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Skagit County Auditor

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Filed for Record at Request of

Skagit Country Farmland Legacy Program
1800 Continental Place
Mount Vernon, WA 98273

Document Title: Conservation Easement

Grantor: Skagit Land Trust

Grantee: Skagit County

Partial Legal Description: Lot 3 of Short Plat No. 91-14, recorded April 8, 1991 under Auditor's File No. 9104080082.

(full legal on following pages)

Assessor's Parcel/Tax I.D. Number: P23472, P23474, P99048

When recorded return to:
Skagit County Farmland Legacy Program
1800 Continental Place
Mount Vernon, WA 98273

GRANT DEED OF CONSERVATION EASEMENT

Grantor: Skagit Land Trust

Grantee: Skagit County

Legal Description

Abbreviated form: Lot 3 of Short Plat No. 91-14, recorded April 8, 1991 under Auditor's File No. 9104080082.

Additional legal at Exhibit A.

Assessor's Tax Parcel Number: P23472, P23474, P99048

THIS GRANT DEED OF CONSERVATION EASEMENT ("Easement") is made this 24th day of January, 2005, by Skagit Land Trust, a Washington nonprofit corporation qualified to do business in Washington (hereinafter referred to as "Grantor"), having an address of P.O. Box 1017, Mount Vernon, WA 98273, 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, 1800 Continental Place, Mount Vernon, WA 98273 (hereinafter referred to as "Grantee").

I. RECITALS

- A. Grantor is the sole owner in fee simple of that certain real property (the "Protected Property") in Skagit County, Washington, more particularly described in Exhibit A (Legal Description) and shown on Exhibit B (Site Plan), which exhibits are attached to and incorporated into this Easement by this reference. The Protected Property is approximately eighty-eight acres (88) in size and is predominately open farmland.
- B. Grantor's mission is to protect wildlife habitat, wetlands, agriculture and forest lands, scenic open space and shorelines throughout the mainland and islands of Skagit County for the benefit of the community and as a legacy for future generations. To further its mission, and the Skagit County Farmland Legacy Program, Grantor intends to work with the County to ensure that the Protected Property will remain in habitat and agricultural uses for present and future generations.
- C. The Protected Property is of significant agricultural and natural value to Grantor, the people of Skagit County and the people of the State of Washington (collectively, "Conservation Values"). The Conservation Values include protection of agricultural productivity and protection of prime



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and important agricultural soils as well as protection of fish and wildlife habitat, and environmentally sensitive areas on the Protected Property

- D. The Protected Property is zoned Agricultural Natural Resource Land under the Skagit County Zoning Ordinance. Skagit County Zoning Ordinance 14.16.400 states that the goal of the Agricultural Natural Resource Land zone is to "provide land for continued farming activities, conserve agricultural land, and reaffirm Agricultural use, activities and operations as the primary use of the district."
- E. The Protected Property is primarily open farmland that has been classified as "prime farmland" of local importance by the Natural Resources Conservation Service, U.S. Department of Agriculture, because of the fertility of its silt loam soils.
- F. The Protected Property includes a riparian buffer area of approximately 8 acres and approximately 180 feet wide and 1,600 feet long, located in the southwest portion of the Protected Property along Nookachamps Creek. Livestock and other agricultural activities are restricted from this riparian area, and it is being restored with native vegetation. The Protected Property also includes a wet swale approximately twenty (20) acres in size that is oriented north-south, and located in the western portion of the Protected Property. The swale is currently under active agricultural management as pasture. It is not currently used for cropland.
- G. The Protected Property is located in the Nookachamps River floodplain near the confluence with the Skagit River, and includes approximately 1,600 feet of shoreline along the Nookachamps River and an unnamed slough of the river. The Protected Property provides important flood control and water quality functions for these river systems, as well as important fish and winter waterfowl habitat.
- 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 January 16 24 2005 attached hereto as Exhibit C and incorporated into this Easement by this reference ("Baseline Documentation"). The Baseline Documentation consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant.
- I. Grantor, as owner of the Protected Property, has the right to protect and preserve the Conservation Values of the Protected Property, and desires to transfer such rights to Grantee in perpetuity.
- J. 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 herein, Grantor hereby grants, conveys and warrants to Grantee a conservation easement in perpetuity over the Protected Property, consisting of the rights in the



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Protected Property, hereinafter enumerated, 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, subject only to the mutual covenants, terms, conditions and restrictions set forth in this Easement and to title matters of record as of the Effective Date of this Easement.
- 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 in perpetuity.

III. PURPOSE

The purpose of this Easement is to assure that the Protected Property will be retained forever in habitat and agricultural use, and to protect prime and important agricultural soils, and to prevent any use of, or activity on the Protected Property that will significantly impair or interfere with its agricultural values; and to assure that existing and potential fish and wildlife habitat on the Protected Property, including the riparian buffer area, may be retained in and/or restored to predominantly its natural condition, and to prevent any use of, or activity on the Protected Property that will impair or interfere with the habitat values of the Protected Property. These agricultural values and habitat values are hereafter collectively known as the "Conservation Values" of the Protected Property. 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, the Conservation Values of the Protected Property.
- B. **Access for Monitoring and Enforcement.**
 - 1. To enter the Protected Property annually, upon prior written notice to Grantor, for the purpose of making a general inspection to monitor compliance with this Easement.
 - 2. To enter the Protected Property at such other times as are necessary if Grantee has a reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of this Easement. Such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Protected Property.
- C. **Injunction and Restoration.** To enjoin any use of, or activity on, the Protected Property that is inconsistent with the Purpose of this Easement, including trespasses by members of the public,



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and to require the restoration of such areas or features of the Protected Property as may be damaged by uses or activities inconsistent with the provisions of this Easement, all in accordance with Section X.

- D. **Enforcement.** To enforce the terms of this Easement, consistent with Section X.
- E. **Assignment.** To assign, convey or otherwise transfer Grantee's interest in the Protected Property in accordance with Section XV.

V. PERMITTED USES AND ACTIVITIES

- A. **General.** Grantor reserves for itself and its personal representatives, heirs, successors and assigns, all rights accruing from ownership of the Protected Property, including the right to engage in, or permit or invite others to engage in, any use of, or activity on, the Protected Property that is not inconsistent with the Purpose of the Easement and that is not specifically prohibited or otherwise limited by this Easement. Without limiting the generality of this subsection, Grantor specifically reserves for itself and its personal representatives, heirs, successors, and assigns, the following uses and activities, which shall be limited in the manner provided below.
- B. **Retained Uses.**
1. **Agricultural.** Grantor retains the right to use the Protected Property for agricultural production, or to permit others to use the Protected Property for agricultural production, in accordance with applicable law. As used herein, "agricultural production" shall mean the production, processing, storage or retail marketing of crops, livestock, and livestock products. For purposes hereof, crops, livestock and livestock products include, but are not limited to, crops commonly found in the community surrounding the Protected Property; field crops; fruits; vegetables; horticultural specialties; livestock and livestock products; timber, wood and other wood products derived from trees; and aquatic plants and animals and their byproducts.
 2. **Recreational.** Grantor retains the right to use the Property for otherwise lawful recreational uses, including, but not limited to, hunting and fishing.
- C. **Construction of Buildings and Improvements.** Except as otherwise specifically provided for in this Easement, Grantor may undertake construction, reconstruction or other improvement of the Protected Property only as provided below. Grantor shall advise Grantee prior to undertaking any construction, reconstruction or other improvement on the Protected Property that requires a development permit from Skagit County as provided for in Section VIII, so as to enable Grantee to review the proposed activity for compliance with the terms and conditions of this Easement.
1. **Fences.** Existing fences may be repaired and replaced, and new fences may be built on the Protected Property, for purposes of reasonable and customary management and protection of crops, livestock and wildlife.



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2. **New Agricultural Structures and Improvements.** New buildings and other structures and improvements to be used primarily for agricultural production and not to be used for any dwelling or Farm Support Housing may be built on the Protected Property.
3. **Ancillary Improvements.** Other improvements, including, but not limited to, small-scale facilities for the generation and transmission of electrical power, may be built on the Protected Property only with the permission of Grantee as provided for in Section VIII.
- D. **Roads and Paving.** Grantor may maintain, renovate, expand or replace roads or construct new roads that may be reasonably necessary and incidental to carrying out permitted uses and activities on the Protected Property; provided that any roads paved or otherwise covered with concrete, asphalt, or any other impervious paving material shall be subject to the surface coverage limitations set forth in Subsection V.D.
- E. **Composting, Use and Storage of Agricultural Wastes or other Waste Materials.** Grantor may compost, use and store agricultural waste and by products on the Protected Property, consistent with the Purpose of this Easement; provided that any such wastes are stored temporarily in appropriate containment for removal at reasonable intervals and in compliance with applicable federal, state, and local laws, and provided that such composting, use, and storage shall not be located in the wet swale or riparian buffer area shown in Exhibit B.
- F. **Drainage structures.** Grantor may construct and maintain drainage structures, including ditches, tubes, pipes, pumps, gates or other facilities and appurtenances for enhancement of drainage systems in support of uses and activities permitted under this easement; provided that Grantor does not materially impair the natural course of the surface water drainage or runoff flowing over the Protected Property and that existing natural water courses, ponds, lakes and wetlands are preserved in their natural state.
- G. **Forest Management.** Grantor may cut, remove or harvest trees, including clearing land for cultivation, use or livestock or commercial timber harvesting, only if consistent with applicable law, consistent with generally accepted "Best Management Practices," as those practices may be identified from time to time by appropriate governmental or educational institutions, and in a manner not wasteful of soil resources or detrimental to water quality or conservation, except within the riparian buffer area as shown in Exhibit B. Grantor may remove trees for sale, and cut or otherwise manage trees to control insects and disease, to prevent personal injury and property damage, to obtain firewood for domestic use in the buildings on the Protected Property, and to construct permitted improvements and fences on the Protected Property.
- H. **Wildlife Habitat Restoration and Enhancement.** The restoration and enhancement of wildlife habitat in the area is permitted. Nothing herein shall be construed to require the Grantor to conduct such restoration and enhancement activities, but shall be conducted at the Grantor's discretion.



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- I. Creation of Mortgage Liens.** Grantor may create consensual liens, whether by mortgage, deed of trust, or otherwise, for the purpose of indebtedness of Grantor, so long as such liens remain subordinate to the Easement.
- J. Emergencies.** Grantor may undertake other activities necessary to protect public health or safety on the Protected Property, or that are actively required by and subject to compulsion of any governmental agency with authority to require such activity; provided that any such activity shall be conducted so that interference with the Conservation Values of the Protected Property is avoided, or, if avoidance is not possible, minimized to the extent possible.

VI. PROHIBITED USES AND ACTIVITIES

- A. General.** Any use of, or activity on, the Protected Property inconsistent with the Purpose of this Easement is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in or permit any such use or activity. Without limiting the generality of this subsection, the following uses of, or activities on, the Protected Property, though not an exhaustive list, are inconsistent with the Purpose of this Easement and shall be prohibited; except as permitted in Section V.
- B. Subdivision and Development Rights.** The legal or *de facto* division, subdivision, platting, partitioning or planned unit development of the Protected Property is prohibited even if that portion of the Protected Property constitutes a separate legal parcel. This restriction does not prohibit boundary line adjustments with adjoining agricultural land, provided that such boundary line adjustments do not result in any net loss of acreage to the Protected Property and that no new parcel may be created by such boundary line adjustments. Any new land gained through a boundary line adjustment shall be made subject to the terms of this Easement. 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 any other property.
- C. Construction.** The placement or construction of any buildings, structures, or other improvements of any kind is prohibited, except as permitted in Subsection V.C.
- D. Impervious surface.** The total area covered by structures of any kind and impervious surfaces such as rooftops, asphalt, or concrete shall be limited to no more than two percent (2%) of the area of the Protected Property. The total area covered by gravel shall be subject to this 2% limitation unless Grantor obtains prior approval from Grantee as provided in Section VIII to increase the percentage of total surfaces covered by gravel and other impervious surfaces above the 2% limitation, provided that the total amount of gravel and other impervious surfaces shall never exceed five percent (5%) of the total area of the Protected Property.
- E. Recreation.** The following forms of recreation are prohibited on the Protected Property: golf courses; commercial use of motorized or mechanized recreational vehicles such as motorcycles,



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snowmobiles and dune buggies; commercial overnight camping; athletic fields; use of the property for any commercial public recreation; and other developed recreational uses of the property which require special buildings, structures, or facilities. Undeveloped recreational uses, and the leasing of such uses for economic gain, may be permitted insofar as they are consistent with the Purpose and terms of this Easement.

- F. **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, including the use of manure lagoons or disposal of wastewater in manners inconsistent with the terms of this Easement.
- G. **Waste Disposal.** Except as expressly permitted in Section V, 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.
- H. **Commercial Signs.** The placement of commercial signs, billboards, or other advertising material on the Protected Property is prohibited; except in connection with the on-site sale of agricultural products, sale or lease of the Protected Property, or to state the conditions of access to the Protected Property.
- I. **Mining.** The exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Protected Property is prohibited. The extraction of rock, dirt, sand, and gravel shall be permitted only if removal of such material is necessary to carry out other permitted activities on the Protected Property, and is limited to no more than one acre total of the Protected Property, and will not interfere with the Conservation Values of the Protected Property. Grantor shall use all practical means to mitigate any adverse effect on the Conservation Values of the Protected Property in carrying out any permitted extraction activities, and upon completion of said permitted extractive activities, Grantor shall promptly restore any portion of the Protected Property affected thereby as nearly as possible to its condition existing prior to commencement thereof.
- J. **Kennels.** Kennels as defined in the Skagit County Zoning Ordinance are prohibited.
- K. **Farm Worker Housing.** Construction or placement of farm worker housing is prohibited.
- L. **Alteration of Wetlands and Watercourses.** The draining, filling, dredging, ditching or diking of wetland areas shown on Exhibit B, or any other action that would reduce the wetland area is prohibited, except as necessary to maintain existing drains consistent with the Purpose of this Easement and permitted by applicable law.
- M. **Introduced Vegetation.** The intentional introduction of any nonnative species of vegetation is prohibited; except as subordinate to and directly supportive of the use of the land as a farm for agricultural production or as deemed necessary by Grantor and Grantee to preserve, protect or enhance the Conservation Values of the Property.



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- N. **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 is prohibited within the riparian buffer areas, except for enhancing or restoring native wildlife habitat, educational or research activities consistent with the purpose of the Easement, 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.
- O. **Mitigation Banking and Credits.** Wetland or aquatic resource creation, enhancement, restoration or preservation for the purpose of, directly or indirectly, compensating for or mitigating wetland or aquatic resource losses or damages in any way associated with actual or potential impacts of development is prohibited on the Protected Property, whether by a public or private entity or person including sale or exchange of wetland or aquatic resource mitigation credits based on the creation, restoration, enhancement or preservation of wetlands and/or aquatic resources within the Protected Property.

VII. STEWARDSHIP

Grantor agrees to maintain the Protected Property for long-term agricultural productivity. No activities violating sound agricultural soil and water conservation management practices shall be permitted. All agricultural operations shall be conducted in accordance with applicable law.

VIII. NOTICE

- A. **Notice.** The following permitted uses and activities require Grantor to notify Grantee in writing prior to undertaking the use or activity:
1. construction of any buildings, structures or improvements requiring a permit from Skagit County (as required under Subsection V.C);
 2. grading activities requiring a permit from Skagit County (as required under Subsection VI.D);

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 and terms 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.

- B. **Approval.** Where approval by one of the parties to this Easement is required (e.g., Subsection V.D, Impervious Surfaces), such approval shall be granted or denied in writing within thirty (30)



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days of receipt of a written notice of the proposed use or activity, and such approval shall not be unreasonably withheld. Grantee's approval may include reasonable conditions which, if satisfied, would be the minimum necessary to assure that the proposed use or activity would not be inconsistent with the Purpose of this Easement. Failure by a party to grant or deny approval within the time provided shall create a presumption of approval.

- C. **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. This Subsection does not itself impose a requirement of prior approval of the activity described in any such notice; however, if Grantee does not provide written objections within thirty (30) days after Grantee's receipt of Grantor's notice, Grantee shall be deemed to have approved the proposed use or activity.
- D. **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 98273

To Grantee: Skagit County Farmland Legacy Program
1800 Continental Place
Mount Vernon, WA 98273

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

IX. DISPUTE RESOLUTION: GRANTEE'S REMEDIES

- A. **Preventive Discussions.** Grantor and Grantee will promptly give the other notice of problems or concerns arising in connection with the other's 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.



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X. ENFORCEMENT; 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 X.C if Grantor:
1. Fails to cure the violation within thirty (30) days after receipt of a notice of violation from Grantee;
or
 2. Under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.
- C. **Grantee's Action.**
1. **Injunctive Relief.** Grantee may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Easement:
 - a. To enjoin the violation, ex parte as necessary, by temporary or permanent injunction; and
 - b. To require the restoration of the Protected Property to the condition that existed prior to any such injury.
 2. **Damages.** Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of Conservation Values. Without limiting Grantor's liability in any way, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking corrective or restoration action on the Protected Property.
- D. **Emergency Enforcement.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire.
- E. **Scope of Relief.** Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at



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

- F. **Costs of Enforcement.** In the event Grantee must enforce the terms of this Easement, the costs of restoration necessitated by acts or omissions of Grantor, its agents, employees, contractors, family members, invitees or licensees in violation of the terms of this Easement and Grantee's reasonable enforcement expenses, including attorneys' and consultants' fees, shall be borne by Grantor or those of its personal representatives, heirs, successors, or assigns, against whom a judgment is entered. In the event that Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of such restoration and Grantee's reasonable expenses shall be borne by Grantor and those of its personal representatives, heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized use or activity.
- G. **Grantee's Discretion.** Grantee acknowledges its commitment to protect the Purpose of the Easement. Enforcement of the terms of the Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Grantee of such term or any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver of such term or any of Grantee's rights under this Easement. No grant by Grantee in its governmental or regulatory capacity of any building permit, grading permit, land use approval or other development approval shall be deemed or construed to be a waiver of any term or any of Grantee's rights under this Easement.
- H. **Waiver of Certain Defenses.** 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; except to the extent the defense is based upon an approval or deemed approval by Grantee pursuant to Section VIII of this Easement. Except for the foregoing, Grantor specifically retains any and all rights it has under the law as owner of the Protected Property, including but not limited to the right to make claims against Grantee for any breach by Grantee of the terms of this Easement.
- 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, earth movement or climate change, or from acts of trespassers, that



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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. Compliance 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 a certificate, that certifies, to the best of Grantee's knowledge, Grantor's compliance or lack of 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; provided that the Protected Property shall be deemed to be free of such liens if Grantor, as the case may be, is diligently challenging the application of such liens to the Protected Property.
- B. Taxes.** Grantor shall pay before delinquency or file timely appeal of all taxes, assessments, fees, charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, 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



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estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the maximum rate allowed by law.

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

1. Grantor and the Protected Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Protected Property and its use;
2. There has been no release, dumping, burying, abandonment or migration from off-site on the Protected Property of any substances, materials, or wastes that are hazardous, toxic, dangerous, or harmful or are designated as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful in violation of any federal, state or local law, regulation, statute, or ordinance;
3. Neither Grantor nor Grantor's predecessors in interest have disposed of any hazardous substances off-site, nor have they disposed of substances at sites designated or proposed to be designated as federal Superfund (42 U.S.C. § 9601 et seq.) or state Model Toxics Control Act (RCW 70.105D.010 et seq.) ("MTCA") sites; and
4. There is no pending or threatened litigation affecting the Protected Property or any portion of the Protected Property that will materially impair the Conservation Values of any portion of the Protected Property. No civil or criminal proceedings have been instigated or are pending against Grantor or its predecessors by government agencies or third parties arising out of alleged violations of environmental laws, and Grantor has not received any notices of violation, penalties, claims, demand letters, or other notifications relating to a breach of environmental laws.

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

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

F. **Indemnification.** Grantor hereby agrees to release and hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the personal



representatives, heirs, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with:

1. Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property, regardless of cause unless due solely to the negligence of any of the Indemnified Parties; and
2. The obligations, covenants, representations and warranties in Subsections A, B, C, and D of this section.

XIII. EXTINGUISHMENT, CONDEMNATION AND SUBSEQUENT TRANSFER

- A. **Extinguishment.** If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or 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, unless otherwise provided by Washington law at the time, in accordance with Subsection XIII.B, Valuation, of this Easement.
- B. **Valuation.** In the event of an extinguishment pursuant to Subsection A, or the taking of all or part of the Protected Property by the exercise of the power of eminent domain, then Grantor and Grantee are entitled to their proportional share each of the percentage of gross sale proceeds or condemnation award representing an amount equal to the ratio of the appraised value of this Easement to the unrestricted fair market value of the Property. All such proceeds received by Grantee shall be used for protection of similar property
- 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. Except as provided by applicable law, 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)



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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

This Easement may be amended by the execution and delivery of an amended easement deed, but only with the written consent of both Grantor and Grantee. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will diminish the effectiveness of this Easement in carrying out the Purpose of the Easement in any way and that only those amendments which strengthen the effectiveness of the Easement in carrying out the Purpose of the Easement shall be permitted. Any such amendment shall not affect the perpetual duration of the Easement and shall be recorded in the official records of Skagit County, Washington, and any other jurisdiction in which such recording is required.

XV. ASSIGNMENT

This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to the Grantee's judicial appointed successor. As a condition of such transfer, Grantee shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement.



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Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

XVI. RECORDING

Grantee shall record this instrument in a timely fashion in the official records of Skagit County, Washington, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.

XVII. GENERAL PROVISIONS

- A. **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Washington.
- B. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the Purpose of this Easement and the policy and purpose of RCW 64.04.130 and Chapter 84.34 RCW. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- C. **Severability.** If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.
- D. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Protected Property, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section XIV.
- E. **No Forfeiture.** Nothing contained in this Easement will result in a forfeiture or reversion of Grantor's title in any respect.
- F. **"Grantor" - "Grantee".** The terms "Grantor" and "Grantee," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include, respectively the above-named Grantor, and its personal representatives, heirs, successors, and assigns, and the above-named Grantee, its personal representatives, successors and assigns.
- G. **Successors and Assigns.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.



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- 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.
- K. Effective Date.** The effective date of this Easement is the date of recording in the records of Skagit County, Washington.



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XVIII. SCHEDULE OF EXHIBITS

- A.** Legal Description of Property Subject to Easement.
- B.** Site Map(s).
- C.** Baseline Documentation Summary.



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

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 6th day of

January, 2005.

Skagit Land Trust, Grantor

Attestation:

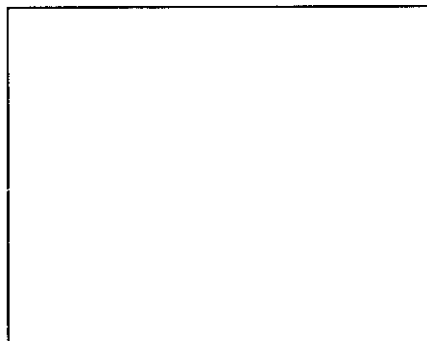
John S. Milnor
John S. Milnor, President

Catherine Dostart
Catherine Dostart, Secretary

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

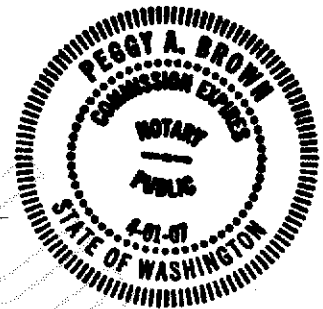
I certify that I know or have satisfactory evidence that John S. Milnor
is the person who appeared before me, and said person acknowledged that he/she signed this instrument,
on oath stated that he/she was authorized to execute the instrument and acknowledged it as the
President of Skagit Land Trust to be the free and
voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: January 6, 2005



(Use this space for notarial stamp/seal)

Peggy A. Brown
Notary Public
Print Name Peggy A. Brown
My commission expires 4-1-07



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

Dated:

January 24, 2005

SKAGIT COUNTY, WASHINGTON

Don Munks

Don Munks, Chairman

Kenneth A. Dahlstedt

Kenneth A. Dahlstedt, Commissioner

Ted W. Anderson

Ted W. Anderson, Commissioner

Approved as to Form

M. Miller

Melinda Miller

Prosecuting Attorney

Easement
SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

JAN 25 2005

STATE OF WASHINGTON)

) ss.

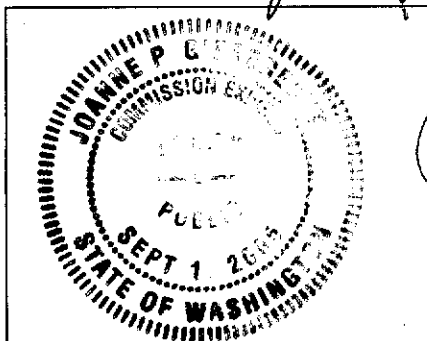
COUNTY OF SKAGIT)

Amount Paid \$60
Skagit Co. Treasurer
By MLM Deputy

I certify that I know or have satisfactory evidence that Don Munks, Kenneth A. Dahlstedt & Ted W. Anderson 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:

January 24, 2005



(Use this space for notarial stamp/initials)

Joanne P. Giesbrecht
Notary Public

Print Name JOANNE P. GIESBRECHT

My commission expires 09/01/05



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EXHIBIT A
Legal Description of Property Subject to Conservation Easement

The Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 2, Township 34 North, Range 4 East, W.M.,

EXCEPT the North 20 feet thereof as conveyed to Skagit County for road purposes by Deed recorded August 7, 1916, under Auditor's File No. 114598, in Volume 104 of Deeds, page 426, records of Skagit County, Washington.

ALSO, the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 3, Township 34 North, Range 4 East, W.M.,

EXCEPT the North 20 feet of the East 714.1 feet thereof as conveyed to Skagit County for road purposes by Deed recorded August 7, 1916, under Auditor's File No. 114598, in Volume 104 of Deeds, page 426, records of Skagit County, Washington.

ALSO, that portion of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 3, Township 34 North, Range 4 East, W.M., lying Northerly of Nookachamps Creek.

EXCEPT from all of the above, Lots 1 and 2, Short Plat No. 91-014 recorded April 8, 1991, in Volume 9 of Short Plats, pages 339 and 340, under Auditor's File No. 9104080087, records of Skagit County, Washington.

Situate in the County of Skagit, State of Washington.

(Also known as Lot 3 of Short Plat No. 91-014 referred to above.)



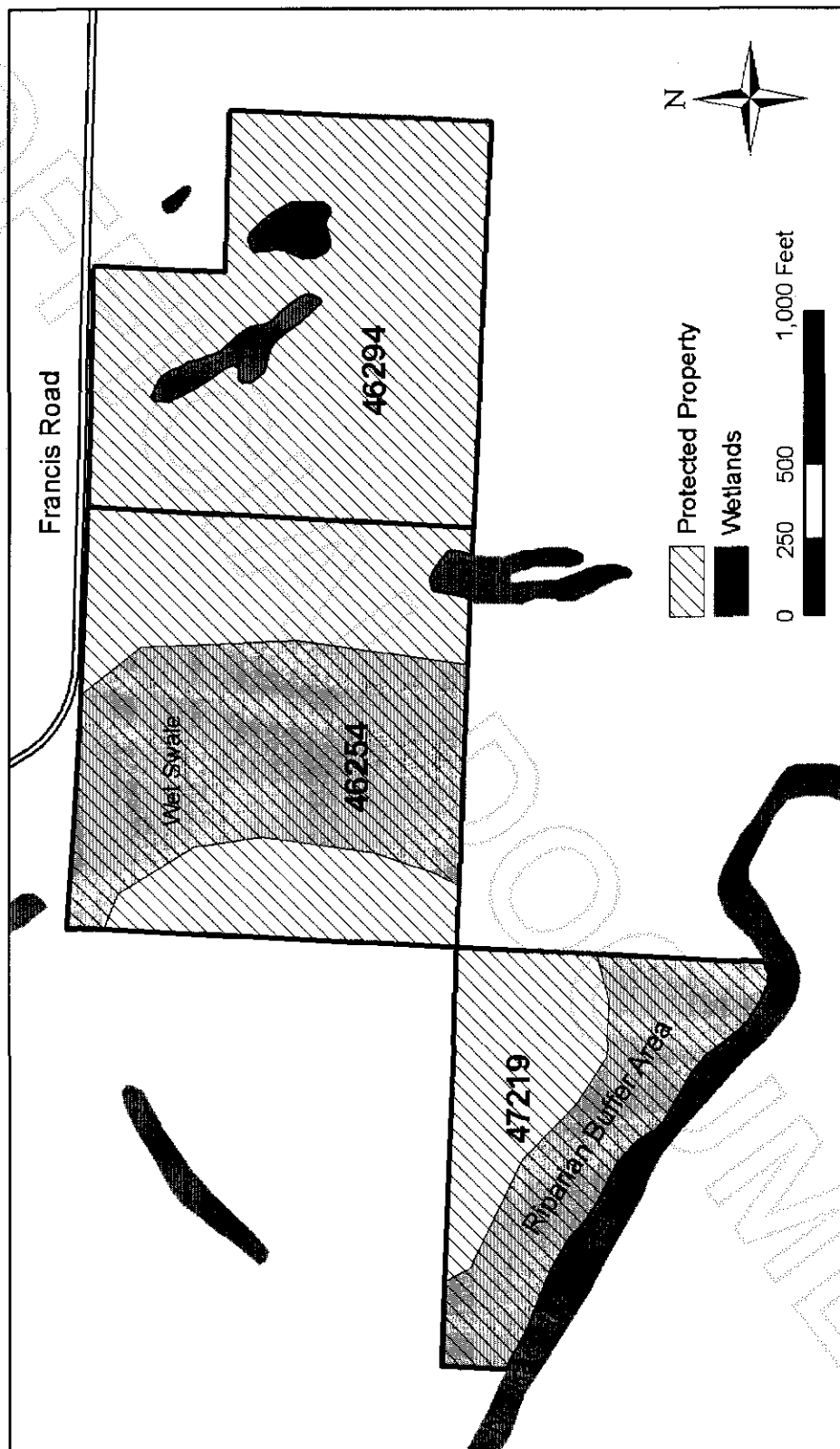
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EXHIBIT B
Site Map

Sections 2 and 3, Township 34 North, Range 4 East



This site map is provided for the purposes of locating the Protected Property and dominant features. It does not purport to be a survey. No reliance should be placed on this map for dimensions of the property.

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EXHIBIT C
Baseline Documentation Summary
Francis Road

Grantor Information:

Name: Skagit Land Trust

Address: PO Box 1017

City: Mount Vernon, WA 98273

Phone: (360) 428-7878

Protected Property Address: Francis Road, approximately 1.5 miles west of Clear Lake.

Skagit County Farmland Legacy Program (Grantee) Contact:

Program Director, Allison Deets, 1800 Continental Place, Mount Vernon, WA 98273

(360) 336-9365

Property Information:

Location: Sections 2 and 3, Township 35 North, Range 4 East

Parcels: P23472, P23474 and P99048

Acres: 88

Habitat types and acres of each: cropland (~60 acres); pasture, including a wet swale (~21.5 acres); riparian area (~6.5 acres)

Structures (attach descriptions and photos): none

County Zoning: Agriculture

Land Use tax classification: Open space farm and agriculture

Type of Ownership: Fee Mortgage? No

Legal Description: see attachments

History of Skagit Land Trust acquisition: In December 2001 Skagit Land Trust purchased this property as part of a 900-acre transaction with Kimberly-Clark. Farmland is leased out for cropland and pasture. The Trust has donated a conservation easement to the Farmland Legacy program that prohibits residential use, but allows for restoration of



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the wetlands. Skagit Land Trust is partnering with Skagit Fisheries Enhancement Group to restore native vegetation to the riparian area.

Land Classification: Stewardship Land - These lands have important conservation values, but they are not actively sought by the Trust. They can ordinarily be protected through a conservation easement, and do not require Trust or public ownership. The Trust may sell or transfer Stewardship Lands to a private party if a conservation easement is retained to protect any important conservation values.

Soil types: see attached soil survey map and descriptions

Sedrowoolley silt loam (*118 on soil survey map*): ~57%

Sumas silt loam (*136 on soil survey map*): ~17%

Field silt loam (*56 on soil survey map*): ~15%

Briscot fine sandy loam (*21 on soil survey map*): ~9%

Pilchuck loamy sand (*104 on soil survey map*): ~2%

County Critical Areas: Wetlands, flood hazard area (100-yr floodplain), fish and wildlife conservation (waterfowl concentration).

State Priority Species and Habitats: Waterfowl concentrations, freshwater wetlands, rural natural open space.

Special features and conservation values: The Protected Property is located in the Nookachamps River floodplain near the confluence with the Skagit River, and includes approximately 1,600 feet of shoreline along the Nookachamps River and an unnamed slough of the river. The Protected Property provides important flood control and water quality functions for these river systems, as well as important fish and winter waterfowl habitat.



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Several wetland types are recognized on this property in the National Wetlands Inventory (NWI). Approximately 4.5 acres of the Protected Property is classified in the NWI as Palustrine Emergent and Seasonally Flooded wetland (PEMC). An additional 1.5 acres are classified as Palustrine, Aquatic Bed and Semipermanently Flooded wetland (PABF). These are identified on the attached wetland inventory map.

The Protected Property is primarily open farmland that has been classified as "prime farmland" of local importance by the Natural Resources Conservation Service, U.S. Department of Agriculture, because of the fertility of its silt loam soils. The Protected Property includes a riparian buffer area approximately 180 feet wide, and 1,600 feet long (~6.5 acres), located in the southwest portion of the Protected Property along Nookachamps Creek and the unnamed slough. Livestock and other agricultural activities are restricted from this riparian area, and it is being restored with native vegetation. The Protected Property also includes a wet swale approximately fifteen (15) acres in size that is oriented north-south, and located in the central portion of the Protected Property. The swale is currently under active agricultural management, although cropland use was prohibited from 2002 through 2004 under a lease with Skagit Land Trust.

The fields on this property host waterfowl in the winter months. Hunters frequently hunt ducks on the field on the eastern end of the property. Maintaining the property in farmland and open space provides both productive arable land for farming and habitat for waterfowl.

Condition of property: Most of the property has been actively farmed for corn from 2002 through 2004. The wet swale on the property was cleared for farming prior to acquisition by Skagit Land Trust, however it has not been plowed for crops during Trust ownership. The triangle of land in the southwestern part of the property, along the Nookachamps River, has been used for pasture from 2002 through 2004, as has the wet swale during the summer months. The triangle of land in the southwest has many patches of blackberries, kept in check by grazing and mowing. The riparian area also has some



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blackberries, but it is mostly covered with reed canarygrass, species of *Juncus* and other wetland grasses. Skagit Land Trust, with the help of students from Emerson High School, planted nearly 400 trees in the riparian area in Spring 2004.

Although the native vegetation for the wetland types found on this property is trees and shrubs, the wetland areas are currently cleared and used for farming. In the case of the PEMC wetlands, a contiguous wetland on the adjacent property to the south has intact wetland vegetation of cottonwoods and willow.

History of previous ownership and uses: Kimberly-Clark (as Scott Paper) purchased the land in 1990 for hybrid poplar production. Kimberly-Clark did not actively manage the property. Just prior to purchase by Skagit Land Trust dairy cows were kept on the property without a lease by a local dairyman. Skagit Land Trust then leased the property to Fred DeVries for pasture and cropland from 2002 through 2004.

Attachments (available in baseline file):

- ✓ Ground photos
- ✓ Aerial photos
- ✓ Orthophoto (2001)
- ✓ Assessor's map
- ✓ Site map
- ✓ NWI map
- ✓ Assessor's printout
- ✓ Soil Survey map and descriptions
- ✓ Environmental Screen (Landau and Associates)
- ✓ Wetland boundary map – based on National Wetlands Inventory



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