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Skagit County Auditor

7/25/2001 Page 1 of 40 12:03:53PM

When recorded return to:

Skagit County Farmland Legacy Program
c/o Skagit County Commissioners
County Administration Building
700 South Second St. Room 202
Mount Vernon, WA 98273

P96960-E
LAND TITLE COMPANY OF SKAGIT COUNTY

GRANT DEED OF CONSERVATION EASEMENT #42064
SKAGIT COUNTY WASHINGTON
Real Estate Excise Tax

Grantor: Skagit Land Trust

Grantee: Skagit County

Legal Description

Abbreviated form: Ptns of W1/2 of the E1/2, Sec. 7, Twp 35N, R. 8E, W.M.

Additional legal at Exhibit A.

Assessor's Tax ID# and Parcel Number: P43494, P43497, P43487, P43484, P43479

JUL 25 2001

Amount Paid \$2386³⁰
Skagit Co. Treasurer
By LP Deputy

THIS GRANT DEED OF CONSERVATION EASEMENT ("Easement") is made this 26 day of June, 2001, by Skagit Land Trust, having an address at 520 South First Street, Mount Vernon, WA 98273 (hereinafter referred to as "Grantor"), in favor of Skagit County, a political subdivision of the State of Washington, having an address at Skagit County Farmland Legacy Program, c/o Skagit County Board of Commissioners, County Administration Building Room 202, 700 South Second Street, 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 map), which are attached and incorporated into this Easement by this reference. The portion of the property protected by this Easement is considered the "Protected Property" and is approximately 69 acres in size.

B. The Protected Property protected by this Easement is described in Exhibit A (legal description) and shown in Exhibit B (site map), and further described in Exhibit C, Baseline Documentation Summary, which are attached and incorporated into this Easement by this reference. C. The Protected Property provides fish and wildlife habitat and other natural values, as well as agricultural productivity, (collectively, the Conservation Values), as more particularly described in Recitals 1.A, 1.G. and Exhibits B and C below.

D. The Protected Property contains important Riparian Habitat conservation values. Riparian Habitat is the land area adjacent to aquatic systems with flowing water that contains elements of both aquatic and terrestrial ecosystems which mutually influence each other and provide habitat for fish and wildlife species. Riparian Habitat provides vital functions to aquatic and upland ecosystems, which include: among others, soil and streambank stability, moderation of stream temperature and reduction of nutrients to the aquatic system..

E. The Protected Property consists of approximately 69 acres in two parcels. Parcel one, the "Hurn Property" consists of 25 acres of pasture; over 13 acres of riparian vegetation, wetland, alder forest, shrub habitat, and aquatic habitat (a portion of House Slough), and 10 acres of old pasture that will be restored to riparian vegetation. House Slough provides important rearing habitat for juvenile Coho salmon, as well as a host of other native species dependent on high quality freshwater habitat. The pasture provides important winter and spring forage for the Nooksack elk herd. A separate parcel, "Trillium Property," is approximately 21 acres in size and contains 15 acres of mature second growth conifer forest of mostly 60-80 year old Douglas fir and western red cedar; the remainder of this parcel is young forest plantation. It is the watershed for House Slough and protects the water supply to the slough.

F. The Protected Property is adjacent to land owned by Washington State Departments of Fish and Wildlife and Natural Resources, and Skagit County. The Protected Property, in combination with the adjacent public lands, creates a 150-acre contiguous block of mixed habitat including 90 acres of riparian woodland and three-quarters of a mile of Skagit River shoreline.

G. The Protected Property is within the watershed of the Skagit River and within the national Wild and Scenic River system. Most of it is also within the floodplain of the Skagit River. It includes important undisturbed riparian habitat essential to numerous native fish and



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wildlife species. The Washington State legislature in RCW 90.70.001 has recognized "that Puget Sound and related inland marine waterways of Washington State represent a unique and unparalleled resource. A rich and varied range of marine organisms composing an interdependent, sensitive communal ecosystem reside in these sheltered waters." The legislature has further recognized that residents of this region enjoy a way of life centered around the waters of Puget Sound which depends upon a clean and healthy marine resource. Restrictions on the uses of the Protected Property would benefit the Skagit River and Puget Sound because of the protection of the riparian vegetation along the river and decreased erosion and siltation due to the exclusion of logging and limitations on development.

H. The specific Conservation Values and characteristics of the Protected Property are further documented in an inventory of relevant features of the Protected Property, dated June 26, 2001, on file at the offices of Grantee and incorporated into this Easement by this reference "Baseline Documentation", and a summary is attached as Exhibit C" The Baseline Documentation, which has been reviewed and accepted by Grantor and Grantee, 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 approximate location of all buildings, the existing developed area, and other key features and improvements on the site at the time of this grant, including the Riparian Habitat Conservation Zone. Grantor and Grantee further agree that, within twelve (12) months of the execution hereof, a collection of additional Baseline Documentation may be compiled by Grantee, and incorporated herein by this reference. Failure to timely compile the additional Baseline Documentation shall not affect the enforceability or validity of any other provision hereof.

I. The Protected Property would also be desirable property for residential development, timber harvest, incompatible agricultural uses because of its location and orientation. In the absence of this Grant Deed of Conservation Easement, the Protected Property could be altered in a manner that would destroy or diminish the riparian, forestland and natural character of the Protected Property and its ecological value.

J. Grantor intends that the Conservation Values of the Protected Property be preserved and maintained by the continuation of land uses on the Protected Property that do not significantly impair or interfere with the Conservation Values. These current uses include: mowing and hay harvest in existing designated hay fields, construction of wildlife viewing structures, management and restoration of forest land and riparian areas for fish, wildlife, native flora, open space and scenic quality; and are consistent with this Easement.

K. The Protected Property is of significant natural value to the Grantor, the people of Skagit County and the people of the State of Washington (collectively "Conservation



Values"). The Conservation Values include protection of fish and wildlife habitat, riparian habitat and agricultural productivity.

L. A goal of Skagit County as stated in the County-wide Regional Comprehensive Plan Policies, adopted in July 2000 is to: "Encourage the Retention of Open Space and Development of Recreational Opportunities, Conserve Fish and Wildlife Habitat, Increase Access to Natural Resource Lands and Water, and Develop Parks".

M. The declared policies of Skagit County in the Critical Areas Ordinance of Skagit County (Title 14 Chapter 14.24.20), as adopted July 24, 2000, or as amended, is "to assist in orderly development, conserve the value of property, safeguard the public welfare, and provide for the protection of the quality and quantity of groundwater used for public water supplies (RCW 36.70A.070(1)) and provide protection for the following critical areas... Wetlands, Frequently Flooded Areas... and Fish and Wildlife Habitat Conservation Areas... It is the purpose of this Chapter to protect, restore where practical, and enhance fish and wildlife populations and their associated habitats."

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

O. 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 \$156,000 and other good and valuable consideration 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

A. The purpose of this Easement is to assure that the Protected Property will be retained predominantly in its natural condition, and to preserve, protect, restore and enhance riparian and wetland areas, natural forest, and wildlife habitat on the Protected Property.

B. Further, the purpose of this Easement is to prevent any use of, or activity on, the Protected Property that will impair or interfere with the Conservation Values of the Protected Property. For the purpose of this easement, maintenance of existing agricultural uses may continue so long as they support the habitat and resource needs of fish and wildlife.

C. 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 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 with the Grantor 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.

Scientific/Education Use: For the benefit of the public, to allow persons or groups to enter upon the Protected Property for educational, scientific and biological purposes to observe and study on the Protected Property; provided that any such persons or groups must first make written request for approval to enter upon the Protected Property from the Grantor who shall not unreasonably withhold permission therefore. Such person shall agree to provide the Grantor with copies of any data or reports resulting from such research, and agree to abide by any restrictions on access set forth by the Grantor.

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 or undertake 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 of Rights to State. Grantor hereby acknowledges its authorization and approval of the assignment of certain rights in this Easement to the State of Washington through the Salmon Recovery Funding Board administered by the Interagency Committee for Outdoor Recreation, which rights shall be co-held by Grantee and the State of Washington through the Salmon Recovery Funding Board administered by the Interagency Committee for Outdoor Recreation. This Assignment of Rights shall be substantially in the form attached to this Easement as Exhibit E.

F. Assignment. To assign, convey or otherwise transfer Grantee's interest in the Protected Property in accordance with Section XV.

V. PROHIBITED USES AND ACTIVITIES

Any use of, or activity on the Protected Property inconsistent with the purposes 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 the foregoing, the following uses of, or activities, though not an exhaustive list, are inconsistent with the purposes of this easement and shall be prohibited, except as expressly provided in Section VI. below, or as described in the Stewardship Plan (Exhibit E), or as deemed necessary by Grantor and Grantee to preserve or protect the Conservation Values of the Protected Property:

A. 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 adjacent property.

B. Construction. The placement or construction of any buildings, structures, or other improvements of any kind, (including, without limitation, residential structures, docks, fences, roads, and utilities), except as permitted in Sections VI. below.

C. Alteration of Wetlands or Water Courses. The alteration or manipulation of wetlands or watercourses, including draining, filling, dredging, ditching, or diking, water impoundments



or surface or sub-surface water withdrawal, except as necessary to protect public health or safety or property on the Protected Property or adjacent property, or to improve and maintain fish and wildlife habitat in accordance with the Conservation Area Management Plan, or as permitted in Sections VI. below.

D. Alteration of Land. The alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat, or sod, except for the study of any incidental archeological findings, or as is necessary for uses permitted in Sections VI. below.

E. Removal of Trees and Other Vegetation. The pruning, topping, cutting down, burning or other destruction or removal of live and dead trees and other vegetation, except for educational or research activities consistent with the purpose of the Easement, or to improve and maintain fish and wildlife habitat in accordance with the Conservation Area Management Plan, or as permitted in Sections VI. below, or to remove plants that are listed as noxious plants by the State of Washington Department of Agriculture. This prohibition includes harvesting or cutting trees for lumber, firewood or Christmas trees, as well as cutting or digging of trees, shrubs or herbs for commercial sale.

F. Recreation. Though not an exhaustive list, the following forms of recreation are prohibited on the Protected Property: golf courses; commercial use of motorized or mechanized recreational vehicles such as motorboats, jet-skis, motorcycles, snowmobiles and dune buggies; commercial overnight camping; athletic fields; and use of the property for any commercial public recreation. Other low impact recreational uses may be permitted insofar as they are consistent with the Purpose and terms of this Easement.

G. 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.

H. 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.

I. 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.

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



- K. Mining.** The exploration for, or development and extraction of minerals and hydrocarbons on or below the surface, include sand and gravel extraction.
- L. Wildlife Disruption.** The intentional disruption of native wildlife breeding and nesting activities.
- M. Riparian Habitat Conservation Zone.** The Riparian Habitat Conservation Zone (RHCZ) shall be considered the area within 180 feet of the ordinary high water mark of House Slough (as shown in Exhibit C). Within this area the following shall be prohibited:
1. **Crop Cultivation.** The cultivation of any crops including timber products, nursery stock, fruit and vegetables, row crops, and livestock feed, except as deemed necessary by Grantor and Grantee to preserve, protect, or enhance the Conservation Values of the Protected Property.
 2. **Application of Agricultural Chemicals.** The application of agricultural chemicals including fertilizers, animal wastes and pesticides, except as deemed necessary by Grantor and Grantee to preserve, protect, or enhance the Conservation Values of the Protected Property.
 3. **Construction of Additional Roads and Trails.** The construction of roads, trails or paths for any use, except as permitted in Sections VI. below.
 4. **Domestic Animals.** The keeping of domestic animals, including grazing livestock.
 5. **Introduced Vegetation.** The introduction of nonnative invasive plant species.

VI. PERMITTED USES AND ACTIVITIES

Grantor reserves for itself and its heirs, successors, and assigns, any use of, or activity on, the Protected Property, which is not inconsistent with the purposes of the Easement and which is not prohibited herein. Without limiting the generality of the foregoing, Grantor specifically reserves for itself and its heirs, successors, and assigns, the following uses and activities, but is not obligated to undertake any of these:

- A. Planting of Vegetation.** The planting of native species of trees and shrubs for the purposes of protecting, restoring or enhancing the conservation values of the Protected Property.
- B. Hazardous Tree Removal.** The trimming or removal of trees or other vegetation that pose a threat to property, public health and safety of neighbors, the general public or users of the



Protected Property. A certified arborist shall arbitrate any disagreement regarding the identification of hazardous or diseased trees.

C. Forest Management. Forest management practices designed to enhance or restore native wildlife habitat including thinning or topping of existing trees, provided that any cut trees are not removed from the Protected Property. Such activities shall be carried out in compliance with federal, state and local regulations, and shall be mutually agreed upon by Grantor and grantee. Prior to such forest management activities, Grantor shall submit to Grantee, for review and approval, an updated Stewardship Plan or Forest Management plan that describes the habitat enhancement objectives of the plan and the specific practices proposed.

D. Pasture. Consists of approximately 25 acres of open field in two areas as described in Exhibit C. Grantor may maintain, harvest, store and sell hay from the existing fields. Activities may include cutting, mowing, harrowing, fertilizing and grass seeding, provided such activities are conducted in a manner and intensity that does not adversely impact the conservation values of the Protected Property.

E. Livestock. The keeping of domestic livestock is allowed provided animals are restricted to the existing fields as shown in Exhibit B and as described in C, and provided such activities are conducted in a manner and intensity that does not adversely impact the conservation values of the Protected Property.

F. Erosion Control and Surface Water Management. Installation of erosion control measures, surface water retention facilities, and other structures, intended to protect, or restore or enhance the conservation values of the Protected Property provided that any such installation shall be subject to the prior written approval of the Grantee.

G. Recreational. To conduct low impact recreational activities (such as hiking or bird watching) on the Protected Property provided that such activities are conducted in a manner and intensity that does not adversely impact plant, fish and wildlife habitat and trails on the Protected Property. No motorized recreational vehicles or other activities that could disrupt the wildlife or destroy essential habitat are allowed.

H. Trails and Access Roads. To maintain, renovate, expand, or replace existing walking trails and access roads, or to construct new trails on the Protected Property, provided that walking trails shall not exceed three feet in width. The design, location and construction materials of any new construction or renovation, expansion, or replacement of trails shall be subject to the prior written approval of the Grantee and construction and maintenance of the trails may not adversely impact the Conservation Values of the Protected Property.

I. Fences. To construct, repair or replace fences to preserve or protect the Conservation Values of the Protected Property. Fences shall allow the safe passage of wildlife.



J. Signage. To place signs on the Protected Property to advertise for sale or rent, or to declare that a Conservation Easement has been placed on the property, or to post notice of a wildlife area, or to state the ownership or management entity, or to state the conditions of access to the Protected Property such as no hunting or trespassing, or to educate the public about the conservation values on the Protected property, provided that such signs are built and located to protect and preserve the Conservation Values of the Protected Property.

K. Noncommercial fishing. Noncommercial fishing is allowed on Protected Property, provided that access for the purpose of fishing is at the discretion of Grantor and/or assigns. Such activities shall be in compliance with federal and state regulations.

L. Wildlife Viewing Area and Structures. Construction of wildlife viewing area and structures, and parking for such, on the Protected Property, provided such structures are built and located to protect and preserve the Conservation Values of the Protected Property, and shall be subject to the prior written approval of the Grantee.

M. Emergencies. To undertake other activities necessary to protect public health or safety on the Protected Property or adjacent property, or which are actively required by and subject to compulsion of any governmental agency with authority to require such activity, provided that any such activity shall be conducted in a manner that protects the Conservation Values of the Protected Property to the greatest practicable extent, taking into account all the surrounding circumstances.

VII. STEWARDSHIP

Grantor agrees to protect the conservation values on the Protected Property. No activities violating sound agricultural soil and water conservation management practices shall be permitted. No activities which would damage the Conservation Values of the Riparian Area Conservation Zone areas shown in Exhibit B shall be permitted

To further this Purpose, Grantee has, by mutual agreement with Grantor, developed a Conservation Area Management Plan which is attached as Exhibit E and incorporated into this Easement by this reference. The Plan describes activities to monitor, protect, maintain and restore or enhance the original and natural conditions of the Protected Property. This Plan may be revised periodically, by mutual consent of the Grantor and Grantee, to reflect changed circumstances or management techniques or practices; provided that any revision shall not diminish the effectiveness of the Easement in protecting the Conservation Values of the Easement.



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) forest management activities (Section V.C.);
- b) installation of erosion control measures and surface water retention facilities (Section VI.D.);
- c) construction, renovation or replacement of trails (Section VI.F.);
- d) construction of wildlife viewing area and structures (section VI.L.)

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: Skagit Land Trust
P.O. Box 1017
Mount Vernon, WA 98284

To Grantee: Skagit County Farmland Legacy Program
c/o Skagit County Commissioners

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County Administration Building
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Mount Vernon, WA 98273

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

IX. DISPUTE RESOLUTION

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 a violation of the terms of this Easement which threatens or has caused immediate, irreparable damage to the Protected property or its Conservation Values; andb. 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, 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.

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, it obtained a Real Estate Transaction Screening Assessment ("Assessment") which was completed in March of 1999 by Rone Brewer of Sound Environmental, a copy of which has been received and reviewed by Grantee.

1. The Assessment contains all of Grantor's knowledge as to whether the Protected Property is in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Protected Property and its use;

2. To the Grantor's knowledge, during its ownership of the Protected Property, 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;



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3. Grantor has not 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. To the best of Grantor's knowledge, 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, except to the extent caused by the negligent or intentional act 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.

XIV. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that 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 by mutual agreement of Grantor and Grantee, and Grantee may assign its rights and obligations under this Easement only to an agency or organization that is a qualified organization at the time of transfer under section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under RCW 64.04.130 or RCW 84.34.250 (or any successor provision(s) then applicable). 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.

Grantor hereby acknowledges its authorization and approval of the assignment of certain rights in this Easement to the State of Washington through the Interagency Committee for Outdoor Recreation, which rights shall be co-held by the grantee and the State of Washington through the Interagency Committee for Outdoor Recreation. This Assignment of Rights shall be substantially in the form attached to this Easement as Exhibit E.



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 Maps**
- C. Baseline Documentation Summary**
- D. Assignment of Rights**

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

Dated: June 29, 2001
WASHINGTON

GRANTEE - SKAGIT COUNTY,

Ted W. Anderson
Ted W. Anderson, Chairman

Don Munks
Donald Munks, Commissioner

Kenneth A. Dahlstedt
Kenneth Dahlstedt, Commissioner

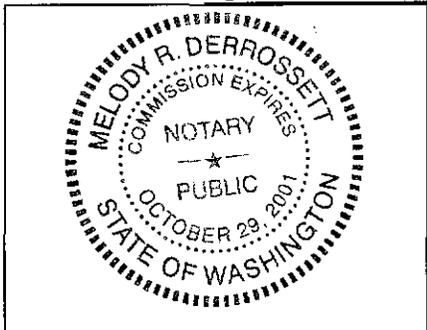
Approved as to Form

John B. Moffat

John B. Moffat
Chief Civil Deputy
STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that Ted W. Anderson, Donald Munks* 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 Commissioners of Skagit County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 6-29-01 *and Kenneth Dahlstedt



(Use this space for notarial stamp/seal)

Melody R. Derrossett
Notary Public
Print Name Melody R. Derrossett
My commission expires 10-29-2001



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EXHIBIT A

Legal Description

UNOFFICIAL DOCUMENT



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PARCEL "A":

That portion of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ and of Government Lot 10, Section 7, Township 35 North, Range 8 East, W.M., lying Southerly of State Highway No. 17A.

ALSO, that portion of Government Lot 8, Section 7, Township 35 North, Range 8 East, W.M., lying North of the following described line:

Beginning at the center of said Section 7, which point is marked by a concrete monument with a State of Washington, Department of Game brass cap imbedded;
thence South $0^{\circ}33'06''$ West, 475 feet to the true point of beginning of said line;
thence South $89^{\circ}45'10''$ East, 755.64 feet, more or less, to the Easterly line of said Government Lot 8, which line is the meander line,

EXCEPT that portion, if any, lying within the present and former bed of the Skagit River.

Situate in the County of Skagit, State of Washington.

PARCEL "B":

That portion of Lot 11 of that certain Survey entitled, "ALTERRA PARK DIV. II", designated as Skagit County Short Plat No. 517-80, Revised April 2, 1981, approved March 26, 1981, recorded April 9, 1981, in Volume 5 of Short Plats, pages 49, 50 and 51, under Auditor's File No. 8104090023, records of Skagit County, Washington; being a Survey in Sections 7 and 8, Township 35 North, Range 8 East, W.M., described as follows:

Beginning at the Northwest corner of said Lot 11;
thence South $0^{\circ}11'48''$ West along the West line of said Lot 11, a distance of 136.28 feet to the true point of beginning of this description;
thence South $34^{\circ}09'33''$ West along said West line, a distance of 300 feet;
thence South $4^{\circ}54'51''$ West along said West line, a distance of 605.7 feet, more or less, to an existing fence running in an Easterly-Westerly direction;

- continued -



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DESCRIPTION CONTINUED:

PARCEL "B" continued:

thence South 89°42'58" East along said fence a distance of 217.4 feet, more or less, to its intersection with an existing fence running in a Northerly-Southerly direction;
thence North 0°11'48"" East along said fence, a distance of 852.8 feet, more or less, to the true point of beginning,

EXCEPT that portion thereof, if any, lying within the boundaries of Government Lots 8 and 10 of said Section 7, Township 35 North, Range 8 East, W.M.,

AND ALSO EXCEPT mineral rights as reserved in Deed from the State of Washington, recorded July 3, 1980, under Auditor's File No. 8007030123.

Situate in the County of Skagit, State of Washington.

PARCEL "C":

That portion of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$, lying North of the Great Northern Railway Company right of way, in Section 7, Township 35 North, Range 8 East, W.M.,

EXCEPT that portion lying within the right of way of Challenger Road.

Situate in the County of Skagit, State of Washington.



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EXHIBIT B

Site Map(s)

UNOFFICIAL DOCUMENT

B-1

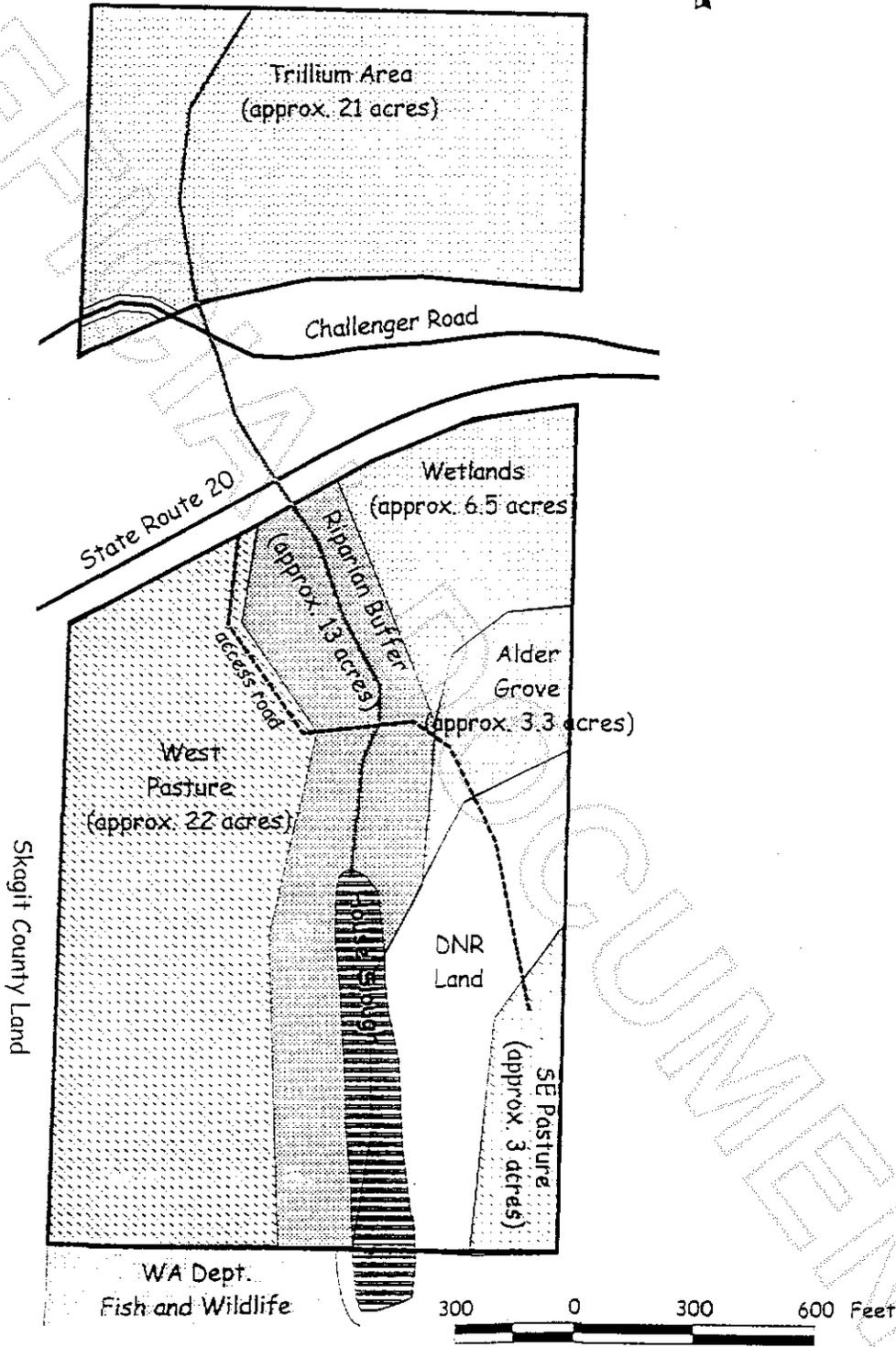


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EXHIBIT 8
Skagit Land Trust
Hurn - Trillium Conservation Area
Section 7, Township 35 North, Range 8 East

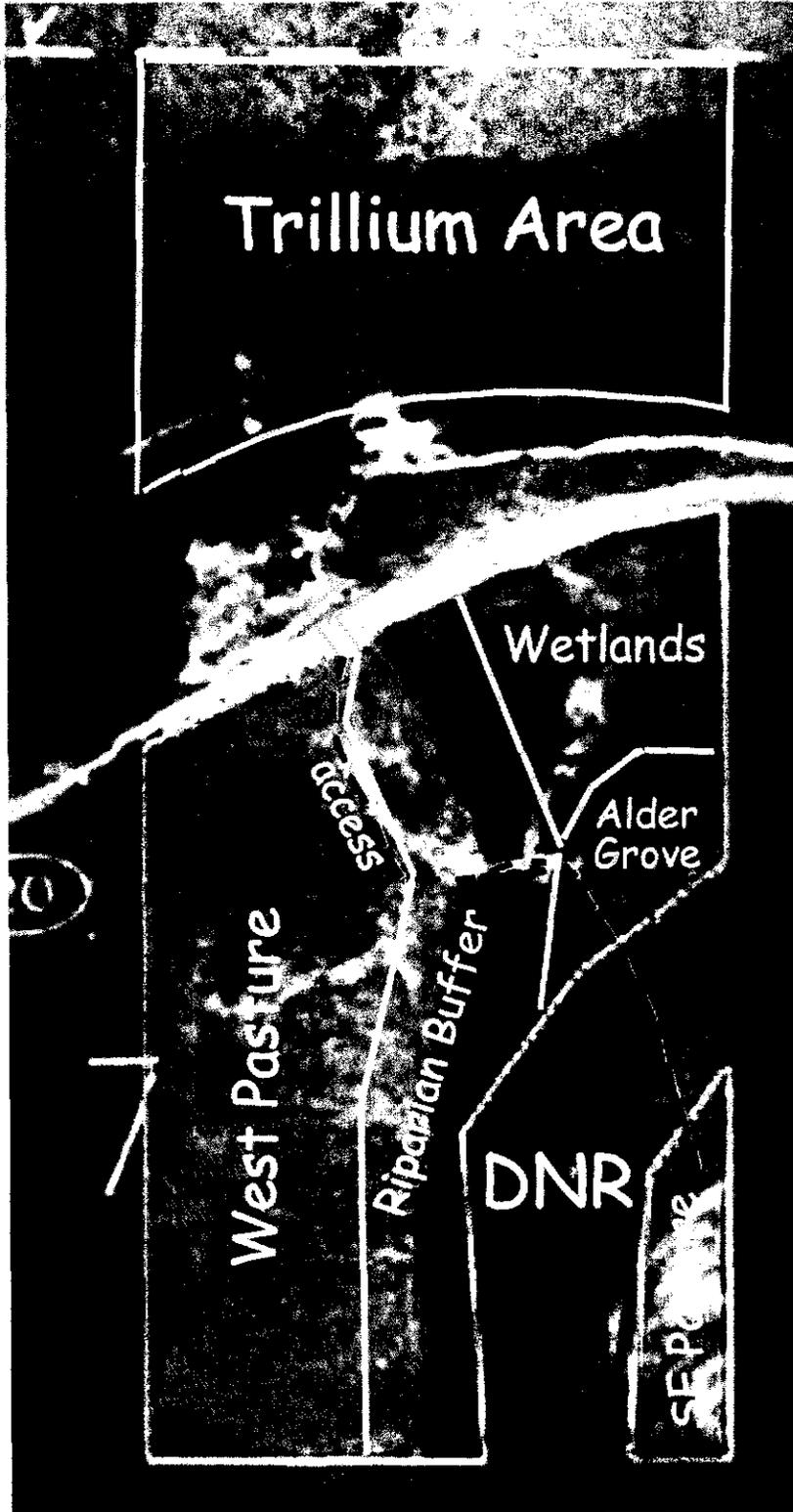


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Hurn-Trillium Conservation Area
Management Plan Site Map



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EXHIBIT C
Baseline Documentation Summary

UNOFFICIAL DOCUMENT

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Hurn-Trillium Baseline Documentation Summary

I. Site Characterization:

A. Overview:

The Hurn-Trillium Conservation Area is located three miles west of the town of Concrete along State Route 20. It consists of approximately 69 acres total, including 25 acres of pasture; 13 acres of riparian vegetation, wetland, forest, shrub habitat, and aquatic habitat (a portion of House Slough), and planned riparian buffer; and a separate 21 -acre parcel (this acreage is based on aerial photo and plat map interpretation; Skagit County Assessor records show 13.5 acres.) (Trillium) containing 15 acres of mature second growth conifer forest of mostly 60-80 year old Douglas fir and western red cedar. The remainder of this parcel is young forest plantation. The Hurn Property portion of the Conservation Area is within the national Wild and Scenic River system and the Skagit River floodplain.

There is vehicular access to the Conservation Area from State Route 20. With the exception of fencing around the Hurn property and a fence along House Creek, there are no structures in the Conservation Area. There is some farm machinery stored on the pasture within 100-feet of SR-20. There is a recently established unimproved farm road that provides access to the Southeast Pasture. The road begins in the northeast corner of the property and crosses the riparian area via an existing culvert and continues through the red alder grove.

The adjacent land to the west is owned by Skagit County Parks Department and may be purchased by the Forest Service as part of the Skagit Scenic River corridor. There are no facilities on the County land at this time; however, public access is allowed. Parking on the County land is very limited and the amount of public use is unknown. The old Skagit River bed, including portions of House Slough, is owned by the State of Washington and managed by the Department of Natural Resources. The State of Washington also owns the land west of House Slough adjoining the southern boundary of the Hurn property, which is managed by the Department of Fish and Wildlife. Private land borders the remainder of the Conservation Area. Two homes are located on private land between Hurn Field and the Trillium property north of State Route 20. The Hurn Property, in combination with the adjacent public lands, creates a 150 acre contiguous block of mixed habitat in the Skagit River floodplain including 90 acres of riparian woodland and three-quarters of a mile of Skagit River shoreline. The Skagit River has historically migrated through much of this floodplain area.

B. Acquisition History:



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The Hurn property was purchased by the Trust from the Hurn family in March 1999. The property is divided into four tax parcels, three of which are zoned agriculture. The remaining parcel is zoned residential with the potential for one building site.

The Trillium Corporation donated parcel of approximately 21 acres to the Trust in June 1999. It contains approximately 15 acres of mature second growth forest and approximately 6 acres of clearcut forest. It is zoned Secondary Forest by the County.

At the time of statehood, the Skagit River bisected the property. Title to the bottom of the Skagit River was granted to the State by the Federal government at statehood. A flood event has moved the river to its present location south of the field; however, the State of Washington retains ownership of the historic river channel. The exact location of the historic river channel is unknown.

C. Habitat:

There are five habitat types within the Conservation Area: mowed field, riparian vegetation, wetland, freshwater slough, and forest.

The two hayfields are utilized by a portion of the Nooksack elk herd for winter forage (More than 30 animals used the field throughout the winter of 1998-99). During the remainder of the year, the herd moves to higher country. This source of winter forage is important to the herd's wellbeing because it provides a crucial source of winter forage in an undisturbed setting. The elk feed in the fields and rest under the thermal cover of the adjacent county and state owned forest. It appears that they come down from the north, using the forested hillside across State Route 20 from Hurn Field and enter the floodplain in the adjacent forest.

The mowed field also provides foraging habitat for a variety of insect eating animals such as swallows, swifts, flycatchers, and several species of bats. Rodents living in the open field, as well as the small birds, feed on insects; attract birds of prey such as northern harriers, owls, hawks, and accipiters. Coyote and deer also forage in the field.

The Southeast field has not been mowed as often and consequently support more woody vegetation along its margins. The recently reconstructed access road will improve the ability of farm machinery to access the field.

Both fields are mowed several times annually and the hay removed from the site for livestock feed.

Some populations of invasive non-native plant species such as - reed canary grass, and Himalayan blackberries are found on the property. A small patch of purple loosestrife has also been found by the landowner, which they plan to control.



The riparian shrub habitat is inhabited by a great variety of songbirds, small mammals, and amphibians. It also provides cover for elk and deer. The willow and alder are an important buffer between State Route 20 and House Slough. The shrub habitat captures sediment and provides a visual barrier between the field and the open water.

House Slough is fed by a creek entering the Hurn field from the Trillium property, a creek northeast of the property and ground water; however, floodwaters of the Skagit River also backup into the slough. The slough is accessible to fish from the Skagit River and provides important rearing habitat for juvenile Coho salmon and trout. It is also important for amphibian reproduction. It has natural complexity and diversity that provides excellent habitat for numerous species such as songbirds. Beaver dams and sign are common in and around the Slough.

The forested tract on the Trillium property provides forest habitat for wildlife, shade and soil erosion protection for House Creek that feeds House Slough, a movement corridor for the elk herd, and a pleasant setting for people using Skagit County's Cascade Trail through the property. The forest stand includes mature second growth red cedar and Douglas fir timber of merchantable value (approximately \$94,000 at the time of the easement) and a smaller area recently harvested and reforested with Douglas fir seedlings approximately 15 years ago. The alder grove is comprised nearly entirely of less than 20-year old red alder in an overstocked condition. No understory conifers were observed.



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EXHIBIT D.
Assignment of Rights

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Exhibit D

ASSIGNMENT OF RIGHTS

This ASSIGNMENT OF RIGHTS (this "Assignment") is executed as of the ____ day of _____, 2001, by SKAGIT COUNTY ("Assignor"), to and in favor of THE STATE OF WASHINGTON ("State"), through the Salmon Recovery Funding Board administered by the Interagency Committee for Outdoor Recreation ("IAC").

RECITALS

A. Assignor has entered into a conservation easement ("Conservation Easement") with certain property owners (collectively "Owner") in the House Slough area of the Skagit watershed (W.R.I.A. number #2 under WAC 173-500-040) in Skagit County, Washington. The names and addresses of the Owner and the recording number of the Conservation Easement are set forth in Exhibit 1 attached hereto and incorporated herein. The legal description of the Property subject to the Conservation Easement are set forth in Exhibit 2 attached hereto and incorporated herein.

B. The conservation purpose of the Conservation Easement is described in the Conservation Easement. That purpose is also described in the Project Agreement entered into between the recipient of IAC funds ("Sponsor") and the State through the IAC entitled _____ Project Number _____ dated _____, 19__ and the application and supporting materials which are on file with the State in connection with the Project Agreement, which Project Agreement is incorporated herein by this reference. That purpose includes protection, restoration, and enhancement of riparian habitat, as defined in the Conservation Easement.

C. Owner has authorized Assignor to assign to the State certain rights for access to and stewardship of the property covered by the Conservation Easement. Assignment of such rights is a necessary condition to receipt of grant funding under the Project Agreement and the policies of the Riparian Habitat Program (RHP) administered by the IAC under SSB6063, Ch. 235, § 329(6) (1997). Such rights are valuable to the State in connection with ensuring protection of riparian habitat under the terms of the Conservation Easement, and are particularly valuable because Assignor and Owner have agreed that Assignor will retain all responsibility for obligations of the Assignor under the Conservation Easement.

D. These recitals are incorporated herein by this reference.

Now, therefore, Assignor and the State agree as follows:

AGREEMENT

1. **Assignment.** For and in consideration of monies coming in whole or in part from the Habitat Conservation Account of the General Fund of the State of Washington and in fulfillment of terms of the Project Agreement identified herein, Assignor does hereby assign, transfer, set over, convey and deliver to the State individually, and as the representative of all the people of the State, the following rights (collectively referred to as "Rights") under the Conservation Easement the recording number of which is listed in Exhibit 1 attached hereto and incorporated herein by this reference:

a. **Access.** To enter the Riparian Habitat Conservation Zone, as defined in the Conservation Easement, through the Property subject to the Conservation Easement at a reasonable time and upon prior arrangement with Assignor and Owner, in order to monitor and evaluate performance, compliance, and/or quality assurance under the Project Agreement.

b. **Injunction and Restoration.** In the event of the failure of Assignor to undertake such injunction and restoration, to enjoin any use of, or activity in, the Riparian Habitat Conservation Zone



which is inconsistent with the terms of the Conservation Easement, including trespass by members of the public, and undertake or cause to be undertaken the restoration of such areas or features of the Riparian Habitat Conservation Zone as may be damaged by uses or activities contrary to the provisions of the Conservation Easement.

c. Enforcement. In the event of the failure of Assignor to undertake such enforcement, to enforce the terms of the Conservation Easement, and thereby assume the Assignor's remedies under the Conservation Easement.

d. Amendments. To review and approve any proposed amendments to the Conservation Easement. Review and approval by IAC's Director will be for compliance with the terms of the Project Agreement.

e. Termination For Reasons of Impracticability. To review and approve any proposed agreements to terminate the Conservation Easement, or release a portion of the Riparian Habitat Conservation Zone from the terms of the Conservation Easement, before expiration of the term of the Conservation Easement for the reason that circumstances have rendered the conservation purpose of the Conservation Easement impractical to achieve.

f. Stewardship Plans. To review any Stewardship Plans, including riparian habitat restoration and enhancement plans, as defined in the Conservation Easement. Review by IAC's Director will be for compliance with the terms of the Project Agreement.

These Rights shall be held in common with Assignor or Assignor's successors and assigns.

2. **State's Exercise of Rights.** The State hereby represents and warrants that its exercise of rights under this Assignment will be consistent with the conservation purpose defined in the Conservation Easement and the Project Agreement.

3. **Representations and Warranties of Assignor.** Assignor hereby represents and warrants to the State that:

a. Owner, identified in Exhibit 1 attached hereto and incorporated herein, has authorized and approved this Assignment.

b. Assignor shall enforce the terms of the Conservation Easement as provided in the Conservation Easement.

c. Assignor shall comply with, and IAC shall not be responsible for determining compliance with, all applicable federal, state, and local laws, regulations, and policies in its administration of the Conservation Easement or the undertaking of any of its rights under the Conservation Easement.

d. Neither Assignor nor Owner has any claims or causes of action, at law or in equity, with respect to any Conservation Easement as of the date provided above.

4. **Obligations.** It is expressly understood and agreed that, by the acceptance of this Assignment, the State has not assumed, and shall not become obligated to keep, fulfill, observe, perform or discharge, any duty or obligation of Assignor under the Conservation Easement.

5. **Indemnity.** Assignor shall defend, protect and hold harmless the State, IAC, or any employees thereof, from and against any and all costs, claims, fees and expenses arising out of or in any way relating to Assignor's representations and warranties under this Assignment, Assignor's obligations under the Conservation Easement, or the acts by or omissions of Assignor or Owner.

6. **Replacement Property.** The Conservation Easement may be extinguished in whole or in part before expiration of its term (if any) under certain circumstances identified in the Conservation



Easement. Assignor may be entitled to compensation in such event. Assignor shall use all such proceeds for acquisition, restoration and/or enhancement of substantially equivalent property or property interests within the same watershed, and if no feasible opportunity exists in the same watershed, within another watershed; provided, however, that any such project must be identified in an eligible watershed plan or accomplish an objective cited in such a plan. Assignor hereby agrees to consult with, and receive the approval of, the IAC in the selection of any replacement property and to assign to the State the same or substantially equivalent rights for access to and stewardship of the replacement property as provided for in this Assignment.

7. **Restriction on Assignment.** Assignor shall not assign the Conservation Easement, or the performance of any obligations to the State under the Conservation Easement, without the express written consent of the IAC's Director.

8. **Assignment Term.** The term of this Assignment shall be the same as the term of the Conservation Easement, and shall expire upon the expiration date of the Conservation Easement (if any).

9. **Disputes.** Any disputes between Assignor and the State under this Assignment shall be governed by the terms of the Project Agreement.

10. **Governing Law/Venue.** This Assignment shall be governed by the laws of the State of Washington. In the event of a lawsuit between Assignor and the State involving this Assignment, venue shall be proper only in Thurston County. Assignor by executing this Assignment, acknowledges the jurisdiction of the courts of the State of Washington in this matter.

11. **Severability.** If any provision of this Assignment or any provision of any document incorporated by reference herein shall be held invalid, such invalidity shall not affect the other provisions of this Assignment which can be given effect without the invalid provision and to this end the provisions of this Assignment are declared to be severable.

ATTACHMENTS:

- Exhibit 1 - Owner and Conservation Easement Recording Number
- Exhibit 2- Legal Description of Property Subject to Conservation Easement



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, Skagit County Auditor

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ASSIGNOR

Dated:

ASSIGNOR - SKAGIT COUNTY

Ted W. Anderson, Chairman

Donald Munks, Commissioner

Kennith Dahlstedt, Commissioner

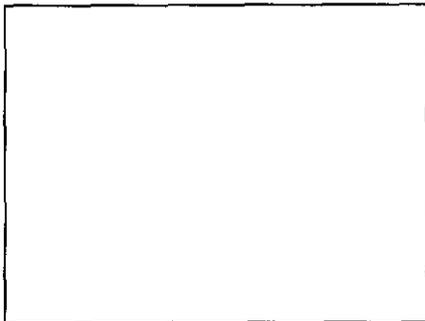
Approved as to Form

John R. Moffat
Chief Civil Deputy

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that _____ 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 _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____



200107250098
, Skagit County Auditor

005366

STATE:

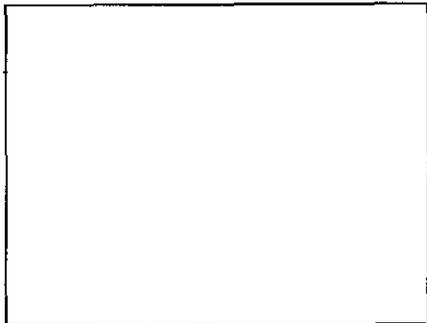
THE STATE OF WASHINGTON, through its Salmon Recovery Funding Board, Interagency Committee
for Outdoor Recreation

By _____
Its Director

STATE OF WASHINGTON)
) ss:
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ 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
_____ of
_____ to be the free and voluntary
act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____



200107250098
, Skagit County Auditor
7/25/2001 Page 38 of 40 12:03:53PM

005366

Exhibit 1

Skagit Land Trust, having an address at 520 South First Street,
Mount Vernon, Skagit County, Washington 98273

Conservation Easement Recording Number: _____



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Exhibit 2

Legal Description of Protected Property

UNOFFICIAL DOCUMENT



200107250098

, Skagit County Auditor