



200306020306

Skagit County Auditor

6/2/2003 Page

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12

4:09PM

RETURN TO:

Martha Bray
Skagit Land Trust
P.O. Box 1017
Mount Vernon, WA 98273

106459
LAND TITLE COMPANY OF SKAGIT COUNTY

Document Title: Grant of Option

Reference number of documents assigned or released: n/a

Grantor: Douwe Dykstra, a single person

Grantee: Skagit Land Trust

Legal Description: (depicted on Exhibit A attached)

a ptn of SE ¼, 18-35-4 E. W.M.

Assessor's Parcel/Tax I.D. Numbers: 350418-4-003-0004 P36867; 350418-4-002-0005
P36866; 350418-4-007-0000 P 36872; 350418-4-001-0006 P36864; 350418-4-001-0105 P36865

GRANT OF OPTION

THIS GRANT OF OPTION is made this 2nd day of June 2003, by and between Douwe Dykstra, as his separate property, (hereafter referred to as the "Dykstra"), Skagit Land Trust, a Washington not-for-profit corporation (hereinafter referred to as the "SLT"), and Skagit State Bank, a Washington State chartered bank (hereinafter referred to as "SSB"). All references to "Dykstra" and "SLT" include respective successors, heirs, assigns, mortgagees and/or beneficiaries of each.

1. **Property:** The property subject to this Grant of Option is located in Skagit County, Washington, and is the northern portion of the real property depicted on Exhibit A as "Potential Habitat Restoration Area (50 acres)."

At the time that this Grant of Option is exercised by SLT, a survey shall be performed for the purposes of subdividing the property, at SLT's sole expense, to define the legal description of the "Potential Habitat Restoration Area" ("Property") to be purchased by SLT. The parties shall accept a reasonable legal description as prepared by a licensed surveyor. The parties hereby waive any defense based on the adequacy of the legal description herein. The area to be surveyed and purchased by SLT shall not exceed 50 acres, nor exceed the area shown as "Potential Habitat Restoration Area" in Exhibit A.

2. **Consideration:** "Consideration" for this agreement is the sale of the Property pursuant to the existing Purchase & Sale Agreement described in Exhibit A, adequacy of which is hereby acknowledged by Dykstra.

3. **Exercise of Option:** SLT shall, if it so elects, exercise this option by giving written notice thereof to Dykstra at any time prior to July 1, 2005.

4. **Purchase Price:** The purchase price shall be negotiated and agreed to by the parties. If the parties cannot agree on a purchase price, SLT shall pay for and obtain a fair market value appraisal or a market valuation of the Property, which shall conclusively establish the purchase price. If such valuation exceeds or equals \$1,300 per acre, the purchase price shall be \$1,300 per acre. The Purchase price shall be paid by SLT to Dykstra in cash at closing.

5. **Title:**

A. Title to the Property shall be marketable at closing. Rights, reservations, covenants, conditions, and restrictions, easements, and encroachments, presently of record, and not materially affecting the value of the Property or unduly interfering with



SLT's intended use of the Property shall not cause the title to be considered unmarketable. SLT shall conclusively be deemed to have accepted the condition of title unless Dykstra receives notice of SLT's objections within ten (10) days after the preliminary commitment for title insurance is received by or made available to SLT. Encumbrances not assumed in writing by SLT shall be paid by Dykstra on or before closing.

B. It is understood that SSB is providing financing for Dykstra's purchase of the Property from SLT. SSB is securing Dykstra's obligation to repay SSB by the recordation of a mortgage on the Property. SSB hereby agrees to release the Property from the Mortgage (by instrument reasonably satisfactory to SLT) at the time this transaction closes, so long as SSB is paid from the closing proceeds no less than the entire amount of Seller's Proceeds available after payment of title insurance and real estate excise tax for the Property sold pursuant to this Option. SSB shall have no other or further obligations to Dykstra or SLT based on this Option.

6. **Preliminary Title Commitment.** SLT authorizes Escrow Holder to obtain, immediately after this Option has been exercised, a Preliminary Title Commitment, along with copies of all documents listed as exceptions in that Commitment, issued by Land Title of Burlington, Washington for the Property, pursuant to which such title company is prepared to issue to SLT a standard coverage owner's policy of title insurance in the amount of the total purchase price, which policy shall be paid for by Dykstra.

7. **Conveyance:** At closing, Dykstra shall execute and deliver a good and sufficient Statutory Warranty Deed, conveying good, insurable and marketable fee simple title to the Property to SLT, free and clear of all liens, encumbrances and other exceptions, except such easements, restrictions and other exceptions of record as are satisfactory to SLT, together with unrestricted legal access and all other right, title and interest of Dykstra in the Property.

8. **Closing:** "Closing" means the date on which all documents are recorded and the sale proceeds are available for disbursement to Dykstra. SLT and Dykstra shall deposit with closing agent all documents and monies required to complete this sale in accordance with this Agreement.

9. **Closing Date.** Closing shall be held at the office of the Escrow Holder within one hundred fifty (150) days of SLT's exercise of this option pursuant to paragraph 3, or as soon thereafter as Dykstra shall have fully performed hereunder.

10. **Escrow.** Upon mutual execution of this Agreement, SLT shall open escrow with Law Office of Bradford Furlong, whose address is 825 Cleveland Street, Mount Vernon, Washington 98273, which will consummate the transaction ("Escrow Holder"). The provisions of this Agreement shall constitute joint instructions to the Escrow Holder; provided, however, that the parties shall execute such additional instructions as requested by the Escrow Holder not inconsistent with the provisions of this Agreement.



11. **Closing Costs & Proration:** Escrow fees shall be paid one-half by Dykstra and one-half by SLT. The premium for the title insurance policy described above and any transfer taxes shall be paid by Dykstra. Recording costs for the deed shall be paid by SLT. All other closing costs shall be borne by the parties according to custom in Skagit County, Washington.

12. **Certification.** To inform SLT that withholding of tax is not required under Section 1445 of the Internal Revenue Code and under penalties of perjury, Dykstra hereby certifies that Dykstra is not a non-resident alien or a foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined for purposes of federal income tax law and that Dykstra's social security number/federal taxpayer identification number is as set out below. Dykstra understands that this certification may be disclosed to the Internal Revenue Service and that any false statement made could be punished by fines, imprisonment or both.

13. **Taxes.** Dykstra agrees that all taxes, assessments and encumbrances that will be a lien against the Properties at closing, including all deferred taxes, whether or not a lien, and any other charges that could be imposed on the Properties in the future by recapture or otherwise as a result of any classification of the Properties for assessment purposes existing prior to closing, including without limitation any additional tax, agricultural use tax, open space tax, interest, and penalties, whether or not those charges would constitute a lien against the Properties at settlement, shall be satisfied of record by Dykstra at or before closing; except any compensating tax due as a result of SLT's purchase and change in use and removal from farm and agriculture classification. If Dykstra shall fail to do so, SLT may pay any such tax, assessment, encumbrance, or other charge and deduct an amount equal to any such payment from the purchase price of the Properties. Regular real property taxes payable during the year in which closing shall occur shall be prorated as of closing. Dykstra agrees to indemnify, defend, and hold SLT harmless from all liability, claims, demands and expense arising from any such charges on the Properties. SLT acknowledges the Property is in Skagit County tax designation of farm and agriculture.

14. **Preservation of Property.** Dykstra acknowledges that SLT intends to use the Property for farming/agriculture and/or nature preserve. Dykstra agrees that the Property shall remain as it now is until closing, and that Dykstra shall refrain from and shall not actively permit any use of the Property for any purpose or in any manner which would adversely affect SLT's intended use of the Property as a habitat restoration area or similar use, including, but not limited to construction of buildings, and roads, except as approved in writing by SLT; *provided*, customary agricultural practices shall be permitted.

15. **Possession:** SLT shall be entitled to possession on closing; *provided*, that SLT shall be given full access to the Property for purposes of inspections and to show the Property to potential lenders, funders and/or their representatives. Dykstra shall bear the risk of loss until the delivery of possession to SLT. Dykstra shall be allowed to finish harvesting any crops planted on the Property at the time SLT exercises this option through the end of the 2005 crop-growing season.



16. **Right of Entry.** SLT and its contractors and invitees may enter upon the Property at reasonable times for surveying, inspection and other reasonable purposes related to this transaction.

17. **Binding Upon Successors; Assignment.** SLT may assign its interest in this Agreement, or in any of the documents described herein, to any party, without Dykstra's consent. SLT shall inform Dykstra within 30 days of any such assignment. The terms and conditions of this agreement shall apply to and bind the heirs, executors, administrators, successors and assigns of Dykstra and or SLT.

18. **Notices:** Any notices, demands or other communications required or permitted to be given hereunder shall be given in writing and shall be delivered (i) in person, against receipt, (ii) by certified mail, postage prepaid, return receipt requested, (iii) by U.S. Express Mail or a commercial overnight courier that guarantees delivery within the next two business days, or (iv) by telephone facsimile. All notices shall be deemed received on the date actually received or two business days after being posted, whichever is sooner. Such notices shall be addressed as follows:

TO SLT:

Skagit Land Trust
PO Box 1017
Mount Vernon, WA 98273
Fax : (360) 336-1079

TO DYKSTRA:

Douwe Dykstra
19111 Gear Road
Burlington, WA 98233
Fax: (360) 757-6376

Each party shall be deemed to have received notices when delivered to the foregoing address/facsimile numbers unless addressee has notified addressor of an address change prior to transmittal.

Person authorized by Dykstra to sign notices hereunder is: Douwe Dykstra.

Persons authorized by SLT to give notices hereunder are: Molly Doran, Executive Director; and Martha Bray, Conservation Director.

19. **Dykstra's Representations and Warranties.** Dykstra shall confirm within fourteen (14) days of the date this option is exercised that he represents and warrants to SLT that:

A. No labor, materials or services have been furnished in, on or about the Property or any part thereof from which any mechanics', laborers' or materialpersons' liens or claims might arise.



B. The Property has not been affected by the presence of, and there is not present, oil, hazardous waste, toxic substances or other pollutants or material that could be a detriment to the Property or in violation of any local, state or federal law or regulation, and there are no potentially hazardous environmental conditions which would affect the Property. Neither Dykstra nor any other user or occupant of any part of the Property known to Dykstra has ever been cited for violating any federal, state or local environmental law or regulation with respect to operations or activities on or about the Property; and all reports, test results, and other documents relating to the presence or absence of hazardous materials on or about the Property are being delivered to SLT concurrently herewith.

In the event it is determined, after this transaction closes, that there is a presence of oil, hazardous waste, toxic substances or other pollutants or material that could be a detriment to the Property or in violation of any local, state or federal law or regulation, then, and in that event, Dykstra agrees to pay, be responsible for and hold SLT harmless from any remedial action to either remove or repair the cause of said substance, waste or other pollutants or material that renders the Property in violation of any local, state or federal law or regulation or constitutes and health hazard to any lifeform. This Paragraph 19 shall survive closing and shall bind and inure to the benefit of the parties' successors and assigns.

C. The Property does not contain underground tanks of any type or any materials containing or producing any polychlorinated biphenyls or any asbestos.

D. There are no parties or trespassers in possession or which have a right to possess all or any portion of the Property, and there are no leases or licenses affecting the Property.

E. Dykstra has complied in all material respects with all applicable laws, ordinances, regulations, statutes and rules relating to the Property, and every part thereof, and has not received nor is aware of any notification from any governmental authority having jurisdiction, requiring any work to be done on the Property or advising of any condition (including without limitation hazardous wastes) which would render the Property unusable or affect the usability of the Property or any part thereof for the purposes of SLT.

F. Dykstra shall not enter into any leases, trust deeds, mortgages, restrictions, encumbrances, liens, licenses or other instruments of agreements affecting the Property (each, an "Instrument") without the prior written consent of SLT from and after the date of this Agreement. SLT shall not assume nor be deemed to have assumed any obligation or liability under any such Instrument without its express written agreement to do so.

G. Dykstra is the sole legal fee owner of the Property and is not holding fee title as a nominee for any other person or entity. No person or entity has any right of first refusal, option to purchase or other similar right to or interest in the Property.



H. Neither the execution nor delivery of this Agreement, nor consummation of the transaction contemplated hereby, nor fulfillment of nor compliance with the terms and conditions hereof contravenes any provision of any law, statute, rule or ordinance to which Dykstra or the Property is subject, or conflicts with or results in a breach of or constitutes a default under any of the terms or conditions of any agreement or instrument to which Dykstra is a party or by which it is bound, or constitutes a default under any of the foregoing, and there exists no default in respect of any obligation pertaining to the Property.

I. Dykstra am not in default and there has occurred no uncured event which, with notice, the passage of time, or both would be a default under any contract, transaction, agreement, lease, encumbrance or other Instrument pertaining to the Property.

J. There is no litigation either pending or, to the best of Dykstra's knowledge, threatened, which could now or in the future in any way constitute a lien, claim or obligation of any kind on the Property, affect the use, ownership or operation of the Property or otherwise adversely affect the Property. For purposes of this subsection, "litigation" includes any lawsuit, action, administrative proceeding, governmental investigation and all other proceedings before any tribunal having jurisdiction over the Property.

K. Dykstra has the right and authority to enter into this Agreement and all documents contemplated by this Agreement, to make the representations and warranties set forth herein and to perform this Agreement in accordance with its terms.

The existence as of the Closing Date of any state of facts with respect to the Property, which, in SLT's sole discretion, is inconsistent with any of the foregoing representations and warranties, shall constitute the failure of a condition precedent to SLT's obligations under this Agreement. In that event, SLT shall have the right to terminate this Agreement, and all of the Earnest money, shall be returned to SLT together with all expenses incurred by SLT in reliance hereon if the Agreement is so terminated.

20. **Conditions Precedent to Parties' Obligation to Close:**

A. Approval by Skagit County Planning and Permit Center of a short plat of the Property or, if applicable, boundary line adjustment, into two (2) lots prior to closing. Dykstra shall fully cooperate with SLT to accomplish a short plat or boundary line adjustment expeditiously after this option is exercised. If the Property cannot be subdivided or conveyed by a boundary line adjustment, this agreement shall terminate.

21. **Hold Harmless:** In the event it is determined, after this transaction closes, that due to any act or omission of Dykstra or its predecessor owners of the Property, there is a presence of Hazardous Substances or other pollutants or material that could be a detriment to the Property or which renders the Property in violation of any local, state or federal law or regulation, then, and in that event, Dykstra agrees to pay, be responsible for and hold SLT harmless from any remedial action to either remove or repair the cause of said substance,



waste or other pollutants or material that is a detriment to the Property or that renders the Property in violation of any local, state or federal law or regulation or constitutes a health hazard to any life form and from any and all fines, penalties or assessments imposed upon SLT therefor. This Paragraph 20 shall survive closing and shall bind and inure to the benefit of the parties' successors and assigns.

22. **Miscellaneous:**

A. This Agreement may be executed in several counterparts and signatures may be delivered via telephone facsimile, which shall constitute one agreement that is binding on all of the parties, notwithstanding that the parties may have signed different counterparts.

B. If any provision of this Agreement is held invalid, the other provisions shall not be affected thereby.

C. This Agreement represents the entire agreement of the parties and may not be amended except by a writing signed by each party hereto.

D. In the event that any party to this Agreement is not a natural person, then that party warrants to the other that it is duly organized and existing and each party warrants that it and the respective signatories have full right and authority to enter into and consummate this Agreement and all related documents.

E. The obligations, covenants, representations, warranties and remedies set forth in this Agreement shall not merge with transfer of title but shall remain in effect.

F. Each party shall execute and deliver or cause to be executed and delivered all instruments reasonably required to convey the Property to SLT and to vest in each party all rights, interests and benefits intended to be conferred by this Agreement.

G. This Agreement shall be governed by the laws of the state of Washington.

H. In the event of a dispute the prevailing party shall be entitled to payment of its reasonable attorneys fees and costs in negotiating, resolving, arbitrating, or litigating the dispute, including those incurred in any appeal.

23. **Computation of Time:** Unless otherwise expressly specified herein, any period of time specified in this Agreement shall expire at 5:00 p.m. of the last calendar day of the specified period of time, unless the last day is Saturday, Sunday, or legal holiday, as prescribed in RCW 1.16.050, in which event the specified period of time shall expire at 5:00 p.m. of the next business day. Any specified period of five (5) days or less shall include business days only.

24. **Termination:** In the event of termination of this Agreement, any costs authorized under this Agreement shall be paid by the party responsible therefor.

25. **General Provisions:** Time is of the essence. There are no verbal agreements which modify this Agreement. This Agreement constitutes the full understanding between Dykstra and SLT.

26. **Litigation, Costs:** If any legal action or any other proceeding, including an arbitration or action for declaratory relief, is brought for the enforcement of this Agreement or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs incurred in that action or proceeding, including appeals, in addition to any other relief to which the prevailing party may be entitled. "Prevailing party" shall include without limitation:

- A. a party dismissing an action in exchange for sums allegedly due;
- B. a party receiving performance from the other party of an alleged breach of covenant or a desired remedy where the performance is substantially equal to the relief sought in an action; or
- C. the prevailing party as determined by a court of law.

Venue for any suit shall be solely in Skagit County; this Agreement shall be interpreted pursuant to Washington law.

27. **Successors and Assigns:** This Agreement shall, in whole or in part, inure to the benefit of and be binding on the parties and their respective successors, heirs, assigns, mortgagees and/or beneficiaries. All references to "Dykstra" and "SLT" include respective successors, heirs, assigns, mortgagees and/or beneficiaries of each.

28. **Recordation:** This Agreement, or a memorandum thereof, may be recorded at SLT's option and expense.

29. **Exhibits:** All exhibits and any others referred to in this Agreement are incorporated into this Agreement by reference.

30. **Captions:** Captions and headings in this Agreement, including the title of this Agreement, are for convenience only and are not to be considered in construing this Agreement.

31. **Modification and Amendment:** This Agreement may not be modified or amended except in writing signed by Dykstra and SLT.

Signed this 2nd day of June 2003.

BY:

Douwe Dykstra, Grantor

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

STATE OF WASHINGTON)

) SS.

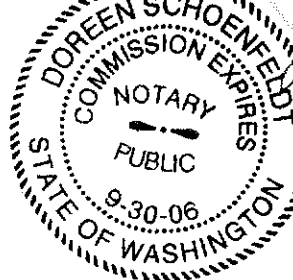
COUNTY OF SKAGIT)

JUN 02 2003

Amount Paid \$
Skagit Co. Treasurer
By [Signature] Deputy

On this 2nd day of June before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Douwe Dykstra to me known to be the individual that executed the foregoing instrument, and acknowledged the said instrument to be his free and voluntary act and deed, for the uses and purposes therein mentioned.

Witness my hand and official seal hereto affixed the day and year first above written.



Doreen Schoenfeldt
Notary Public in and for the State of Washington,
Residing at 2200 W. Waller
My commission expires: 09/30/06
Print Name: Doreen Schoenfeldt

ACCEPTANCE BY SKAGIT STATE BANK

Skagit State Bank hereby accepts the obligations imposed upon it by Section 5(B) hereof. Skagit State Bank shall have no obligations to the parties due to this Option other than as set forth in said Section 5(B).

Signed this 23rd day of May 2003.

By:

James E. Bishop

Its:

Co-CEO/President



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Skagit County Auditor

Signed this 2nd day of June 2003, by:

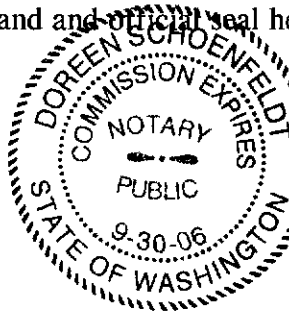
Skagit Land Trust:

By: John S. Milnor
Its: President

STATE OF WASHINGTON)
) SS.
COUNTY OF SKAGIT)

On this 2nd day of June 2003 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared John S. Milnor to me known to be the president of Skagit Land Trust, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that she is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.



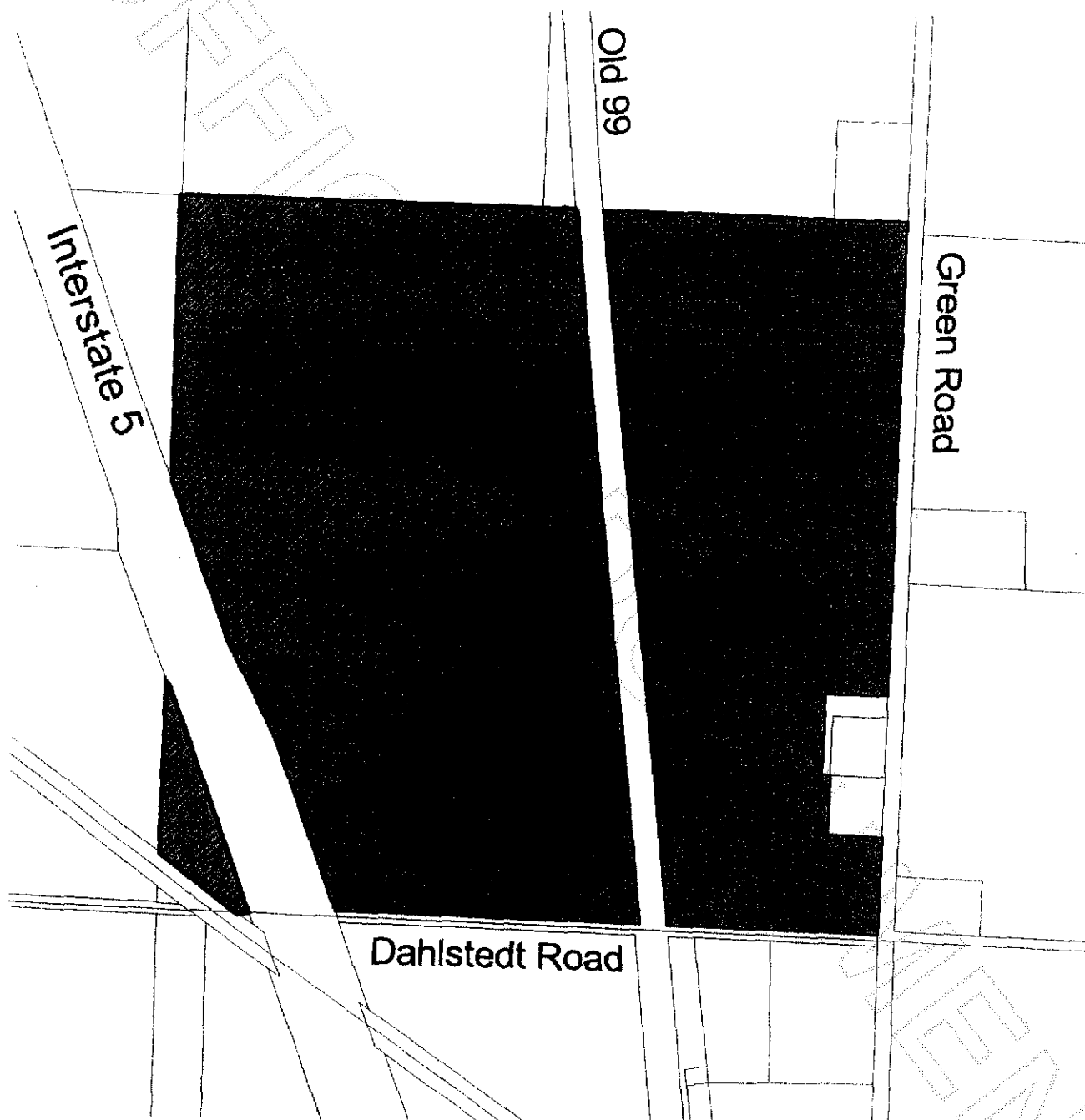
Doreen Schoenfeldt
Notary Public in and for the State of Washington,
Residing at Sequoia Walk,
My commission expires: 09/30/06
Print Name: Doreen Schoenfeldt



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Skagit County Auditor

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EXHIBIT A
Site Map
Skagit Land Trust
Farmland North of Burlington



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