

DOCUMENT PROPERTY OF:
DUCKS UNLIMITED, INC.
ONE WATERFOWL WAY
MEMPHIS, TN 38120



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Tax # P48451;P48452;P48453;P48462;P48464;P48525;P48527
DEED OF CONSERVATION EASEMENT

LAND TITLE COMPANY OF SKAGIT COUNTY
104173-E

THIS GRANT DEED OF CONSERVATION EASEMENT (this "Easement") is made as of this 20th day of December, 2002, by MARK F. WHEELER, and CYNTHIA B. JOHNSON, Husband and Wife, of 4851 NE 39th Street, Seattle, Washington 98105, (together with their heirs, personal representatives, successors, and assigns hereinafter collectively referred to as "Grantor",) and WETLANDS AMERICA TRUST, INC., a non-profit corporation organized under the laws of the District of Columbia, One Waterfowl Way, Memphis, Tennessee 38120, "Grantee";

WHEREAS, Grantor is the owner in fee simple of certain real property ("Protected Property") Skagit County, Washington, which is 65.25 acres, more or less, and more particularly described in Exhibit "A" attached hereto and made a part hereof; and

Gov Lots 4 and 5 in 28-36-3

WHEREAS, the Protected Property consists of natural areas of significant ecological, scenic, and aesthetic value, and has substantial value and potential as open space, and a natural, ecological, and scientific resource; and,

WHEREAS, The Grantee is a non-profit, 501 (c) (3) "qualified conservation organization" as defined in Section 170 (h) of the Internal Revenue Code of 1986, as amended and the regulations thereunder ("the Code") whose purpose is to preserve, enhance, and conserve natural areas for aesthetic, scientific, charitable and educational purposes; and

WHEREAS, the Uniform Conservation Easement Act of 1981 as well as the Washington Code of Laws, as amended, permit the creation of conservation easements for the purposes of,

among other things, retaining or protecting natural, scenic, historical or open space values of real property, assuring its availability for agricultural, forest, recreational, educational or open space use, protecting natural features and resources, maintaining or enhancing air and water quality or preserving the natural, historical, architectural, archeological or cultural aspects of real property;

WHEREAS, Grantor and Grantee recognize the natural, scenic, aesthetic, and special character and opportunity for enhancement of the Protected Property, and have the common purpose of the conservation and protection in perpetuity of the Protected Property as “a relatively natural habitat of fish, wildlife or plants or similar ecosystem” as that phrase is used in 26 USC 170 (h) (4) (A) (ii) and Section 170 (h) (4) (A) (ii) of the Internal Revenue Code of 1986, as amended (“the Code”), and in regulations promulgated thereunder by placing voluntary restrictions upon the use of the Protected Property and by providing for the transfer from the Grantor to the Grantee of affirmative rights for the protection of the Protected Property; and so as to qualify as a contribution of a “qualified conservation contribution” as that term is defined under Section 170 (h) (2) (C) of the Code; and

WHEREAS, the specific conservation values of the Protected Property on the date of this Easement are documented in the Baseline Documentation Report (“Report”), dated of even date herewith, a copy of which is on file with both the Grantor and the Grantee. Both parties agree the Report provides an accurate representation of the Protected Property and the condition of the same as of the date of this Easement as required by Treasury Reg. 1.170 A-14 (g) (5), and is intended to serve as an objective informational baseline for monitoring compliance with the terms of this Easement.

WHEREAS, Grantor represents that the Protected Property is free and clear of any liens or encumbrances and that as owner of the Protected Property, Grantor has access thereto, the right to convey to the Grantee, and the right to preserve and protect the conservation values of the Protected Property in perpetuity; and



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NOW, THEREFORE, the Grantor, in consideration of the foregoing recitations and of the mutual covenants, terms, conditions and restrictions hereinunder set forth and as an absolute and unconditional gift, does hereby freely give, grant, bargain, donate and convey unto the Grantee, and its successors and assigns, the Easement over the Protected Property subject to the covenants, conditions and restrictions hereinafter set forth which will run with the land and burden the Protected Property in perpetuity.

Section I

- 1.1 Purpose. It is the purpose of this Easement to assure that the Protected Property will be retained in perpetuity predominantly in its natural, scenic, and open condition, as evidenced by the Report, for conservation purposes and to prevent any use of the Protected Property which will impair significantly or interfere with the conservation values of the Protected Property, its wildlife habitat, natural resources or associated ecosystem. ("Purpose")

Section II

GRANTEE'S AFFIRMATIVE RIGHTS

- 2.1 Right of Entry and Access & Enforcement. The Grantee shall have the right with prior notice to Grantor to enter the Protected Property for the purposes of inspection, preservation, and protection of the conservation values of the Protected Property and to prevent any activity on or use of Protected Property that is inconsistent with the Purpose of this easement. The right of entry and access herein described does not extend to the public or any person or entity other than the Grantee, its agents, employees, successors, and/or assigns.
- 2.2 Management Plan. The Grantee at its discretion to develop a management plan for rare or endangered plant or animal species in the event that they are found to exist on the Protected Property and to implement said plan with the permission of the Grantor which

permission shall not be unreasonably withheld or delayed. Costs for such a plan shall be paid by Grantee.

Section III

GRANTOR'S RESERVED RIGHTS

Notwithstanding any provision to the contrary contained in this Easement, the Grantor reserves for himself, his heirs, successors and assigns the "Reserved Rights" set forth in this Section III. The exercise of all Reserved Rights will be in full accordance with all applicable local, state and federal laws and regulations, as well as in accordance with the Purpose of this Easement. Grantor hereby agrees to give written notice to the Grantee prior to exercising the following Reserved Rights:

- a) improvements as reserved hereinafter in paragraph 3.1 and 3.2;
- b) construction of any New Impoundments, as defined hereinafter in Paragraph 3.6;
- c) management of vegetation pursuant to 3.8;
- d) extraction of oil, gas, or minerals pursuant to paragraph 3.12

3.1 Structures. The right to maintain and replace the existing and additional permitted structures at the same location with structures of like size and function.

3.2 Roads. The right to maintain and replace existing roads at the same location with roads of like size and composition. The right to widen existing roads for utility rights-of-way. The right to use roads for all activities permitted under this Easement. Maintenance of roads shall be limited to normal practices for non-paved roads, such as the removal of dead vegetation, necessary pruning or removal of hazardous trees and plants, application of permeable materials necessary to correct erosion, placement of culverts, water control structures, and bridges, and maintenance of roadside ditches.

3.3 Hunting and Fishing. The right of Grantor, Grantor's family members and Grantor's guests to hunt and fish on the Protected Property.



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- 3.4 Leases. The right to lease, or grant other less-than-fee interests in all or a portion of the Protected Property for any use permitted to the Grantor under this Easement, provided that such lease or other interest is consistent with and subject to the terms of this Easement, and is not of a nature or terms as to constitute an impermissible subdivision of the Protected Property.
- 3.5 Wells and Septic Systems. The right to maintain existing wells on the Protected Property and place and maintain wells on the Protected Property. The right to construct new wells for agricultural use and/or other uses consistent with the Purpose of this Easement.
- 3.6 Water Resources. The right to develop and maintain those water resources and wetlands on the Protected Property necessary to wildlife, private recreation, farming, and other agricultural uses permitted by this Easement, so long as such development and maintenance does not impair any of the water resources or wetlands. Permitted activities shall include, but are not limited to, the right to develop, restore and enhance water resources for fisheries and wildlife improvement; and the right to undertake bank stabilization measures and stream and watercourse restoration.
- The right to repair, replace or maintain existing and/or historic wetland impoundments and water control structures. The right to construct new impoundments and water control structures. The impoundments are recognized by both Grantor and Grantee as beneficial to waterfowl, and other wetland dependent plants and animals. The impoundments shall be managed primarily for waterfowl. To the greatest extent feasible and practical, management of the impoundments will be carried out in a manner that is conducive to providing feeding and nesting habitat for waterfowl, shorebirds, wading birds and birds of prey. Within the existing impoundments internal ditching and diking will be allowed.
- 3.7 Clearing and Food Plots. The right to maintain and cultivate existing agricultural fields as shown in the Report as Agricultural Reserve Land. The right to maintain and cultivate the wildlife food plots existing on the Protected Property at the time of the execution of this Easement. The right to create new wildlife food plots (a) on open lands and spaces existing at the time of the execution of this Easement, (b) in openings resulting from activities permitted under this Easement in accordance with permitted Timber Section 3.12, and (c) along existing roads on the Protected Property. The Grantors may use native



and non-native plant species traditionally and commonly used as of or prior to the date of this Easement in the food plots.

- 3.8 Vegetation Maintenance. Subject to other provisions of this Easement, the right to manage vegetation and grasses through a written haying and/or grazing Management Plan, that shall be approved by the Grantee. Such approval shall not be unreasonably withheld. The right to selectively cut, burn, mow and clear trees and vegetation in existing fields for waterfowl habitat enhancement and protection. The right to undertake activities for fire protection, road maintenance, tick, fire ant, and mosquito control. All such activities shall be undertaken in order to protect the conservation values of the Protected Property as shown in the report.
- 3.9 Agriculture. The right to engage in not-for-profit agricultural, farming, and aquacultural activities provided the same is conducted in a manner consistent with the Purpose of this Easement and undertaken in the same location as of the date of this Easement. The right to locate, construct, and maintain watering facilities and ponds. Permitted agricultural activity must be consistent with the maintenance and enhancement of soil composition, structure and productivity, and may not result in pollution or degradation of any waters or have a detrimental effect upon fish or wildlife, their natural habitat, or upon the natural ecosystem and its process.
- The right to replace, repair, and maintain any and all facilities on the Protected Property used or useful to commercial agriculture operations, including agricultural products processing on the surrounding properties. This right shall include but not be limited to dikes, ditches, pumps, electrical transmission facilities and drain tiles which serve the Protected Property and/or surrounding properties. This right shall include the right of access to these facilities by any and all third parties with interests in the facilities, including but not limited to the diking district, drainage district, electrical service purveyor, and owner(s) of benefited properties.
- 3.10 Agrichemicals. To use agrichemicals, as permitted under Federal, State, and/or local law, including, but not limited to, fertilizers, biocides, herbicides and rodenticides, but only in those amounts and with that frequency of application constituting the minimum necessary to accomplish reasonable agricultural and residential activities permitted by the terms of



this Easement. Notwithstanding the foregoing sentence, no use of agrichemicals will be made if such use would result in (a) contamination of any source of water, (b) any significant impairment of any natural ecosystem or process on the Protected Property.

- 3.11 Exotics. To allow only those non-native plant or animal species traditionally and prevalently used, in accordance with Federal, State, and/or local law, and those which do not have a negative affect to the conservation values and Purpose of this Easement.
- 3.12 Minerals. All minerals, gas, oil and other hydrocarbon rights are reserved by Grantor and not conveyed by this Easement; provided that Grantor reserves to himself, his heirs and assigns and to all predecessors in title, their heirs, grantees, personal representatives and assigns who have reserved or conveyed title to such mineral, gas, oil and other hydrocarbon rights, all interest in minerals, gas, oil and other hydrocarbon products found or to be found in, on or under the Protected Property provided that Grantor shall cause any persons exploring for, developing or extracting minerals, gas, oil or related hydrocarbon products on or under the Protected Property shall insure the following:
- A. No water shall be utilized on the Protected Property which would cause interference with surface water rights of Grantor, the wells and streams which exist on the Protected Property, or other sources of water on the Protected Property, utilized by Grantor for agricultural or residential purposes.
 - B. Whenever possible, access to exploration and/or extraction sites of minerals, gas, oil, or related hydrocarbons products shall be by existing roads.
 - C. Any new road shall conform to the standards of this Easement.
 - D. Any surface disturbance resulting from permitted subsurface exploration or extraction activities shall be restored upon completion to a condition similar or equivalent to its state prior to the disturbance, by restoring soils and replanting suitable domestic vegetation.
 - E. Any wastewater resulting from such activities which is of materially poorer quality than the existing water supplies shall be treated so that its quality is substantially equivalent to existing water supplies, or removed from the Protected Property.



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- F. There shall be no exploration or extraction of minerals, gas, oil or related hydrocarbons by any surface mining method, within the meaning of Section 170 (h) (5) (B) of the Code and the regulations promulgated thereunder, nor shall there be any exploration or extraction by any surface mining method if such activity would, in the sole judgment of the Grantee, result in the destruction of a significant natural, scenic wildlife habitat, or other conservation attribute of the Protected Property.
- G. The Grantor shall provide Grantee with advance written notice at least sixty (60) days prior to engaging in any exploration for or extraction of (or leasing, selling, or otherwise disposing of the rights thereto) minerals, gas, oil and other hydrocarbon products from beneath the Protected Property whether or not such exploration or extraction (or leasing, selling, or otherwise disposing of the rights thereto) could result in any surface disturbance.
- H. There may not be at any time any extraction or removal of minerals, gas, oil and other hydrocarbon products by any surface strip mining method.
- 3.13 Utilities. The right to maintain and replace all utility systems. At Grantor's election, to bury or otherwise camouflage all utility systems or extensions of the existing utility systems.
- 3.14 Signs. The right to construct, place and maintain directional signs, signs indicating and identifying occupancy and signs advertising the sale of the Protected Property.
- 3.15 Consistent Uses. The Grantor has the right to engage in any and all acts or uses not expressly prohibited herein that are not inconsistent with the Purpose of this Easement.

Section IV

RESTRICTIONS AND COVENANTS

In furtherance of the foregoing rights, the Grantor states and agrees that the following uses and practices, though not an exhaustive recital of the inconsistent uses and practices, are hereby deemed to be inconsistent with the Purpose of this Easement, and shall be prohibited. **All prohibitions in Section IV are subject to the rights reserved to the Grantor in Section III, and such general prohibitions in Section IV shall not be interpreted to supercede the**



specific rights consistent with the Purpose of this Easement reserved to the Grantor in Section III.

- 4.1 Uses. There shall be no commercial or industrial activity undertaken or allowed on the Protected Property; nor shall any rights of passage across or upon the Protected Property be allowed or granted to third parties.
- 4.2 Subdivision. The Protected Property may not be subdivided. Although the legal description of the contiguous parcels of the Protected Property may describe more than one tract of land which could be sold separately, the Grantor covenants and agrees that all of the Protected Property shall be held by the same owner(s) as a single undivided tract of land. The Grantor shall not indirectly subdivide the Protected Property through the creation of a horizontal property regime or other means.
- 4.3 Structures. There shall be no construction or placing of buildings, docks, bridges, or other structures including, but not limited to, transmission or receiving towers, energy facilities, or water tanks on the Protected Property. There will be no house trailers, temporary shelter or vehicles of any sort providing temporary living quarters on the Protected Property. This restriction is not intended to apply to temporary parking of recreational vehicles so long as no commercial use is made of such recreational vehicles.
- 4.4 Roads. There shall be no building of any new roads.
- 4.5 Leases. There shall be no leasing of all or any part of the Protected Property for a use inconsistent with the Purpose of this Easement.
- 4.6 Topography and Minerals. There will be no filling, excavating, dredging, mining, drilling or use of any surface mining method; no removal of topsoil, sand, gravel, rock, peat, minerals, gas, oil, or other hydrocarbon products or other materials; and no change in the topography of the land in any manner.
- 4.7 Exotics. There shall be no introduction of non-native plant or animal species.
- 4.8 Agriculture. There shall be no commercial agricultural activities including, but not limited to: farming, horticulture, including nursery, aquaculture, animal husbandry, and cattle and livestock activities.



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- 4.9 Water Resources. There shall be no dredging, construction of pond or dikes, nor any manipulation of natural water courses. There will be no change, disturbance, alteration or impairment of any watercourse or wetlands within and upon the Protected Property.
- 4.10 Hunting and Fishing. There shall be no commercial hunting or fishing on the Protected Property.
- 4.11 Refuse and USTs. No portion of the Protected Property shall be used for sanitary landfill, for the installation of any underground storage tanks, for the installation and use of an incinerator for the destruction of waste material or for the dumping, storing, disposal or treatment of refuse, trash, garbage, rubbish, junk, ashes, or hazardous substances or waste.
- 4.12 Pollutants. There shall be no release, generation, treatment, use, disposal, abandonment, and movement in, on, from or across the Protected Property of a substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation or requirement as hazardous, toxic, polluting or otherwise contaminating to the air, water, soil, or in any way harmful or threatening to human health or the environment.
- 4.13 Signs. There shall be no construction or placing of signs for commercial purposes, including but not limited to, billboards, or any advertising materials of any sort on the Protected Property.
- 4.14 Vegetation and Timber. The Grantor shall not cut, remove, or otherwise destroy grasses or any other vegetation on the Protected Property. There shall be no cutting or harvesting of timber on or from the Protected Property.
- 4.15 Use Inconsistent with Purpose. The parties recognize that this Easement cannot address every circumstance that may arise in the future. The parties agree upon the Purpose of this Easement. The Protected Property will be retained in perpetuity predominantly in its natural, scenic and open condition, for conservation purposes and to prevent any use of the Protected Property which will impair significantly or interfere with the conservation values of the Protected Property, its wildlife habitat, natural resources or associated ecosystems. Any use or activity not reserved in Section III which is inconsistent with the Purpose of this Easement or which materially threatens the Purpose of this Easement is prohibited. In the event that there is a dispute between the Grantor and the Grantee as to



whether or not an activity or use is prohibited under this Section 4.15, the parties will arbitrate the matter in accordance with the provisions of Section 5.17 of this Easement.

SECTION V

GENERAL COVENANTS

- 5.1 Baseline Documentation Report. The parties intend that the Report shall be used by Grantee to monitor Grantor's future uses of the Protected Property and practices thereon. The parties further agree that, in the event a controversy arises with respect to the condition of the Protected Property or a particular resource thereof, the parties shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy. Grantor and Grantee recognize that changes in agricultural technologies, including accepted farm and forest management practices may result in an evolution of agricultural activities on the Protected Property. Such evolution shall be permitted so long as it is consistent with the Purpose of this Easement, and does not in any way materially impair or interfere with the conservation values of the Protected Property.
- 5.2 Cost of Ownership. Grantor, his heirs, successors, and assigns, shall 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. This includes the payment of any and all real estate taxes or assessments levied on the Protected Property by authorized local, county, state or federal officials. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Easement. Nothing in this Easement shall be construed as giving rise, 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 operator with respect to the Protected Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and the corresponding state statutes.



5.3 Indemnification. Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee as well as Ducks Unlimited, Inc., its members, directors, officers, employees, agents, and contractors and their heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, 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; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitations, CERCLA and the corresponding state statutes by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Protected Property; and (3) the presence or release in, on, from, or about the Protected Property, at any time, or any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties.

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

5.5 Subsequent Conveyances. The Grantor shall include reference to all terms and conditions of this Easement in any subsequent deed, or legal instrument by which the Grantor divests itself of either the fee simple in all or part of the Protected Property, or its possessory interest in any portion of the Protected Property. The Grantor shall notify the Grantee in writing of any changes in ownership, transfer of title or other conveyance of the Protected Property.



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5.6 Subsequent Liens. No provision of this Easement should be construed as impairing the ability of the Grantor to use this Protected Property as collateral for a subsequent monetary loan or other form of borrowing.

5.7 Notices/Approvals. Any notices or approval requests required in this Easement will be sent by registered or certified mail, or commercial overnight carrier, to the following addresses below or to such address as may be hereafter specified by notice in writing.

GRANTEE:

Wetlands America Trust, Inc.
One Waterfowl Way
Memphis, TN 38120-2351

With copy to:

Ducks Unlimited, Inc.
Vancouver Field Office
1101 Southeast Tech Center Dr.
Vancouver, WA 98663

GRANTOR:

Mark Wheeler
4851 NE 39th Street
Seattle, WA 98105

5.8 Severability. In the event any provision of this Easement is determined by the appropriate court to be void and unenforceable, all remaining terms will remain valid and binding.

5.9 Perpetuity. The burdens of this Easement will run with the Protected Property and will be enforceable against the Grantor and all future owners in perpetuity during the period of such ownership.

5.10 Assignment by Grantee. The benefits of this Easement shall be in gross and shall be assignable by the Grantee, only upon the following conditions: (i) the Grantee must require that the Purpose of this Easement continues to be carried out, and (ii) the assignee, at the time of the assignment, must qualify under Section 170 (h) of the Code, and applicable regulations thereunder, and under Washington law and must be eligible to receive this Easement directly. In the event Grantee ceases to exist or exists but no longer as a tax exempt, non-profit organization, qualified under Section 501 (c) (3) of the Code, this Easement shall automatically become vested in a tax exempt, non-profit organization qualified under Section 501 (c) (3) and 170 (h) (3) of the Code and which has experience in holding similar conservation easements as designated by the then owner of the Protected Property.



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In any assignment of this Easement by the Grantee, the Grantee agrees to give preference to Ducks Unlimited, Inc., a not-for-profit corporation organized under the laws of the District of Columbia, One Waterfowl Way, Memphis, Tennessee 38120, if Ducks Unlimited, Inc., at the time of the assignment, is still a "qualified organization" as described in the above paragraph.

5.11 Judicial Extinguishment. If a subsequent, unexpected change in the conditions of the Protected Property or the surrounding property, make impossible or impractical the continued use of the Protected Property for conservation purposes, the Easement shall be extinguished by judicial proceeding and all the Grantee's proceeds, if any, from a subsequent sale or exchange of the Protected Property shall be used for conservation purposes.

5.12 Compensation. This section is applicable only to the determination of compensation payable to Grantee in the event of a termination or extinguishment of this Easement pursuant to Section 5.11. The value of the Protected Property at the date of execution of this Easement, shall be the value established by the Grantor's qualified appraisal taken for that purpose (pursuant to Treasury regulation Section 1.170A-14 or its successor regulation) for federal income tax purposes ("Appraisal").

The parties agree that the compensation payable to Grantee in the event of termination or extinguishment of this Easement pursuant to Section 5.11, shall be the amount determined by dividing the fair market value of the Easement shown in the Appraisal by the fair market value of the Protected Property, prior to this Easement, shown in the Appraisal. That figure is then multiplied by the fair market value of the Protected Property at the time of termination or extinguishment, minus improvements made after the date of the Appraisal.

5.13 Eminent Domain/Condemnation. Whenever all or part of the Protected Property is taken in exercise of eminent domain by public, corporate or other authority so as to abrogate the restrictions imposed by this Easement, Grantor shall take appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. The net proceeds (including, for purposes of this section, proceeds from any lawful sale of the Protected Property unencumbered by the restrictions



hereunder) will be distributed between the Grantor and the Grantee in shares in proportion to the fair market value of their interests in the Protected Property on the date of the execution of this Easement. The Grantee shall use its share of the net proceeds for conservation purposes.

5.14 Amendments. This Easement shall not be amended, modified, or terminated except in writing in a document signed by Grantor and Grantee. No amendment shall be allowed that would adversely affect the qualifications of this Easement as a charitable gift or the status of the Grantee under any applicable laws, including Section 170 (h) of the Code or the laws of the State where the Protected Property is located. Any such amendment shall be consistent with the Purpose of this Easement, shall not affect its perpetual duration, and shall not permit any impairment of the significant conservation values of the Protected Property. Any such amendment shall be recorded in the County land records where the Protected Property is located. Nothing in this Section shall require Grantor or Grantee to agree to any amendment.

5.15 Notice of Breach and Enforcement. In the event there is a breach of the terms of this Easement by the Grantor or by a third party acting at the direction of, with the permission of, or under control of the Grantor, the Grantee shall have the right to notify the Grantor in writing of such a breach, and the right to enforce by proceedings at law or in equity the covenants hereinafter set forth, including, but not limited to the right to enjoin any activity on, or use of, the Protected Property which is inconsistent with this Easement, and to require the restoration of the Protected Property as evidenced by the Report. Upon such notice, the Grantor shall have thirty (30) days to undertake actions, including restoration of the Protected Property, that are reasonably calculated to correct the conditions constituting such breach. If the Grantor fails to take such corrective action, the Grantee may, at its discretion, undertake such actions, including appropriate legal proceedings, as are reasonably necessary to effect such corrections by Grantor. The cost of such corrections, including Grantee's expenses, court costs and legal fees will be paid by the Grantor, provided it is determined that the Grantor or a third party acting at the direction of, with the permission of or under the control of the Grantor, is responsible for the breach. Nothing herein shall be construed to entitle the Grantee to institute any



proceedings against the Grantor for any changes to the Protected Property due to causes beyond the Grantor's control such as changes occurring due to natural causes or unauthorized wrongful acts of third parties.

- 5.16 Waiver of Rights. Grantee, its successors or assigns, does not waive or forfeit the right to take action as may be necessary to insure compliance with this Easement by any prior failure to act. The rights hereby granted will be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for enforcement of this Easement.
- 5.17 Arbitration. In the event of a disagreement between the Grantor and the Grantee as to whether or not a use or activity violates Section 4.15 (hereinafter "Arbitration Issue"), the Arbitration Issue will be resolved by a committee made up of three (3) individuals who have reasonable experience with conservation easements and land use of similar properties. One individual will be selected by Grantor, one individual will be selected by the Grantee and the other individual will be selected by the two individuals selected by Grantor and Grantee. The three (3) individuals (hereinafter "Committee") will determine by majority vote the Arbitration Issue. The Committee shall follow the procedural rules established by the American Arbitration Association. The decision of the Committee will be binding on the Grantor and the Grantee.
- 5.18 Warranty of Title. Grantor hereby warrants and represents that the Grantor is seized of the Protected Property in fee simple and has the right to grant and convey this Easement, that the Protected Property is free and clear of any and all encumbrances, except easements of record and prescriptive easements, purchase money mortgages, and mineral right reservations, if any, and that the Grantee and its successors and assigns shall have the use of and enjoy all of the benefits derived from and arising out of this Easement.
- 5.19 Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of Washington.
- 5.20 Filing. The Grantor shall file this instrument and any amendment in the official land records as soon as is practicable after all signatures have been obtained and the Grantee may re-file it and any amendments to the Easement at any time as may be required to preserve its rights in this Easement.



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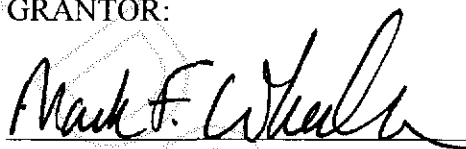
5.21 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supercedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 5.14.

TO HAVE AND TO HOLD this Easement together with all and singular the appurtenances and privileges belonging or in any way pertaining thereto, either in law or equity, either in possession or expectancy, for the proper use and benefit of the Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor has set his hand and seal on this 3rd day of January, 2003 and the Grantee has caused this Easement to be signed in its name by its Chief Operating Officer, and its corporate seal to be affixed hereto.

SIGNED, SEALED AND

DELIVERED IN THE PRESENCE OF: GRANTOR:



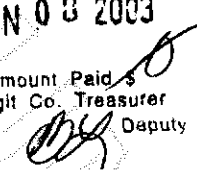
Mark F. Wheeler

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

STATE OF WASHINGTON)

COUNTY OF KING)

JAN 03 2003

Amount Paid \$
Skagit Co. Treasurer
By  Deputy

I, a Notary Public, do hereby certify that MARK F. WHEELER personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

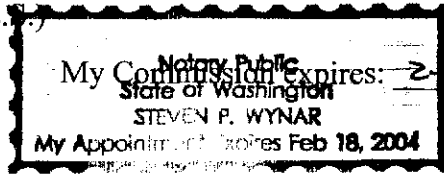
WITNESS my hand and seal this 3 day of January, 2003.



200301080076
Skagit County Auditor

Steven P. Wynar (L.S.)

Notary Public for WASHINGTON



SIGNED, SEALED AND

DELIVERED IN THE PRESENCE OF: GRANTOR:

Cynthia B. Johnson
Cynthia B. Johnson

STATE OF WASHINGTON)

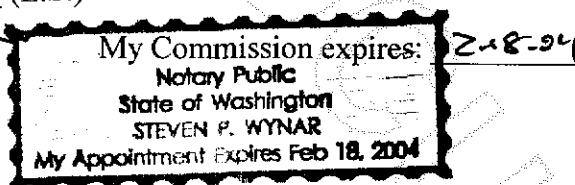
COUNTY OF King)

I, a Notary Public, do hereby certify that Cynthia B. Johnson personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this 3 day of January, 2003.

Steven P. Wynar (L.S.)

Notary Public for WASHINGTON



200301080076
Skagit County Auditor

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Continuation of Signature Page For
Deed of Conservation Easement

GRANTEE:
WETLANDS AMERICA TRUST, INC.

Brenda R Carlson

By: [Signature]
Its: Chief Operating Officer

Dan Murren

STATE OF TENNESSEE)

COUNTY OF SHELBY)

I, Paula Booker, a Notary Public, do hereby certify that
D.A. (Don) Young, on behalf of Wetlands America Trust, Inc. as its
Chief Operating Officer, personally appeared before me this day and acknowledged the due
execution of the foregoing instrument.

WITNESS my hand and seal this 20th day of December,
2002.

[Signature] (L.S.)
Notary Public for Tennessee

My Commission expires: November 9, 2005



200301080076
Skagit County Auditor

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EXHIBIT A

CONSERVATION EASEMENT

GOVERNMENT LOTS 4 & 5 AND THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 36 NORTH, RANGE 3 EAST, W.M. AND
GOVERNMENT LOT 1 AND THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 36 NORTH, RANGE 3 EAST, W.M., SKAGIT COUNTY, WASHINGTON
AND
THAT PORTION OF GOVERNMENT LOT 2 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 33, DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER 188.2 FEET EAST OF THE NORTHWEST CORNER; THENCE SOUTH 54°05' WEST 167 FEET TO A POINT 53 FEET EAST OF THE WEST LINE OF SAID SECTION 33; THENCE SOUTH 1,145.3 FEET; THENCE SOUTH 87°03' EAST 195.9 FEET; THENCE SOUTH 0°34' EAST 220 FEET, MORE OR LESS, TO THE NORTH SAMISH RIVER; THENCE WESTERLY ALONG THE SAMISH RIVER TO THE SOUTHEAST CORNER OF A TRACT IN LOT 2, DEEDED TO MARGARET A DRUAND, DATED MAY 18, 1912 AND RECORDED IN VOLUME 89 OF DEEDS, PAGE 193; THENCE NORTH ALONG THE EAST LINE 2.94 CHAINS; THENCE WEST TO A POINT 33 FEET EAST OF THE WEST LINE OF SECTION 33; THENCE NORTH TO BASE OF DIKE DISTRICT NO. 4; THENCE NORTHEASTERLY ALONG BASE OF DIKE TO THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER; THENCE EAST 69 FEET TO THE POINT OF BEGINNING,
EXCEPT ROADS
EXCEPT DITCH RIGHT OF WAYS
EXCEPT THAT PORTION CONVEYED TO DIKING DISTRICT NO. 4
EXCEPT THAT PORTION LYING WEST AND SOUTH OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28; THENCE ALONG THE SOUTH LINE THEREOF NORTH 89°33'51" WEST A DISTANCE OF 2,660.32 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 28; THENCE ALONG THE NORTH-SOUTH CENTER SECTION LINE OF SAID SECTION NORTH 00°14'47" EAST A DISTANCE OF 1,322.38 FEET TO THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 4; THENCE ALONG THE NORTH LINE THEREOF NORTH 90°00'00" WEST A DISTANCE OF 812.05 FEET TO THE POINT OF BEGINNING;
THENCE SOUTH 00°34'59" WEST A DISTANCE OF 1,594.67 FEET;
THENCE NORTH 87°18'09" WEST A DISTANCE OF 174.15 FEET;
THENCE SOUTH 68°55'00" WEST A DISTANCE OF 87.74 FEET;
THENCE NORTH 71°57'12" WEST A DISTANCE OF 228.75 FEET;
THENCE SOUTH 80°50'29" WEST A DISTANCE OF 59.85 FEET;
THENCE SOUTH 63°26'05" WEST A DISTANCE OF 249.74 FEET;
THENCE SOUTH 54°37'59" WEST A DISTANCE OF 263.09 FEET;
THENCE SOUTH 73°50'16" WEST A DISTANCE OF 181.69 FEET;
THENCE SOUTH 33°00'00" WEST A DISTANCE OF 636.50 FEET;
THENCE SOUTH 41°00'00" WEST A DISTANCE OF 359.74 FEET;
THENCE NORTH 89°48'14" EAST A DISTANCE OF 50.86 FEET TO THE EASTERLY BOUNDARY LINE OF THE ABOVE DESCRIBED PARCEL, AND THE POINT OF ENDING

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|  | DAVID R. DOWNING & ASSOCIATES PROFESSIONAL SURVEYORS 1775 4th St. NE Everett, WA 98201 (425) 335-5985 |
| RECORD BY MARK WHEELER | DATE 3.5.03 BY SFC JTB 01-007 SH. & OF 2 |



200301080076

Skagit County Auditor