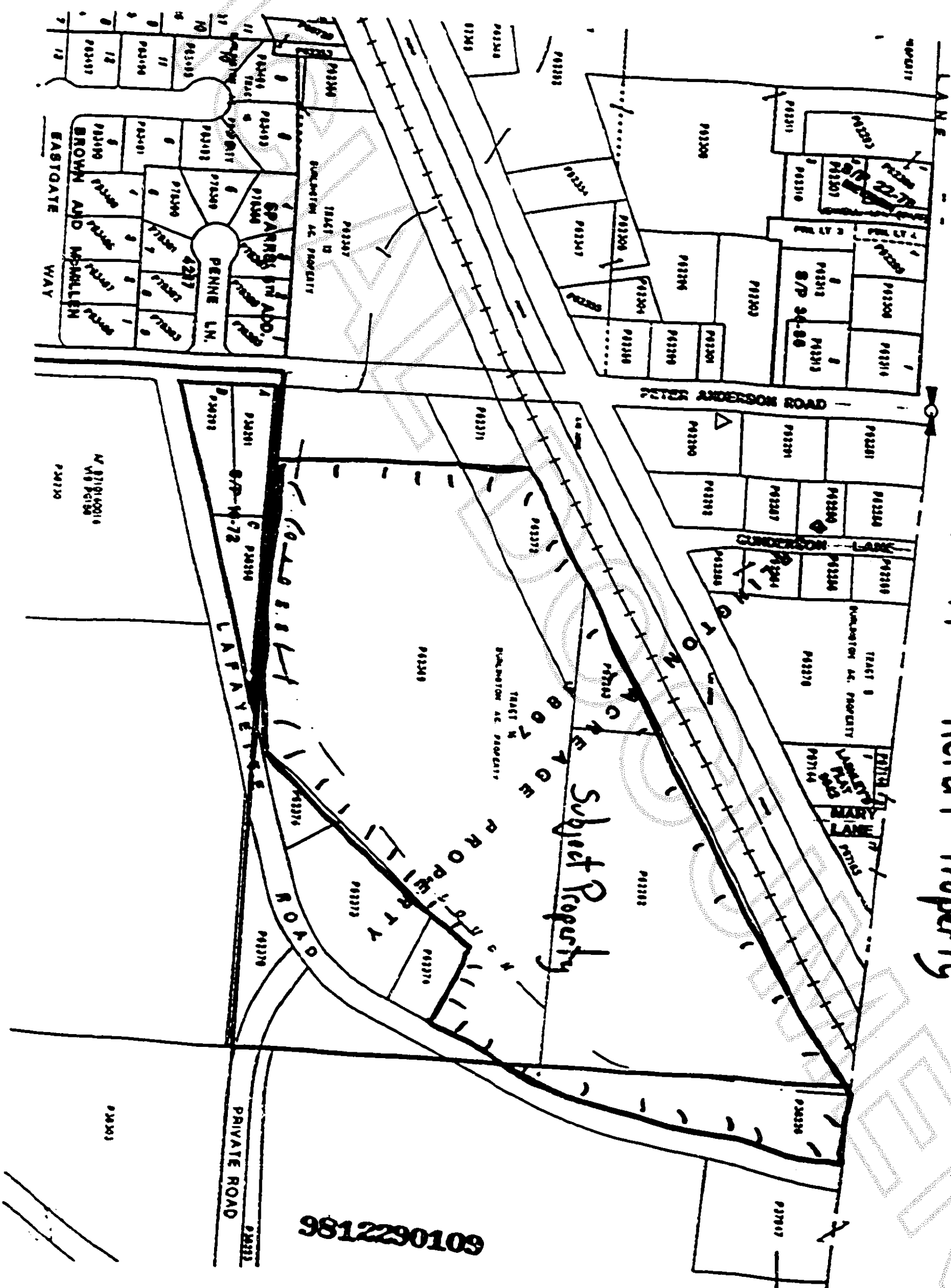
Site Map(s)

B-1

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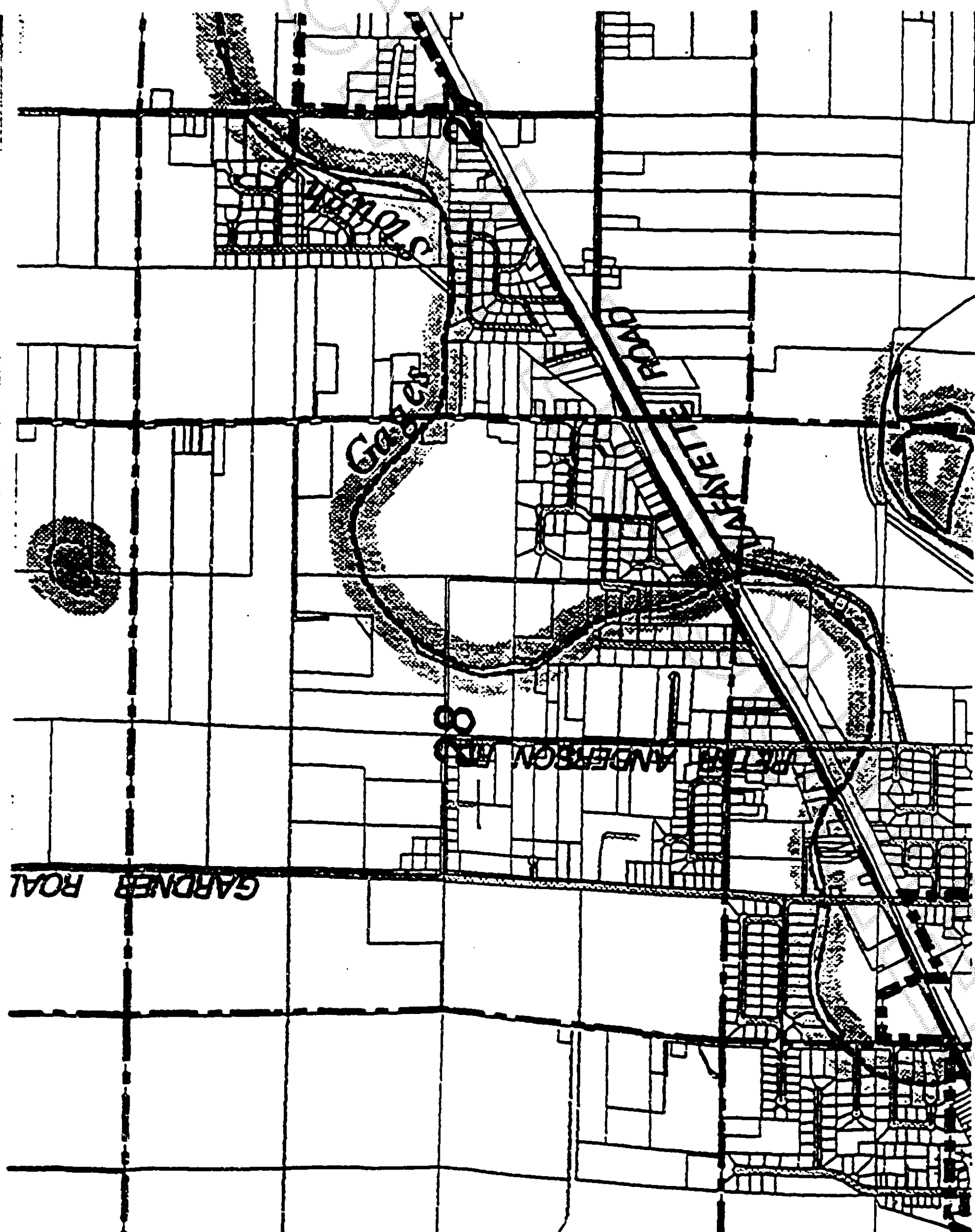
Exhibit A Herd Property



9812290109

9812290109

EX 1921 PG0056



9812290109

3X | 92 | PG0057