



200506010059
Skagit County Auditor

6/1/2005 Page 1 of 15 12:05PM

PREPARED BY
DUCKS UNLIMITED, INC.
ONE WATERFOWL WAY
MEMPHIS, TN 38120

115743 PE

LAND TITLE OF SKAGIT COUNTY

Notice: This Easement has been acquired in part with a grant from the North American Waterfowl Conservation Act (Grant). This deed contains restrictions on the use and development of the property that are intended to protect its conservation values.

Abbreviated Legal: ptn GL 5 & ptn NE 1/4 of SE 1/4, 5-35-3 E.W.M.
350305-0-005-0006/P33812, 350305-4-001-0002/P33844, 350305-4-001-0101/P33845
DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT (this "Easement") is made as of this 17th day of May, 2005, by **DANIEL D. RASAR, TRUSTEE OF THE RASAR FISHERIES, INC., 401K PROFIT SHARING PLAN**, who acquired title as **RASAR FISHERIES, INC., 401K PENSION TRUST**, with an address of 10191 Halloran Road, Bow, Washington, 98232 (together with his 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") known as the Rasar property in Skagit County, Washington, which is 50.51 acres, more or less, and more particularly described in Exhibit "A" attached hereto and made a part hereof.

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 Revised Code of Washington, 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

DUCE Rasar WA

1

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

2763
JUN 01 2005

Amount Paid \$ 2047.00
By Skagit Co. Treasurer
Deputy

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"), 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 that could supercede this Easement. 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

WHEREAS, this Easement will be funded by a grant from the North American Wetlands Conservation Act.

NOW, THEREFORE, the Grantor, in consideration of the foregoing recitations and of the mutual covenants, terms, conditions and restrictions set forth herein, does hereby voluntarily give, grant, sell, 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 including the protection of wildlife habitat, 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, Access, and Enforcement. The Grantee shall have the right with prior notice to Grantor to enter the Protected Property for the purposes of the inspection, 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 right of 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. Activities pursuant to section 3.1
 - b. Activities pursuant to section 3.2
 - c. Construction pursuant to section 3.6
 - d. Exploration or mineral extraction per section 3.11
- 3.1 **Restoration.** The right to restore the Protected Property for the benefit of waterfowl and other wildlife in accordance with a restoration plan in cooperation with the Grantee and/or the National Resources Conservation Service.
- 3.2 **Structures.** The right to maintain and replace the existing structures or improvements, as shown in the Report, at the same location with structures or improvements of like size and function.
- 3.3 **Roads.** The right to maintain and replace existing roads at the same location with roads of like size and composition. 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.
- 3.4 **Hunting and Fishing.** The right of Grantor, Grantor's family members and Grantor's guests to hunt and fish on the Protected Property.
- 3.5 **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.



- 3.6 Wells and Water Resources. The right to maintain existing wells on the Protected Property. The right to construct new wells for uses consistent with the Purpose of this Easement. The right to develop and maintain those water resources and wetlands on the Protected Property necessary to wildlife, private recreation, 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.

- 3.7 Vegetation Maintenance. Subject to other provisions of this Easement, the right to selectively cut, burn, mow and clear trees and vegetation for waterfowl habitat enhancement and protection. The right to undertake activities for fire protection, road maintenance, tick and mosquito control. All such activities shall be undertaken in order to protect the present and/or restored condition of the Protected Property.
- 3.8 Timber. The right to cut and/or harvest dead or diseased trees and trees that present hazards to persons or property. The right to conduct noncommercial forest management activities in compliance with the "best management practices" which is approved by both the Grantor and the Grantee.
- 3.9 Agrichemicals. To use agrichemicals, 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 maintenance 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 (i) contamination of any source of water, (ii) any significant impairment of any natural ecosystem or process on the Protected Property.
- 3.10 Exotics. To allow only those non-native plant or animal species traditionally and prevalently used and those which do not have a negative affect to the conservation values and Purpose of this Easement.
- 3.11 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.
 - 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.
- 3.12 Utilities. At Grantor's election, to bury or otherwise camouflage all utility systems or extensions of the existing utility systems.
- 3.13 Signs. The right to construct, place and maintain directional signs, signs indicating and identifying occupancy and signs advertising the sale of the Protected Property. Signs may not exceed 14 inches by 18 inches in size.

- 3.14 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 Grantor in Section III, and such general prohibitions in Section IV shall not be interpreted to supercede the specific rights reserved to Grantor in Section III.**

- 4.1 Uses. There shall be no residential, agricultural, 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 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 mobile homes, house trailers, temporary shelter or vehicles of any sort providing 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, nor widening of existing roads.
- 4.5 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.
- 4.6 Agriculture. There shall be no agricultural activities including, but not limited to: farming, horticulture, including nursery, aquaculture.



- 4.7 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.
- 4.8 Hunting and Fishing. There shall be no commercial hunting or fishing on the Protected Property.
- 4.9 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.
- 4.10 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.
- 4.11 Signs. There shall be no construction or placing of signs, including but not limited to, billboards, or any advertising materials of any sort on the Protected Property.
- 4.12 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 4.12, 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. 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 and may include:

- A) The appropriate survey maps from the United States Geological Survey, showing the property line of the Protected Property and other contiguous or nearby protected areas;
- B) A map of the area drawn to scale showing all existing man-made improvements or incursions (such as roads, buildings, fences, or gravel pits), vegetation and identification of flora and fauna (including, for example, rare species locations, animal breeding and roosting areas, and migration routes), land use history (including present uses and recent past disturbances), and distinct natural features (such as large trees and aquatic areas);
- C) An aerial photograph of the Protected Property at an appropriate scale taken as close as possible to the date the donation is made, and
- D) On-site photographs taken at appropriate locations on the Protected Property; and other documentation possessed (at present or in the future) by the Grantor which the Grantor shall make available to the Grantee, its successors and assigns, which documentation establishes the conditions of the Protected Property at the date of this Easement as required by Treasury Reg. 1.170A-14 (g) (5).

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.
- 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
Attn.: Chief Operating Officer

With copy to:
Ducks Unlimited
Western Regional Office
3074 Gold Canal Drive
Rancho Cordova, CA 95670

GRANTOR:
Daniel Rasar
10191 Halloran Road
Bow, Washington, 98232



- 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 Oregon 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.

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 qualified appraisal taken for that purpose ("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 Washington. Any such amendment shall be consistent with the Purpose of this Easement, shall not affect its perpetual duration, shall not permit additional development other than development permitted by this Easement on its effective date, and shall not permit any impairment of the significant conservation values of the Protected Property. Any such amendment shall be recorded in the land records of the Land Records of Skagit County, Washington. Nothing in this paragraph 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 require the restoration of the Protected Property to its condition on the date of this Easement 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 swiftly 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 4.12 (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 the State 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.
- 5.21 Counterparts. This Easement may be executed in multiple counterparts.
- 5.22 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.



UNRECORDED
IN WITNESS WHEREOF, the Grantor has set his hand and seal 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:

Karen Ashley
Karen Ashley

Daniel D. Rasar
DANIEL D. RASAR, TRUSTEE

STATE OF Washington }
County of Skagit } SS:

I certify that I know or have satisfactory evidence Daniel D. Rasar is
the person who appeared before
me, and said person acknowledged that he signed this instrument, on oath stated He is
authorized to execute the instrument and is Trustee
of The Rasar Fisheries, Inc., 401K Profit Sharing Plan
to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: May 17, 2005

Carrie Huffer

Carrie Huffer
Notary Public in and for the State of Washington
Residing at Burlington
My appointment expires: 12/31/2007

CARRIE HUFFER
STATE OF WASHINGTON
NOTARY - - - PUBLIC
MY COMMISSION EXPIRES 12-31-07



Continuation of Signature Page For
Deed of Conservation Easement

GRANTEE:
WETLANDS AMERICA TRUST, INC.

David Marrone
DAVID MARRONE
Brenda Propper

By: [Signature]
Its: JAMES WEST
ASSISTANT SECRETARY

STATE OF TENNESSEE)
COUNTY OF SHELBY)

I, a Notary Public, do hereby certify that JAMES WEST, on behalf of Wetlands America Trust, Inc. as its ASSISTANT SECRETARY, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this 23 day of May, 2005.

Paula Becker (L.S.)
Notary Public for Tennessee

My Commission expires: 11/9/05



Supplemental No. 4 to Order No. 115743-PE

Schedule "A-1"

DESCRIPTION:

All that portion of Government Lot 5 and the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 5, Township 35 North, Range 3 East, W.M., described as follows:

Beginning at the East $\frac{1}{4}$ corner of said Section 5;
thence South along the East line of the Section, 1010.1 feet;
thence West parallel with North line of the Southeast $\frac{1}{4}$, said Section, to the East bank of the Samish River;
thence Northerly along the said East bank of the river to the North line of the Southeast $\frac{1}{4}$;
thence East to the point of beginning,

EXCEPTING THEREFROM all rights of way for County roads, dikes and drainage ditches;

ALSO EXCEPT those portions thereof described as follows:

a.) Beginning at the East $\frac{1}{4}$ corner of said Section 5;
thence South 90 feet to the Southeast corner of that certain tract conveyed to Ivan J. Omdal by Deed recorded June 10, 1957, under Auditor's File No. 552302 and the true point of beginning of this description;
thence West 160 feet along the South line of said Omdal Tract to the Southwest corner thereof;
thence South 90 feet;
thence East 160 feet;
thence North 90 feet to the point of beginning;

EXCEPT County roads.

b.) Beginning at the East $\frac{1}{4}$ corner of said Section 5;
thence West along the North line of the said Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$, a distance of 160 feet;
thence South 90 feet;
thence East 160 feet;
thence North 90 feet of the point of beginning, EXCEPT road.

c.) All second class tidelands in front of the Government meander line adjacent to Government Lot 5.

Situate in the County of Skagit, State of Washington.

15



200506010059

Skagit County Auditor