

KATHY HILL  
SKAGIT COUNTY AUDITOR

'99 FEB -5 P12:50

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When recorded return to:  
Farmland Legacy Program  
County Administration Building  
700 South Second St., Room 202  
Mount Vernon, WA 982763

GRANT DEED OF CONSERVATION EASEMENT 004229

SKAGIT COUNTY WASHINGTON  
Real Estate Excise Tax

Grantors: Ralph M. Zoberst and June L. Zoberst, husband and wife

Grantee: Skagit County, a political subdivision of the State of Washington

FEB 05 1999

Legal Description

Abbreviated form: A portion of the Southeast quarter of the Southwest quarter of Section 6, Township 34N, Range 4E, W.M.

Additional legal at Exhibit A.

Assessor's Tax Parcel Number: P23855

Amount Paid \$ 843.97  
Skagit Co. Treasurer

THIS GRANT DEED OF CONSERVATION EASEMENT ("Easement") is made this 25 day of January, 1999, by Ralph M. Zoberst and June L. Zoberst, husband and wife, having an address at 1498 Bennett Road, Mt. Vernon, Washington, (hereinafter collectively referred to as "Grantors"), 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. Grantors are the sole owners 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 10.74 acres in size and is predominantly open farmland.

B. The Protected Property is of significant agricultural and natural value (collectively, "Conservation Values")

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to Grantors, the people of Skagit County and the people of the State of Washington. The Conservation Values include protection of wetlands and Fish and Wildlife Habitat Conservation 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 wetland of approximately 4.4 acres and a Fish and Wildlife Habitat Conservation Area designated by Skagit County.

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 January 25, 1999, on file at the offices of Grantee and incorporated into this Easement by this reference (hereinafter "Baseline Documentation."). The Baseline Documentation, a full, complete, and accurate copy of which has been provided to Grantors prior to the date hereof and is attached to their copy hereof, 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 Fish and Wildlife Habitat Conservation Areas.

F. Grantors, as owners of the Protected Property, have the right to protect and preserve the Conservation Values of the Protected Property, and desire to transfer such rights to Grantee in perpetuity.

## 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 \$55,161.84, the payment schedule for which is attached hereto as Exhibit C and thereby incorporated herein, and other good and valuable consideration by Grantee to Grantors, the receipt of which is acknowledged, Grantors hereby grant, convey and warrant 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. Grantors expressly intend that this Easement run with the land and that this Easement shall be binding upon Grantors 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; (2) protection of wetland and Fish and Wildlife Protection areas; and (3) waterfowling and related educational activities 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 (hereinafter the "Purpose"). Grantors intend 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. Except as specifically provided herein, this Easement shall not be construed as affording to the general public physical access to the Protected Property.

#### IV. RIGHTS CONVEYED TO GRANTEE

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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 prior, signed 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 Grantors, 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 probable cause 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 Grantors, and Grantee shall not in any case unreasonably interfere with Grantors' 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 Grantors acknowledge and agree that they 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. Grantors shall not exercise their 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 adjacent 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 VI.B, *infra*, 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. 004229

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; and use of the property for any commercial public recreation except waterfowling and related educational activities. All other recreational uses may be permitted insofar as they are not inconsistent 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.

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, to state the conditions of access to the Protected Property, or any other permitted use identified in Section VI below.

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.** Grantors reserve for themselves and their 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, Grantors specifically reserve for themselves and their personal representatives, heirs, successors, and assigns, the following uses and activities.

B. **Agricultural Use.** Grantors 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, dairy ing, pasturage, apiculture, horticulture, floriculture, animal and poultry husbandry, and the cultivation, management and harvest of forest crops. Prior to

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initiating any new construction, alteration or improvement which requires a development permit or approval from Skagit County, Grantors must submit a plan to Grantee for review. The plan must indicate the desired location and size of the improvements.

C. Roads. Grantors 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 new construction, renovation, expansion, or replacement of new roads shall be subject to the prior written notice of Grantee, and maintenance of the new roads may not adversely impact the Conservation Values of the Protected Property.

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

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

F. Composting, Use and Storage of Agricultural Wastes. Grantors 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 Fish and Wildlife Habitat Conservation Area shown in Exhibit B.

G. Drainage structures. Grantors 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. Grantors 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, Grantors must provide written notice to the Grantee.

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

J. Emergencies. Grantors 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. Grantors 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.

L. Hunting and Fishing. Grantors and Grantors' licensees and permittees may hunt and fish on the Protected Property and engage in educational activities related thereto. Grantors may also, consistent with good wildlife and fisheries management practices, enhance the Protected Property so as to increase or optimize fish and wildlife habitat and sanctuary.

#### VII. STEWARDSHIP

Grantors agree to maintain the Protected Property for long-term agricultural productivity and to protect the wetlands and Fish and Wildlife Habitat Conservation Areas on the site. No activities violating sound agricultural soil and water conservation management practices shall be permitted. No activities which would damage the

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Conservation Values of the wetland and/or Fish and Wildlife Habitat Conservation Area shown in Exhibit B shall be permitted.

### VIII. NOTICES

#### A. Notice.

1. Grantors. The following permitted uses and activities require Grantors 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 (and Section VI.B);
- b) road construction (and Section VI.C);
- c) grading and paving activities requiring a permit from Skagit County (and Section VI.H);

The purpose of requiring Grantors 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, Grantors shall notify Grantee in writing not less than thirty (30) days prior to the date Grantors intend to undertake the use or activity in question. Grantors 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 Grantors' 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 Grantors' notice, Grantee shall be deemed to have approved of the proposed activity for purposes of this Easement only.

B. Optional Consultation. If Grantors are unsure whether a proposed use or activity is prohibited by this Easement, Grantors 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 Grantors 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 Grantors: William R. Zoberst, Esq.  
Suite 2450  
1000 Second Avenue  
Seattle, WA 98104

To Grantee: Farmland Legacy Program  
c/o Skagit County Board of Commissioners  
County Administration Building  
700 South Second Street, Room 202  
Mount Vernon, WA 98273

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

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## IX. DISPUTE RESOLUTION

A. **Preventive Discussions.** Grantors 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 IX.A, Grantors and Grantee may by mutual agreement submit the matter to mediation or arbitration upon such rules of mediation or arbitration as Grantors and Grantee may agree.

## X. GRANTEE'S REMEDIES

A. **Notice of Violation, Corrective Action.** If Grantee determines that Grantors are in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantors 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. **Grantors' Failure to Respond.** Grantee may bring an action as provided in subsection C if Grantors:

1. Fail 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, fail 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 Grantors' 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 Grantors 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. Grantors agree that Grantee's remedies at law for any violation of the

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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 reasonable costs of restoration necessitated by acts or omissions of Grantors, their 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 Grantors or those of their 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 Grantors and those of its personal representatives, heirs, successors, or assigns who are otherwise determined by a court of competent jurisdiction 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 Grantors, their 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 Grantors 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 Grantee 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.** Grantors acknowledge that they have 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, Grantors hereby waive any claim or defense they 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 Grantors' Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantors 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 Grantors' control, including, without limitation, natural changes, fire, flood, storm, or earth movement, or from acts of trespassers, that Grantors could not reasonably have anticipated or prevented or from any prudent action taken by Grantors 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, Grantors agree, at Grantee's option, to join in any suit for the purpose of pursuing enforcement action against the responsible parties.

J. **Estoppel Certificates.** Upon request by Grantors, Grantee shall within thirty (30) days execute and deliver to Grantors, or to any party designated by Grantors, any document, including an estoppel certificate, that certifies, to the best of Grantee's knowledge, Grantors compliance with any obligation of Grantors contained in this Easement and otherwise evidences the status of this Easement.

#### 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.

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

A. **Costs, Legal Requirements, Liabilities and Insurance.** Grantors retain 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. Grantors remain 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. Grantors 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 Grantors.

B. **Taxes.** Grantors 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 Grantors fail 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 Grantors, 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 Grantors at the maximum rate allowed by law.

C. **Representations and Warranties.** Grantors represent and warrant that, after reasonable investigation and to the best of Grantors' knowledge:

1. Grantors 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 Grantors nor Grantors' 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 Grantors or their predecessors by government agencies or third parties arising out of alleged violations of environmental laws, and Grantors have 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 by Grantors 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, Grantors agree to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused in whole or in part by Grantee, in which case Grantee should be responsible for remediation.

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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 Grantors' 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.** Grantors hereby agree 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 Grantors 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, Grantors 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 Grantors and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantors 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 Grantors.

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. Grantors agree to:

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1. Incorporate the terms of this Easement by reference in any deed or other legal instrument by which they divest themselves 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 Grantors divest themselves of any interest in all or a portion of the Protected Property;
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 Grantors to perform any act required by this subsection shall not impair the validity of this Easement or limit its enforceability in any way.

**XIV. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantors 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 and then only with Grantors' prior written consent. 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 Grantors in writing, at Grantors' 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. Governing Law, Jurisdiction & Venue. The interpretation, construction and enforcement of this

GRANT DEED OF CONSERVATION  
EASEMENT--Page 11 of 14

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Easement shall be governed by the laws of the State of Washington. Grantee consents, agrees and stipulates that the Superior Courts for Snohomish and Whatcom Counties have subject matter jurisdiction concurrent with the Superior Court for Skagit County in any action arising out of or relating to this Easement. Provided, that if Grantee commences any such action in the Superior Court for Skagit County, Grantee agrees that Grantors may remove or transfer said action to the Superior Court of either Snohomish or Whatcom Counties, and Grantee agrees that venue is proper and convenient in those other counties.

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 Grantors' title in any respect.

F. "Grantors" - "Grantee". The terms "Grantors" 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 Grantors, and their 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: (1) Grantors' rights to receive payments from Grantee shall survive transfer of Grantors' fee interest; and (2) liability for acts or omissions occurring prior to transfer shall survive transfer.

I. Joint and Several. The obligations imposed by this Easement upon Grantors 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).
- C. Payment Schedule

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

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IN WITNESS WHEREOF, the undersigned Grantors have executed this instrument this 21 day of January, 1999.

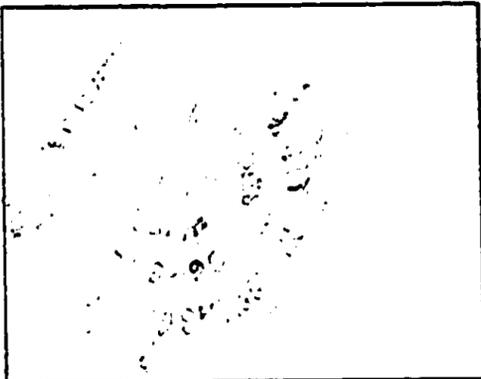
June L. Zoberst  
June L. Zoberst

Ralph M. Zoberst  
Ralph M. Zoberst

STATE OF WASHINGTON )  
  ) ss.  
COUNTY OF SKAGIT )

I certify that I know or have satisfactory evidence that June L Zoberst and Ralph M. Zoberst are the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the Grantors of Conservation easement to be their free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: 1-21-1999



(Use this space for notarial stamp/seal)

Terri L. Shuhart  
Notary Public  
Print Name Terri L. Shuhart  
My commission expires 3-29-99



**EXHIBIT A**

**004229**

**Legal Description**

That portion of the Southeast quarter of the Southwest quarter of Section 6, Township 34 North, Range 4 East, W.M., lying South of the County Road, EXCEPT the following described tract:

Beginning 60 rods West of the quarter corner common to Sections 6 and 7, Township 34 North, Range 4 East W.M.; thence North 32 rods;  
thence West 20 rods;  
thence South 32 rods;  
thence East 20 rods to the point of beginning.

Situate in County of Skagit, State of Washington.

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EXHIBIT B

Site Map(s)

004229

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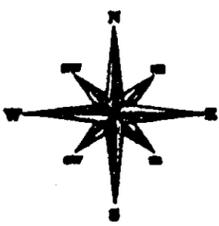
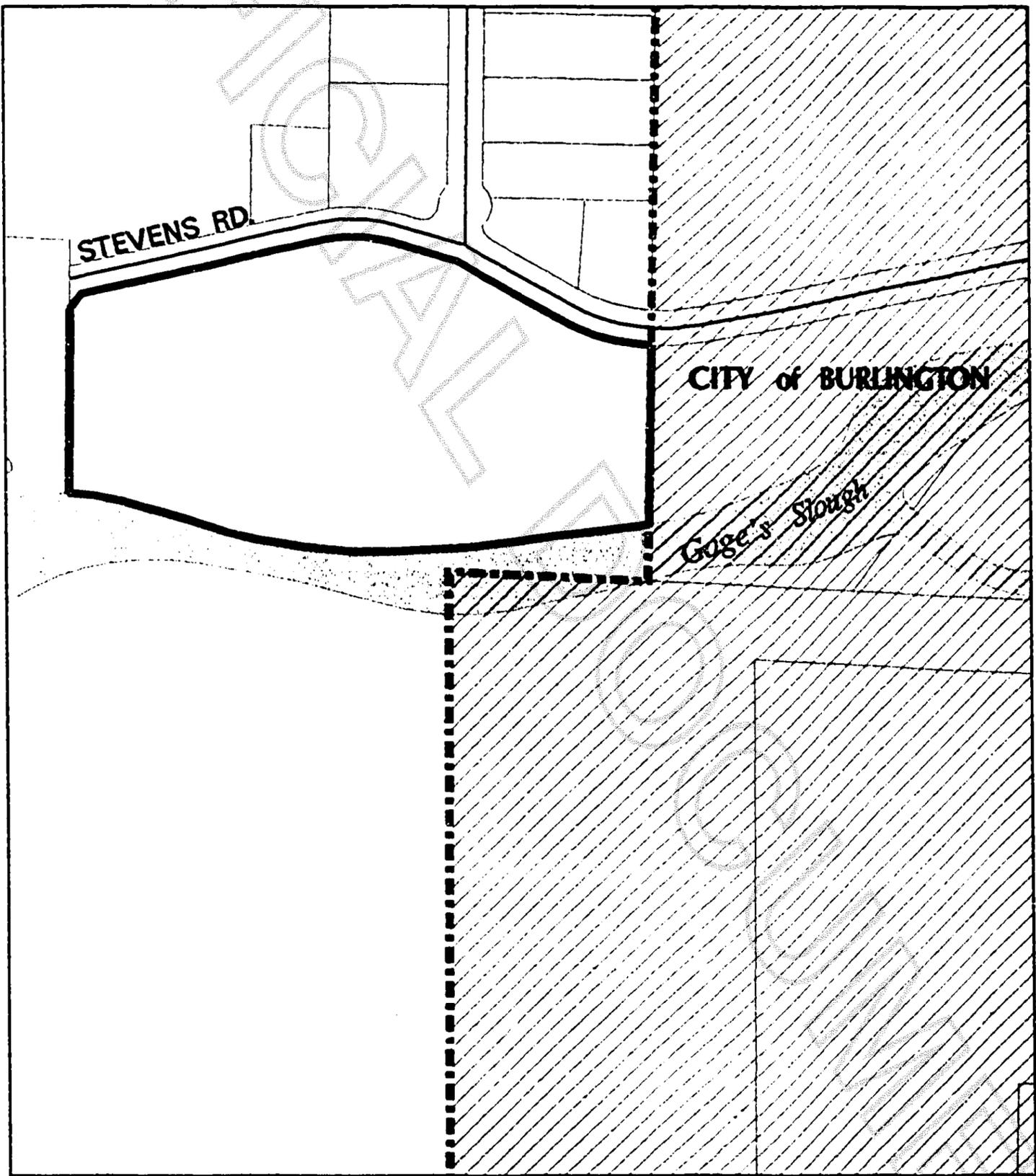
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004229



**ZOBERST PROPERTY**

December 28, 1998

Scale 1 inch = 265 feet

0 Feet      265 Feet      530 Feet



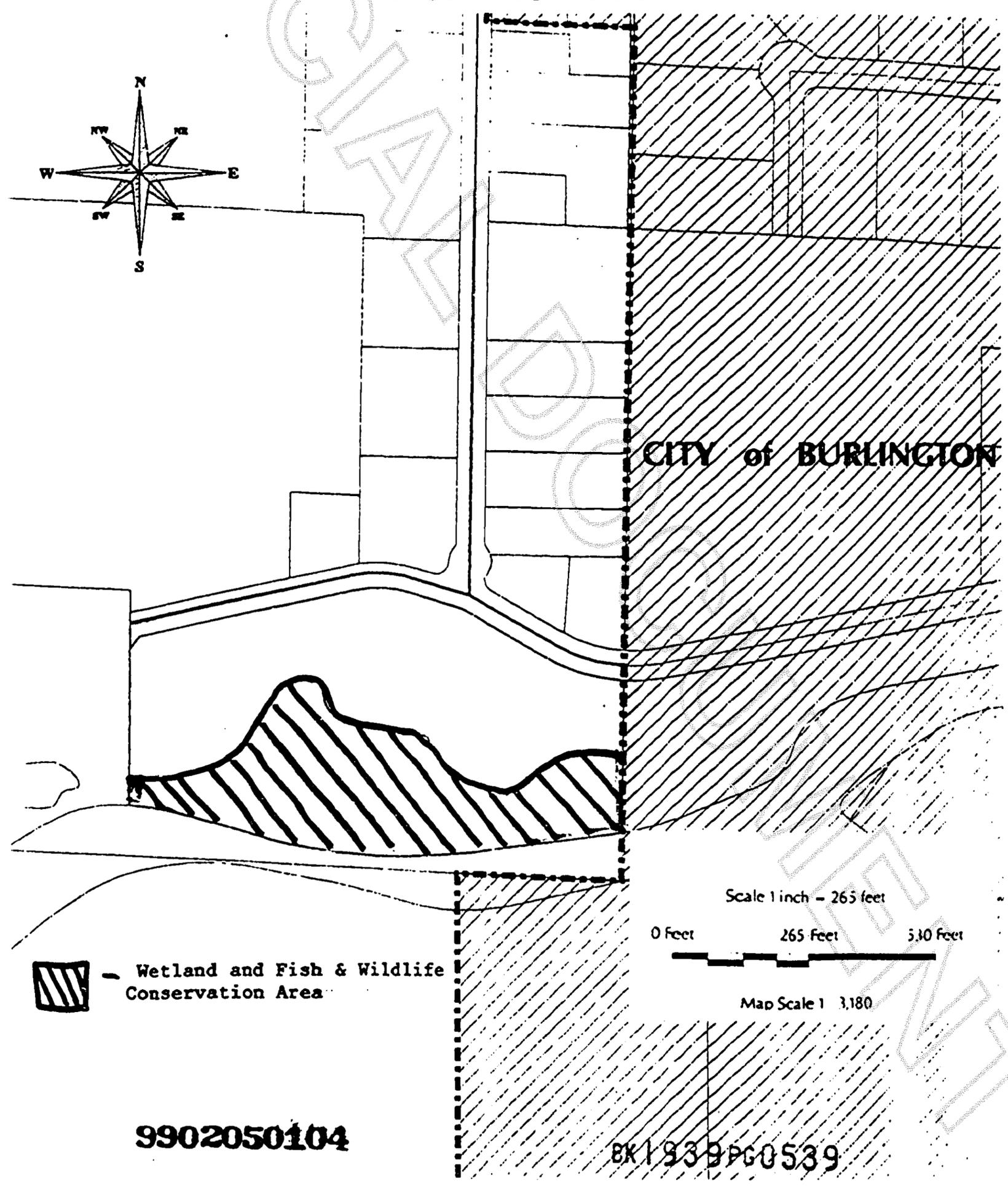
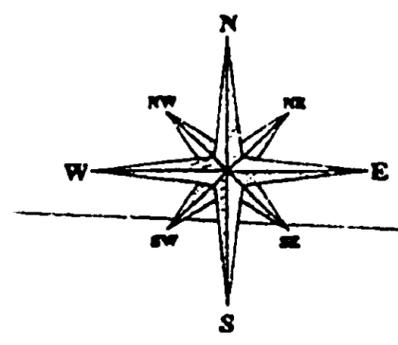
Map Scale 1 : 3,180

**9902050104**

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004729

# ZOBERST PROPERTY



CITY of BURLINGTON



Wetland and Fish & Wildlife Conservation Area

Scale 1 inch = 265 feet

0 Feet      265 Feet      530 Feet

Map Scale 1 3,180

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ZOBERST PAYMENT SCHEDULE

004229

PRINCIPAL \$55,161.84  
 PAYMENT \$749.50  
 INTEREST 6.00%

	MONTHLY PAYMENT	INTEREST	PRINCIPAL	BALANCE
Begin Date JAN 15, 1999				\$55,161.84
PAYMENT 1	\$749.50	\$275.81	\$473.69	\$54,688.15
PAYMENT 2	\$749.50	\$273.44	\$476.06	\$54,212.09
PAYMENT 3	\$749.50	\$271.06	\$478.44	\$53,733.65
PAYMENT 4	\$749.50	\$268.67	\$480.83	\$53,252.82
PAYMENT 5	\$749.50	\$266.26	\$483.24	\$52,769.58
PAYMENT 6	\$749.50	\$263.85	\$485.65	\$52,283.93
PAYMENT 7	\$749.50	\$261.42	\$488.08	\$51,795.85
PAYMENT 8	\$749.50	\$258.98	\$490.52	\$51,305.33
PAYMENT 9	\$749.50	\$256.53	\$492.97	\$50,812.36
PAYMENT 10	\$749.50	\$254.06	\$495.44	\$50,316.92
PAYMENT 11	\$749.50	\$251.58	\$497.92	\$49,819.00
PAYMENT 12	\$749.50	\$249.10	\$500.40	\$49,318.60
Annual subtotal	\$8,994.00	\$3,150.76	\$5,843.24	
PAYMENT 13	\$749.50	\$246.59	\$502.91	\$48,815.69
PAYMENT 14	\$749.50	\$244.08	\$505.42	\$48,310.27
PAYMENT 15	\$749.50	\$241.55	\$507.95	\$47,802.32
PAYMENT 16	\$749.50	\$239.01	\$510.49	\$47,291.83
PAYMENT 17	\$749.50	\$236.46	\$513.04	\$46,778.79
PAYMENT 18	\$749.50	\$233.89	\$515.61	\$46,263.19
PAYMENT 19	\$749.50	\$231.32	\$518.18	\$45,745.00
PAYMENT 20	\$749.50	\$228.73	\$520.77	\$45,224.23
PAYMENT 21	\$749.50	\$226.12	\$523.38	\$44,700.85
PAYMENT 22	\$749.50	\$223.50	\$526.00	\$44,174.85
PAYMENT 23	\$749.50	\$220.87	\$528.63	\$43,646.23
PAYMENT 24	\$749.50	\$218.23	\$531.27	\$43,114.96
Annual subtotal	\$8,994.00	\$2,790.36	\$6,203.64	
PAYMENT 25	\$749.50	\$215.57	\$533.93	\$42,581.03
PAYMENT 26	\$749.50	\$212.91	\$536.59	\$42,044.44
PAYMENT 27	\$749.50	\$210.22	\$539.28	\$41,505.16
PAYMENT 28	\$749.50	\$207.53	\$541.97	\$40,963.18
PAYMENT 29	\$749.50	\$204.82	\$544.68	\$40,418.50
PAYMENT 30	\$749.50	\$202.09	\$547.41	\$39,871.09
PAYMENT 31	\$749.50	\$199.36	\$550.14	\$39,320.95
PAYMENT 32	\$749.50	\$196.60	\$552.90	\$38,768.05
PAYMENT 33	\$749.50	\$193.84	\$555.66	\$38,212.39
PAYMENT 34	\$749.50	\$191.06	\$558.44	\$37,653.96
PAYMENT 35	\$749.50	\$188.27	\$561.23	\$37,092.73
PAYMENT 36	\$749.50	\$185.46	\$564.04	\$36,528.69
Annual subtotal	\$8,994.00	\$2,407.73	\$6,586.27	
PAYMENT 37	\$749.50	\$182.64	\$566.86	\$35,961.83
PAYMENT 38	\$749.50	\$179.81	\$569.69	\$35,392.14
PAYMENT 39	\$749.50	\$176.96	\$572.54	\$34,819.60
PAYMENT 40	\$749.50	\$174.10	\$575.40	\$34,244.20
PAYMENT 41	\$749.50	\$171.22	\$578.28	\$33,665.92
PAYMENT 42	\$749.50	\$168.33	\$581.17	\$33,084.75
PAYMENT 43	\$749.50	\$165.42	\$584.08	\$32,500.67
PAYMENT 44	\$749.50	\$162.50	\$587.00	\$31,913.68
PAYMENT 45	\$749.50	\$159.57	\$589.93	\$31,323.75
PAYMENT 46	\$749.50	\$156.62	\$592.88	\$30,730.87
PAYMENT 47	\$749.50	\$153.65	\$595.85	\$30,135.02
PAYMENT 48	\$749.50	\$150.68	\$598.82	\$29,536.19
Annual subtotal	\$8,994.00	\$2,001.51	\$6,992.49	

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PAYMENT	49	\$749.50	\$147.68	\$601.82	\$28,934.38
PAYMENT	50	\$749.50	\$144.67	\$604.83	\$28,329.55
PAYMENT	51	\$749.50	\$141.65	\$607.85	\$27,721.70
PAYMENT	52	\$749.50	\$138.61	\$610.89	\$27,110.80
PAYMENT	53	\$749.50	\$135.55	\$613.95	\$26,496.86
PAYMENT	54	\$749.50	\$132.48	\$617.02	\$25,879.84
PAYMENT	55	\$749.50	\$129.40	\$620.10	\$25,259.74
PAYMENT	56	\$749.50	\$126.30	\$623.20	\$24,636.54
PAYMENT	57	\$749.50	\$123.18	\$626.32	\$24,010.22
PAYMENT	58	\$749.50	\$120.05	\$629.45	\$23,380.77
PAYMENT	59	\$749.50	\$116.90	\$632.60	\$22,748.18
PAYMENT	60	\$749.50	\$113.74	\$635.76	\$22,112.42
<u>Annual subtotal</u>		<u>\$8,994.00</u>	<u>\$1,570.22</u>	<u>\$7,423.78</u>	
PAYMENT	61	\$749.50	\$110.56	\$638.94	\$21,473.48
PAYMENT	62	\$749.50	\$107.37	\$642.13	\$20,831.35
PAYMENT	63	\$749.50	\$104.16	\$645.34	\$20,186.00
PAYMENT	64	\$749.50	\$100.93	\$648.57	\$19,537.43
PAYMENT	65	\$749.50	\$97.69	\$651.81	\$18,885.62
PAYMENT	66	\$749.50	\$94.43	\$655.07	\$18,230.55
PAYMENT	67	\$749.50	\$91.15	\$658.35	\$17,572.20
PAYMENT	68	\$749.50	\$87.86	\$661.64	\$16,910.56
PAYMENT	69	\$749.50	\$84.55	\$664.95	\$16,245.62
PAYMENT	70	\$749.50	\$81.23	\$668.27	\$15,577.34
PAYMENT	71	\$749.50	\$77.89	\$671.61	\$14,905.73
PAYMENT	72	\$749.50	\$74.53	\$674.97	\$14,230.76
<u>Annual subtotal</u>		<u>\$8,994.00</u>	<u>\$1,112.34</u>	<u>\$7,881.66</u>	
PAYMENT	73	\$749.50	\$71.15	\$678.35	\$13,552.41
PAYMENT	74	\$749.50	\$67.76	\$681.74	\$12,870.68
PAYMENT	75	\$749.50	\$64.35	\$685.15	\$12,185.53
PAYMENT	76	\$749.50	\$60.93	\$688.57	\$11,496.96
PAYMENT	77	\$749.50	\$57.48	\$692.02	\$10,804.94
PAYMENT	78	\$749.50	\$54.02	\$695.48	\$10,109.47
PAYMENT	79	\$749.50	\$50.55	\$698.95	\$9,410.51
PAYMENT	80	\$749.50	\$47.05	\$702.45	\$8,708.07
PAYMENT	81	\$749.50	\$43.54	\$705.96	\$8,002.11
PAYMENT	82	\$749.50	\$40.01	\$709.49	\$7,292.62
PAYMENT	83	\$749.50	\$36.46	\$713.04	\$6,579.58
PAYMENT	84	\$749.50	\$32.90	\$716.60	\$5,862.98
<u>Annual subtotal</u>		<u>\$8,994.00</u>	<u>\$626.22</u>	<u>\$8,367.78</u>	
PAYMENT	85	\$749.50	\$29.31	\$720.19	\$5,142.79
PAYMENT	86	\$749.50	\$25.71	\$723.79	\$4,419.01
PAYMENT	87	\$749.50	\$22.10	\$727.40	\$3,691.60
PAYMENT	88	\$749.50	\$18.45	\$731.04	\$2,960.56
PAYMENT	89	\$749.50	\$14.80	\$734.70	\$2,225.86
PAYMENT	90	\$749.50	\$11.13	\$738.37	\$1,487.49
PAYMENT	91	\$749.50	\$7.44	\$742.06	\$745.43
PAYMENT	92	\$749.16	\$3.73	\$745.43	(\$0.00)
<b>TOTAL</b>		<b>\$68,953.66</b>	<b>\$13,791.82</b>	<b>\$55,161.84</b>	

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