

UNOFFICIAL DOCUMENT



200510310196  
Skagit County Auditor

10/31/2005 Page 1 of 31 1:48PM

When recorded return to:

Skagit Conservation District  
2021 E. College Way, Suite 203  
Mount Vernon, WA 98273

**GRANT DEED OF CONSERVATION EASEMENT**

Grantor: Don Butterfield and Joan Lang

FIRST AMERICAN TITLE CO.

85367E

Grantee: Skagit Conservation District

SKAGIT COUNTY WASHINGTON  
RE: ESTATE EYE

Tract 4 of Parcel Map and Survey No. 111-76 approved July 30, 1976, recorded August 5, 1976 under Auditor's File N. 840287, in Volume 1 or Short Plats, page 153, records of Skagit County, Washington; being a portion of the Southeast 1/4 of the Northwest 1/4; and of the Southwest 1/4 of the Northeast 1/4; all in Section 25, Township 36 North, Range 4 East, W.M.

OCT 31 2005

AMOUNT PAID \$  
3,188.50  
By Skagit Co. Treasurer  
Deputy

Assessor's Tax ID# and Parcel Number: 360425-2-008-0409 P49938

THIS GRANT DEED OF CONSERVATION EASEMENT ("Easement") is made this 31 day of OCT, 2005, 2005, by Donald Butterfield and Joan Lang (husband and wife), having an address at 4380 Blank Road, Sedro-Woolley, WA (hereinafter referred to as "Grantor"), in favor of Skagit Conservation District, a political subdivision of the State of Washington, having an address at 2021 E. College, Suite 203, 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 the legal description. The Protected Property is approximately 4.2 acres in size.
- B. The Protected Property includes natural riparian and floodplain features that provide habitat and other natural values (collectively, the "Conservation Values"). The specific Conservation Values and characteristics of the Protected Property are documented in an inventory of relevant features of the Protected Property (hereinafter the "Baseline Documentation"), dated August 2005, on file at the offices of Grantee and incorporated into this Easement by this reference. A summary of the Baseline Documentation is attached at Exhibit A. The Baseline Documentation, which has been reviewed and accepted by Grantor and Grantee, consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an information baseline for monitoring compliance with the terms of this grant.
- C. The Conservation Values of the Protected Property include, but are not limited to, natural features that create and support habitat for salmon. The Grantor and Grantee desire to preserve the Conservation Values on the Protected Property, and in particular to protect and promote the restoration of natural salmon habitat on it. The State of Washington, through the Salmon Recovery Funding Board (SRFB), administered by the Interagency Committee for Outdoor Recreation (IAC) has provided the Grantee with public funding for this purpose (IAC Project #00-1726C, Samish Acquisition and Restoration).
- D. The Grantor desires to transfer the rights to carry-out the protection and preservation of the Conservation Values on the Protected Property to the Grantee in perpetuity.
- E. 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 terms, conditions, and restrictions contained in this Easement, and in consideration of payment of \$ 21,000 and other good and valuable consideration by Grantee to Grantor, the receipt of which is acknowledged, Grantor hereby grants, conveys and warrants to Grantee a conservation easement in perpetuity over the Protected Property, consisting of certain rights in the Protected Property, as defined in this Easement, subject only to the restrictions contained in this Easement.



200510310196  
Skagit County Auditor

- B. This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130.
- C. Grantor expressly intends that this Easement run with the land and that this Easement shall be binding upon Grantor's personal representatives, heirs, successors, and assigns.

### III. PURPOSE

The purpose of this Easement is to assure that the Protected Property will be retained predominantly in its natural condition, and to prevent any use of, or activity on, the Protected Property that will impair or interfere with the Conservation Values. 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, protect, and enhance in perpetuity the Conservation Values of the Protected Property. The Grantee will, by mutual agreement with the Grantor, develop a plan (hereinafter "Stewardship Plan") for conducting specific activities to carry-out this right. The Grantee may, by mutual agreement with the Grantor, update the Stewardship Plan from time to time as necessary to address changes that may occur at the site. The Stewardship Plan will be kept on file in the offices of the Grantee, and is incorporated into this Easement by reference. A summary of the original Stewardship Plan is attached as Exhibit B.
- B. **Access over Adjoining Property.** The right to enter onto the Protected Property for the purpose of carrying-out the Stewardship Plan and for otherwise monitoring or enforcing compliance with the provisions of this Easement. Such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Protected Property. Said right to enter also includes the right of ingress and egress over and across the Grantor's adjoining property lying between a public road and the Protected Property.
- C. **Injunction and Restoration.** The right to enjoin any use of, or activity on, the Protected Property that is inconsistent with the Purpose of this Easement, including trespass by members of the general public, and to require or undertake the restoration of such areas or



200510310196  
Skagit County Auditor

10/31/2005 Page

3 of 31 1:48PM

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 IX.

- D. **Enforcement**. The right to enforce the terms of this Easement, consistent with Section IX.
- E. **Assignment**. The right to assign, convey or otherwise transfer Grantee's interest in the Protected Property in accordance with Section XIV.
- F. **Assignment of Rights to State**. The Grantor hereby acknowledges its authorization and approval of the assignment of certain rights in this Easement to the State of Washington through the Interagency Committee for Outdoor Recreation, which rights shall be co-held by Grantee and the State of Washington through the Salmon Recovery Funding Board (SRFB), administered by the Interagency Committee for Outdoor Recreation (IAC). This Assignment of Rights shall be substantially in the form attached to this Easement as Exhibit C.

## V. PROHIBITED USES AND ACTIVITIES

Any use of, or activity on the Protected Property inconsistent with the purposes of this Easement is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in or permit any such use or activity. Without limiting the generality of the foregoing, the following uses of, or activities, though not an exhaustive list, are inconsistent with the purposes of this Easement and shall be prohibited, except as expressly provided in Section VI below, or as described in the Stewardship Plan, or as deemed necessary by Grantee to preserve or protect the Conservation Values of the Protected Property:

- A. **Construction**. The placement or construction of any buildings, structures, or other improvements of any kind, (including, without limitation, residential structures, docks, fences, roads, trails, and utilities), except as permitted in Section VI.
- B. **Alteration of Land**. The alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, or other mineral resources, except as is necessary for uses permitted in Sections VI below.
- C. **Alteration of Water Courses and Their Banks**. The alteration of watercourses and their banks, including draining, filling, dredging, ditching, or diking, armoring or changing locations of banks, constructing water impoundments or surface or sub-surface water withdrawal, except as permitted in Section VI.
- D. **Removal of Trees and Other Vegetation**. The cutting or removal of live and dead trees and other vegetation, except as permitted in Sections VI below, or to remove plants that are listed as noxious plants by the State of Washington Department of Agriculture



200510310196

Skagit County Auditor

- E. **Crop Cultivation**. The cultivation of any crops including timber products, nursery stock, fruit and vegetables, row crops, and livestock feed.
- F. **Waste Disposal**. The disposal or storage of solid waste, abandoned vehicles or parts, petroleum, pesticides, or hazardous substances, or other material that may be unsightly or pose a threat to public health and environment.
- G. **Signs**. The placement of commercial signs or other advertising material.
- H. **Fish and Wildlife Disruption**. The intentional disruption of fish and wildlife breeding/spawning and rearing activities.
- I. **Domestic Animals**. The keeping of domestic animals, including grazing livestock.
- J. **Introduced Vegetation**. The introduction of non-native invasive plant species.
- K. **Motorized Watercraft and Vehicles**. The operation of motorized watercraft or road motorized vehicles normally used for activities permitted in Section VI.

## VI. PERMITTED USES AND ACTIVITIES

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

- A. **Forest Management**. Forest management activities designed to protect or enhance the Conservation Values of the Protected Property, provided that they are consistent with the Stewardship Plan (see Exhibit B). Activities may include, but not be limited to, planting of native tree and shrub species and trimming or thinning of existing vegetation, provided that any cut trees are not removed from the Protected Property. Trees or other vegetation that pose a threat to safety or property may be cut and removed. Such activities shall be carried out in compliance with relevant regulations and shall be mutually agreed upon by Grantor and Grantee. The Stewardship Plan shall be updated to reflect the specific forest management activities that are to be carried out.
- B. **Maintenance and Replacement of Existing Structures**. Maintaining the walking trail through the Protected Property. This sentence is redundant with Section D. below. What about specifically mentioning the 30'x40' recreation area adjacent to river? This should show up on maps too. Or, created a new "permitted use" section below titled, "Recreation Area"?
- C. **Access Roads**. There are no roads in the Protected Property.



200510310196  
Skagit County Auditor

- D. **Trails.** Maintain existing foot trails on the Protected Property. Do you want to specifically reference the trail to the 20'x30' non-easement area? The more specific details we can put to the trail locations and display them on any maps and/or aerial photos the better for you and us in the future.
- E. **Recreation, Hunting, and Fishing.** Conduct non-commercial fishing, hunting, and other recreational activities in a manner and intensity that does not adversely impact vegetation and fish and wildlife habitat on the Protected Property.
- F. **Emergencies.** To undertake other activities necessary to protect public health or safety on the Protected Property or adjacent property, provided that any such activity shall be conducted in a manner that protects the Conservation Values of the Protected Property to the extent practicable.

## VII. NOTICE

- A. **Notice.** The following permitted uses and activities require Grantor to notify Grantee in writing prior to undertaking the use or activity:
- 1) forest management activities;
  - 2) construction of new trails;
  - 3) replacement of existing structures;
  - 4) any other activity that is likely to have a substantial impact on the Protected Property.

The purpose of requiring Grantor to notify Grantee prior to undertaking these permitted uses and activities is to afford Grantee an adequate opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the Purpose of this Easement. Whenever such notice is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity. The notice shall describe the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose of this Easement. If Grantee does not provide written objections within thirty (30) days after receipt of Grantor's notice, Grantee shall be deemed to have approved of the proposed activity for purposes of this easement only.

- B. **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 Conservation District  
2021 E. College Way, Suite 203  
Mount Vernon, WA 98273



200510310196  
Skagit County Auditor

10/31/2005 Page

6 of 31 1:48PM

To Grantee: Donald Butterfield  
Joan Lang  
4280 Blank Road  
Sedro-Woolley, WA 98284

**VIII. DISPUTE RESOLUTION**

- A. **Preventive Discussions.** Grantor and Grantee will promptly give the other notice of problems or concerns arising in connection with the parties' actions under this Easement or the use of, or 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.

**IX. 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.** Notwithstanding the Dispute Resolution provisions of Section VIII, Grantee may bring an action as provided in subsection C if Grantor: 1) fails to cure the violation within thirty (30) days after receipt of a notice of violation from Grantee; or 2) under circumstances where the violation cannot reasonably be cured within the 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, 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.



200510310196  
Skagit County Auditor

- 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. **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 or invitees in violation of the terms of this Easement and Grantee's reasonable enforcement expenses, including attorneys' and consultants' fees, shall be borne by Grantor, successors, assigns, or others who are otherwise determined to be responsible for the unauthorized use or activity.
- F. **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate 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 or flood; storm, or from acts of trespassers that Grantor could not reasonably have prevented; or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate 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.

#### X. 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.

#### XI. COSTS, LIABILITIES AND INSURANCE, TAXES, ENVIRONMENTAL COMPLIANCE, AND INDEMNIFICATION

- A. **Costs, Liabilities and Insurance.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, and maintenance of the Protected Property, including the maintenance of adequate liability insurance coverage.



200510310196  
Skagit County Auditor

Grantor remains solely responsible for obtaining any applicable governmental permits for any construction or other activity permitted by this Easement.

- B. **Taxes.** Grantor shall pay all taxes levied against the Protected Property as they become due. 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, procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill. 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 dumping, burying, or other release, or migration from off-site, on the Protected Property of any material that is subject to regulation as a "hazardous substance" within the meaning of 42 U.S.C. § 9601 et seq. (CERCLA) or RCW 70.105D.010 et seq. ("MTCA");
  - 3) 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 relating to a violation of environmental laws.
- D. **Remediation.** If, at any time, there occurs, or has occurred, a release on the Protected Property of any material that is classified as a hazardous substance pursuant to law, Grantor agrees to take all steps necessary to assure its remediation, 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 "operator" with respect to the Protected Property within the meaning of CERCLA and MTCA.
- F. **Indemnification.** Grantor hereby agrees to release and hold harmless, indemnify, and defend Grantee against all liabilities, claims, or judgments, arising from or in any way connected with:



200510310196

Skagit County Auditor

- 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 representations and warranties in Subsections A, B, C, and D of this section.

## XII. EXTINGUISHMENT, CONDEMNATION AND SUBSEQUENT TRANSFER

- A. **Extinguishment**. If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction and only upon a finding and declaration to that effect. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined in accordance with Subsection B, below.
- B. **Valuation**. In the event of an extinguishment pursuant to Subsection A, the amount to be paid by the Grantor to the Grantee shall be determined by subtracting the value of the Protected Property subject to this Easement from the fair market value of the unrestricted Protected Property at the time of termination or extinguishment.
- C. **Condemnation**. If all or any of the Protected Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to extinguish this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interest in the Protected Property subject to the taking or in lieu purchase and all direct or incidental damages. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantor and Grantee agree that Grantee's share of the balance of the amount recovered shall be determined by the method described in Subsection B, with the remainder due to the Grantor.
- D. **Application of Proceeds**. Grantee shall return any proceeds received under the circumstances described in this Section to the Washington Interagency Committee for Outdoor Education's Salmon Recovery Funding Board (or successor fund) for use in acquiring property for salmon habitat recovery (or a 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;
  - 2) Describe this Easement in and append it to any e- any interest in the Protected Property;



200510310196  
Skagit County Auditor

- 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.

### **XIII. AMENDMENT**

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

### **XIV. ASSIGNMENT**

This Easement is transferable by mutual agreement of Grantor and Grantee, and Grantee may assign its rights and obligations under this Easement only to an agency or organization that is a qualified organization at the time of transfer under section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under RCW 64.04.130 or RCW 84.34.250 (or any successor provision[s] then applicable). As a condition of such transfer, Grantee shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement.

### **XV. 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.



200510310196

Skagit County Auditor

10/31/2005 Page

11 of 31 1:48PM

## XVI. 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 XIII.
- E. **No Forfeiture**. Nothing contained in this Easement will result in a forfeiture or reversion of Grantor's title in any respect.
- F. **"Grantor" - "Grantee"**. The terms "Grantor" and "Grantee," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include, respectively the above-named Grantor, and its personal representatives, heirs, successors, and assigns, and the above-named Grantee, its personal representatives, successors and assigns.
- G. **Successors and Assigns**. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.
- H. **Termination of Rights and Obligations**. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.



200510310196  
Skagit County Auditor

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.

#### **XVII. SCHEDULE OF EXHIBITS**

- A. **Baseline Documentation Summary**
- B. **Stewardship Plan Summary**
- C. **Assignment of Rights**



200510310196

Skagit County Auditor

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

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 31 day of OCT, 2005.

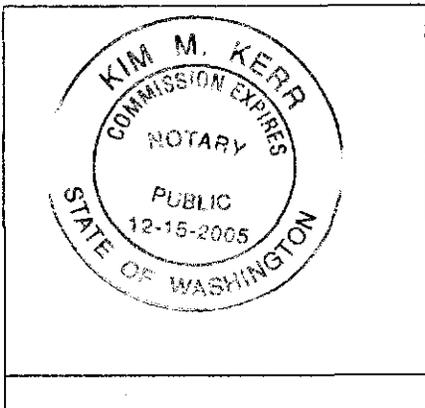
[Signature]  
Grantor

[Signature]  
Grantor

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAGIT )

I certify that I know or have satisfactory evidence that Donald Butterfield and Joan Lang are the persons who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: OCT 31, 2005



(Use this space for notarial stamp/seal)

Kim M. Kerr  
Notary Public

Print Name Kim M. Kerr

My commission expires 12/15/05



200510310196

Skagit County Auditor



## EXHIBIT A

### Butterfield/Lang Property Conservation Easement Baseline Documentation

#### I. Introduction

##### A. Location

The land referred to in this plan is situated approximately 4 miles north of Sedro-Woolley, Skagit County, Washington. Don Butterfield and Joan Lang presently own the property. The legal description for the easement area is as follows:

##### Legal description of Area Encumbered by Permanent Conservation Easement

That portion laying west of a line running north and south 253 feet west of the west side of Blank Road as it existed August 25, 2005 of Tract 4 of Parcel Map and Survey No. 111-76 approved July 30, 1976, recorded August 3, 1976 under Auditor's File No. 840287, in Volume 1 of Short Plats, page 153, records of Skagit County, Washington; being a portion of the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$ ; and of the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$ ; all in Section 25, Township 26 North, Range 4 East of W.M. ALSO EXCEPT a 20' (running east and west) x 30' (running north and south) square area located 398' west of the most western edge of Blank Road as it existed August 25, 2005 and adjacent to the south property line. The SW corner, NW corner and NE corner of the 20'x30' square is approximately located by a large western red cedar in each of the above listed corners.

SUBJECT TO and TOGETHER WITH easements, reservations, restrictions, covenants, liens, leases, court causes and other instruments of record.

Situate in the County of Skagit, State of Washington.

The property that will be burdened by the conservation easement lies in Skagit County tax parcel P49938, which is listed as 5.04 acres. The balance of total acreage to be included in the easement is 4.2 acres.

The property is accessed from Highway 9 by turning west on Prairie Road and then turning south onto Blank Road. The property is located at 4380 Blank Road.

##### B. General Property Description

The property is located in Section 25, Township 36 North, Range 4 East. The elevation of the property from the USGS map is 200 feet. The property is a long narrow rectangular shaped property that runs east and west. The Samish river splits the property in the middle running north and south. Length of river frontage is 165' for both the west bank and east bank of the Samish River. There is no access to the property on the west side of the Samish River which totals about 2.8 acres.



200510310196  
Skagit County Auditor

The topography is generally flat. There is a small swale that runs north and south through the property on the east side of the Samish River. When the Samish river floods this swale fills with water. The landowners indicated that when the river subsides the water drains out of the swale.

The property is woodland except for the area where the house and yard are located. It is estimated that 4.5 acres of the property is woodland. The woodland consists of mature cedar, alder, some spruce. Understory plants include elderberry, salmon berry, vine maple and Indian plum.

There is a walking trail through the property that ends in a small 30'x 40' clearing at the east bank of the Samish River.

### *C. Purpose of Conservation Easement*

The Butterfield/Lang's objectives for their property is to protect and enhance the wildlife value of their property and the surrounding area by placing 4.2 acres of the their property into a conservation easement.

The primary purpose of the Butterfield/Lang property conservation easement is to assure that the subject property will remain predominately in it's natural condition, and to prevent and use of, or activity on, the subject property that will impair or interfere with its conservation values.

The conservation easement prohibits the following activities:

- General construction;
- Alteration of land;
- Alteration of water courses and their banks;
- Removal of trees and other vegetation;
- crop cultivation;
- waste disposal;
- signs;
- wildlife disruption;
- domestic animals;
- introduced non native vegetation;
- motorized watercraft and vehicles.

Exceptions to these prohibitions can be found in Section VI of the Conservation Easement.

## **II. Natural Resources Inventory**

### *A. Geology and Soils*

The Butterfield/Lang property is located in the immediate floodplain of the Samish River. The site consists of alluvial deposition. The USDA Soil Survey of Skagit County Area, Washington describes the soils as Bernstone gravelly loam, Cokedale silt loam, and Samish Silt loam.



200510310196

Skagit County Auditor

*B. Climate*

According to the USDA Soil Survey of Skagit County Area, Washington, the average annual precipitation is about 45 inches, the average annual air temperature is about 50 degrees F, and the average frost-free season is 160 to 200 days.

*C. Vegetation*

The property primarily consists of second growth forest dominated by hardwood species. There are a few conifers on the site and the understory plants consist of various shrubs, salmon berry and noxious weeds.

Japanese knotweed is present along the bank of the Samish River in the Subject property.

*D. Fish and Wildlife*

Samish River has historically provided habitat to Chinook, Chum, Coho, Steelhead, and Cutthroat trout.

Songbirds and squirrels have been sighted on the property. Deer have also been seen on the property.

**III. Historic Land Use**

Much of the land surrounding the Subject property has been used as timber land and woodlot. The production of timber on this land is limited by muddiness caused by seasonal soil wetness. The seasonal high water table limits the use of equipment to dry periods. Trees are frequently subject to windthrow during periods when the soil is excessively wet and the winds are strong. The seasonal high water table reduces root respiration, which results in a low survival rate of seedlings.

Currently, the main use for the property has been to maintain it as woodland and is used for recreational purposes.

**IV. Existing Land Use Plans**

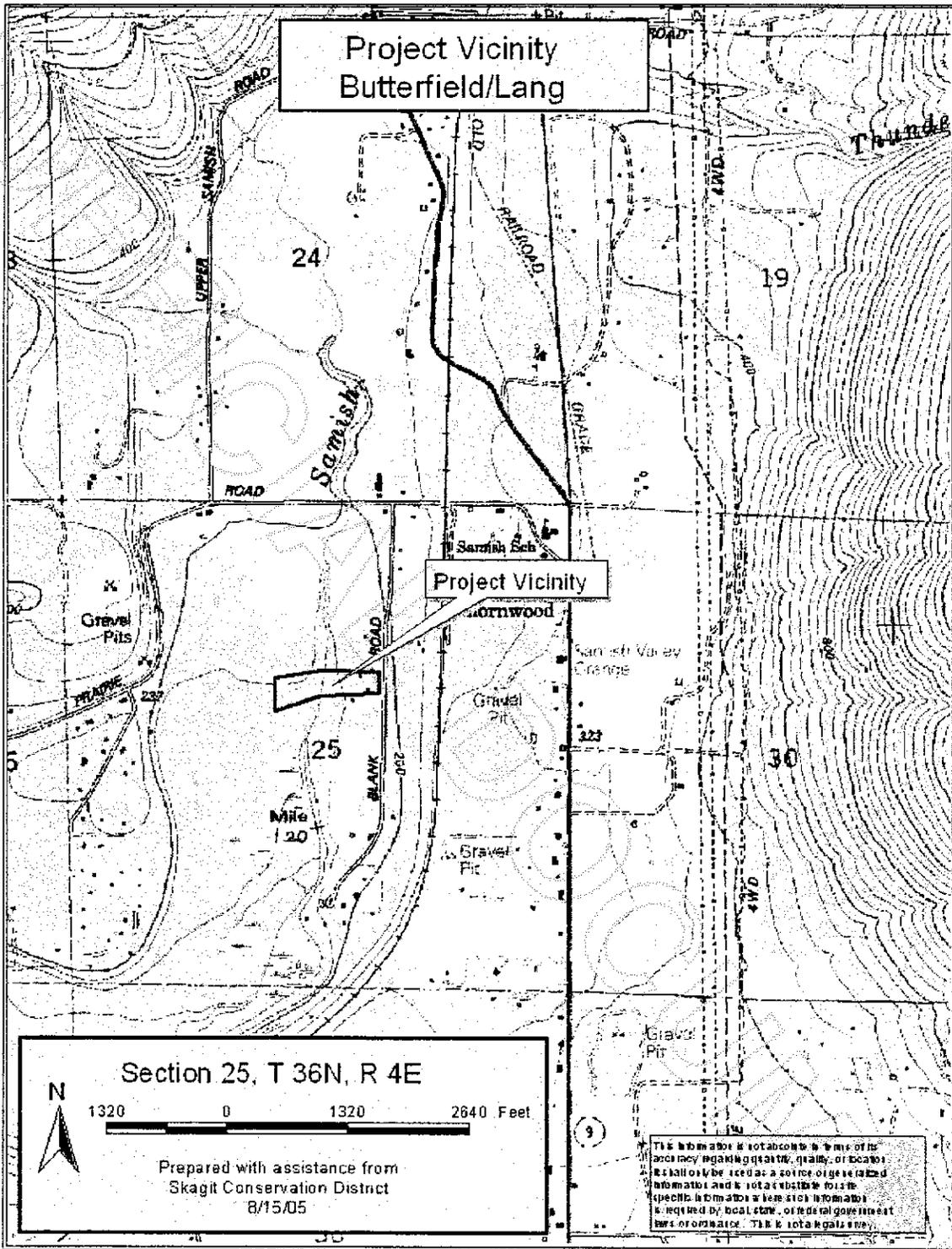
The subject property is currently zoned "Ag-NRL." As part of the Grant Deed of Conservation Easement, the land will be re-zoned as "Open Space." A walking trail will be maintained along with the approximate 30'x 40' recreation area near the Samish River. The details are in Section VI of the Easement.

The Skagit Conservation District reserves the right to transfer the Conservation Easement to another suitable land steward in the future. The Skagit Conservation District's revegetation and management plans will be Stewardship Plan for the site.



200510310196  
Skagit County Auditor  
10/31/2005 Page 18 of 31 1:48PM

Project Vicinity  
Butterfield/Lang



Section 25, T 36N, R 4E



Prepared with assistance from  
Skagit Conservation District  
8/15/05

This information is not accurate in terms of its accuracy, reliability, quality, or location. It shall not be used as a source of general information and is not a substitute for the specific information which may be required by local, state, or federal government laws or ordinances. This is not a legal survey.



200510310196  
Skagit County Auditor

Parcel Map  
Butterfield/Lang

Parcels  
Hydrology

P49938

Section 25, T 36N, R 4E



200 0 200 400 Feet

Prepared with assistance from  
Skagit Conservation District  
8/15/05

This information is not absolute in terms of its accuracy regarding quantity, quality, or location. It should not be used as a basis for legal proceedings and is not a substitute for a professional survey. The information is provided for informational purposes only and is not intended to be used for any other purpose. This is not a legal survey.



200510310196  
Skagit County Auditor

## EXHIBIT B

# STEWARDSHIP CONSERVATION PLAN Butterfield/Lang Property – Sedro-Woolley, WA

### Table of Contents

<u>Section</u>	<u>Page</u>
Property Owner	2
Description of the Property	2
Objective and Purpose of the Plan	3
Resource Concerns/Critical Elements	4
Natural Resource Inventory	4
Restoration and Management Alternatives	5
Tree & Shrub Planting Plan	6
Operation & Maintenance	8
Recreation Area Management	9

### Appendices

NWI Map  
Soil Interpretations  
CPA-52  
Tech. Note 14  
FOTG #391 Riparian Forest Buffer Standard  
FOTG # 490 Forest Site Preparation Standard  
FOTG #612 Tree Shrub Establishment Standard  
FOTG #314 Brush Management Standard



Skagit Conservation District  
Stewardship Plan for the Butterfield/Lang Property

**PROPERTY OWNER**

Don Butterfield and Joan Lang  
4930 Blank Road  
Sedro-Woolley, WA 98284  
(360) 856-4497

**DESCRIPTION OF THE PROPERTY**

Legal description of Area Encumbered by Permanent Conservation Easement

That portion laying west of a line running north and south 253 feet west of the west side of Blank Road as it existed August 25, 2005 of Tract 4 of Parcel Map and Survey No. 111-76 approved July 30, 1976, recorded August 3, 1976 under Auditor's File No. 840287, in Volume 1 of Short Plats, page 153, records of Skagit County, Washington; being a portion of the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$ ; and of the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$ ; all in Section 25, Township 26 North, Range 4 East of W.M.

**SUBJECT TO and TOGETHER WITH** easements, reservations, restrictions, covenants, liens, leases, court causes and other instruments of record.

Situate in the County of Skagit, State of Washington.

Location

The property is located in Section 25, T 36N, R 4E, about 4 miles north of Sedro-Woolley, Washington. Access to the property is off Blank road shown in the Project Vicinity map.

Site Characteristics

The total acreage of the property is 5.02 acres according to the Skagit County Assessor. The area encumbered by the Conservation Easement and subject to this Stewardship Plan is 4.2 acres. The length of the river frontage is 165' on the east bank of the Samish River and 165' on the west bank of the Samish River. Elevation is approximately 200 feet. There are small knolls and swales, with relief varying no more than 5 feet throughout the property. The property is split by the Samish River. Approximately 2.8 acres of the property is on the west side of the Samish River with the remaining acreage lying on the east side of the Samish River.



Skagit Conservation District  
Stewardship Plan for the Butterfield/Lang Property

The proposed conservation area is currently forested with small clearings where noxious weeds have invaded. The area east of the Samish River contains a small number of mature conifers, hardwoods and shrubs. The area is fully stocked with native vegetation (see Stocking Survey) but lacks a sufficient number of conifer. The west side of the Samish River is comprised of mature alder and understory shrubs such as vine maple, elderberry and salmon berry. There is no access to the property on the west side of the Samish River.

There is a 30 foot by 40 foot recreation area in the proposed easement near the east bank of the Samish River. This area is currently being used by the landowner to exercise in and occasionally is used for tent camping by the landowner's family. There is also a 20' x 30' area in the proposed easement that will be excluded from the easement. This area is located along the south property line of the property.

Soil Types

*Barnestone gravelly loam (#5) – 1.0 acres (NRCS, Skagit County Soil Survey.)* Site Potential Tree Height (SPTH) = 150 feet for Douglas fir. Wood production capability for Douglas fir is 158 cubic feet per acre per year at age 60. Permeability is moderately rapid to the substratum and very rapid through it. Slope is 0 to 8 percent. This unit is well suited to year-round logging.

*Cokedale silt loam (#34) – 3.1 acres (NRCS, Skagit County Soil Survey.)* Site Potential Tree Height (SPTH) = 165 feet for Douglas fir. Wood production capability for Douglas fir is 176 cubic feet per acre per year at age 60 and 109 cubic feet per acre per year for red alder at age 40. Permeability of this soil is moderate to a depth of 16 to 35 inches and very rapid below this depth. Slope is 0 to 3 percent. The main limitation for the harvesting of timber is muddiness caused by seasonal soil wetness.

*Samish silt loam (#114) – 0.7 acres (NRCS, Skagit County Soil Survey.)* Site Potential Tree Height (SPTH) = 85 feet for red alder. Wood production is 92 cubic feet per acre per year for red alder at age 40. Permeability of this soil is moderately slow. Slope is 0 to 3 percent.

**OBJECTIVES AND PURPOSE OF THE PLAN**

The landowner's objectives for their property are: 1) to place the majority of their property in a conservation easement to protect the property from any future landuse



Skagit Conservation District  
Stewardship Plan for the Butterfield/Lang Property

change or development; 2) attract more wildlife to their property; 3) control noxious weeds on their property.

This plan is developed to: provide information about the current condition of the property and its conservation values; implement the creation of a habitat conservation reserve; give recommendations for restoration and /or management alternatives; and provide technical guidance as specified by the NRCS Field Office Technical Guide (FOTG) Practice Standards.

NATURAL RESOURCE INVENTORY (S.W.A.P.A.H.)

*Soils*

The primary soils on the property are:

Barnestone gravelly loam (5)

Cokedale silt loam (34)

Samish silt loam (114)

(Refer to NRCS soils information)

*Water*

The Samish River is a Type 1 water way according to Department of Natural Resources water classification. It contains Chinook, Chum, Coho, Steelhead and Cutthroat trout.

The area located of the west side of the river is listed as a [P] Palustrine, [FO] Forested, [C] Seasonally Flooded (PFOC) by the National Wetlands Inventory. (See explanation in appendix).

*Animals*

Wildlife and fish are present on the property. Protection and enhancement of the conservation area will increase and improve habitat diversity. The forested land and associated wetlands are an important food and habitat source for many species of fish, birds, animals and reptiles. The area will include areas of coniferous and deciduous trees, deciduous shrubs, and herbaceous plants. Wildlife attracted to there areas include song birds, woodpeckers, squirrels, raccoons, deer.

There are no livestock on the property or history of livestock use.

A list of endangered and threatened species for Skagit County is listed in the appendix.



Skagit Conservation District  
Stewardship Plan for the Butterfield/Lang Property

*Air*

Air resource concerns and issues usually deal with outdoor burning, odor from animal waste and dust. There are no livestock or soil tillage occurring on the property.

*Plants*

The area on the west side of the Samish River is comprised exclusively of red alder 12 to 24 inches DBH. The understory consists of salmon berry, elderberry and vine maple.

The area on the east side of the Samish River is a mix of some mature conifer, mostly western red cedar and some spruce, hardwoods and various shrubs. Hardwoods present are red alder and maple. Shrubs present include salmon berry, huckleberry, Indian plum, and vine maple. See Stocking Survey. Noxious weeds present are blackberry, thistle and Japanese knotweed.

*Human*

Cultural Resources are present within one mile of the project area. The State Department of Archaeology and Historic Preservation office has confirmed that the proposed project will have no effect upon cultural properties included in the National and State Registers of Historic Places and the Washington State Archaeological and Historic Sites Inventories. Thus, no historic properties are affected.

No pesticides will be used in the easement area to control noxious vegetation. All noxious vegetation will be controlled mechanically by hand.

**RESOURCE CONCERNS**

The primary natural resource concerns at the easement site are the following:

- Retention and enhancement of a riparian forest buffer along a salmon spawning stream.
- Improvement and protection of critical fish and wildlife habitat.
- Removal and control of noxious weeds.
- Protection of endangered species.
- Protection and enhancement of natural forest stands in hydrologic convergence zones.
- Allowing recreational access to the landowners.

**MANAGEMENT ALTERNATIVES**

The following site restoration and management options were evaluated by the landowners and Skagit Conservation District. The landowners chose option #1 as the preferred option.



Skagit Conservation District  
Stewardship Plan for the Butterfield/Lang Property

Option #1. Sale of permanent conservation easement and replace noxious weeds with native vegetation.

The site would be converted into a permanent conservation easement. The land would be protected from future land use changes and remain in valuable fish and wildlife habitat. This section includes site preparation (FOTG #490) and treatments to facilitate planting of trees and shrubs (FOTG #612). By following techniques to prepare the land you will be able to: establish a stand of trees, improve wildlife habitat. Conserve soil and water, and improve the watershed. The establishment of desirable, adaptive trees for long term benefits will help to control invasive vegetation (FOTG #314) and reduce competition for available nutrients and moisture. Noxious weeds will be controlled mechanically, no pesticides will be used. Seedling protection measures (FOTG #612-3) will reduce the hazard of rodent and deer damage to newly establish tree and shrub plantings. Please refer to these NRCS practice standards for descriptive details.

A planting design shows the approximate location and tree/shrub species type well suited for the area. Implementation of the planting design will achieve 75 percent or more of the riparian forest functions. Refer to "NRCS Biology Technical Note 14", Evaluation Summary for planned RMS levels. See Record of Decisions for implementation schedule of these practices.

Option #2. Leave area as is and control noxious weeds, with easement.

The land would be protected from future land use changes and remain in valuable fish and wildlife habitat. The area would be managed to control present noxious weeds consisting of blackberry, thistle and Japanese knotweed. This option would be labor intensive and ongoing until all noxious weeds are eradicated. This options does not provide and additional wildlife habitat value. Additional wildlife habitat value could be added by removing the noxious weeds and replacing them with native vegetation that will provide wildlife habitat values and prevent the return of the noxious weeds.

Option #3. Do nothing, no easement and no control of noxious weeds.

This option would not protect the area against future development or land use changes. Noxious weeds would be allowed to remain and potentially spread.

10/21/2005

6



200510310196  
Skagit County Auditor

10/31/2005 Page 26 of 31 1:48PM

## TREE AND SHRUB PLANTING DESIGN

Conifer trees and shrubs would be planted within the existing stand of trees to compose a diverse forest structure that will provide greater fish and wildlife habitat and replace open areas where noxious weeds are currently present. Minimal site preparation will be required.

Planting will only take place on the east side of the Samish River (see planting map). There is no access to the property on the west side of the Samish River and the area appears to be fully stocked with mature hardwood stand consisting of red alder, vine maple, elderberry and salmon berry.

While the stocking survey indicates that the site on the east side of the Samish River is fully stocked (see Stocking Survey) there are some open areas in the canopy and along the edges of the property where native vegetation could be established. Some of these areas are currently being utilized by noxious weeds.

Conifer will be planted in these open areas (see planting map for location of conifer). Conifer will be planted on a 10 foot by 10 foot spacing. Desired species are western red cedar (*Thuja plicata*) and sitka spruce (*Picea sitchensis*). Western red cedar is more shade tolerant than sitka spruce. Site prep will consist of removing any non native vegetation by scalping the ground. Conifer trees will be planted by hand with planting shovel (See planting techniques). Approximately 25 conifer will be required.

A row of shrubs will be planted on the outside of the conifer trees on a 4 foot by 4 foot spacing (see planting map for location). Desirable shrubs are blue elderberry (*Sambucus glauca*), serviceberry (*Amelanchier alnifolia*), snowberry (*Symphoricarpos albus*) and wild rose (*Rosa* sp.). Shrubs will be planted by hand with planting shovel (see planting techniques). Approximately 55 shrubs will be required.

There will also be a few red osier dogwood (*Cornus stolonifera*) along the bank of the Samish River in the small 30 foot by 40 foot recreation area (see planting map). Shrubs should be planted on a 4 foot spacing. No activity shall take place in the river channel. Approximately 15 shrubs will be required.

Tree seedlings must exceed the following size requirements: *caliper 3/8 inch (measured 1 inch above the root collar), plus minimum 18 inch shoot height, plus minimum 8 inch root length, plus a shoot to root ratio of at least 2:1. Seedlings must be from seed zone 202 or 403.*



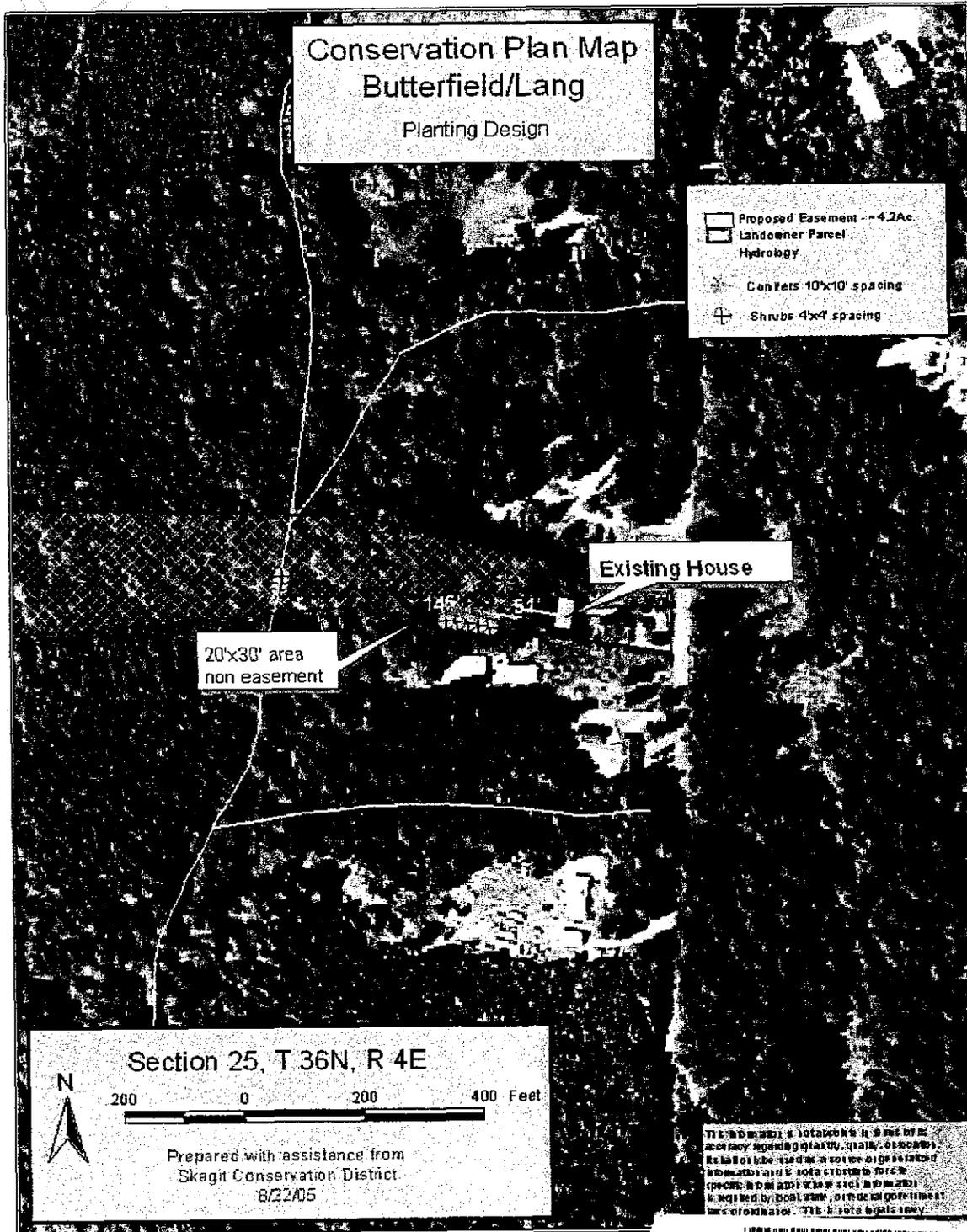
Skagit Conservation District  
Stewardship Plan for the Butterfield/Lang Property

Tree shelters may be needed to protect seedlings from animal damage. This plan recommends using tree shelters immediately after planting.

Planting shall only be done in the fall (October through November) or early spring (March through April) when enough soil moisture is present to support the seedlings. Do not plant seedlings in frost or freezing weather.



Skagit Conservation District  
Stewardship Plan for the Butterfield/Lang Property



10/21/2005

9



200510310196  
Skagit County Auditor

Skagit Conservation District  
Stewardship Plan for the Butterfield/Lang Property

UNITED STATES DEPARTMENT OF AGRICULTURE  
NATURAL RESOURCES CONSERVATION SERVICE  
SKAGIT CONSERVATION DISTRICT  
MOUNT VENON, WASHINGTON

OPERATION AND MAINTENANCE PLAN

COOPERATOR: Don Butterfield and Joan Lang

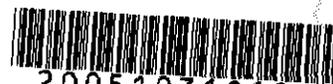
Date: October 2001

LOCATION OF PRACTICE: Samish river 4 miles north of Sedro-Woolley, WA.

Properly maintaining your woody vegetation planning is important to its long term success. This proactive will require you to perform periodic operation and maintenance to maintain satisfactory performance. Here are the guidelines to help you implement a food operation and maintenance program.

GENERAL GUIDELINES

- The buffer will be inspected monthly and protected from adverse impacts, such as livestock or wildlife damage, fire, equipment operations. Replacement of dead trees or shrubs and control of undesirable vegetative competition will be continued until the buffer is, or will progress to a fully functional buffer.
- Inspect the treated area monthly to assess need to repair, replace, remove, or adjust physical barriers.
- Tree protectors may need annual replacement or adjustment until trees grow beyond the reach of browsing animals.
- Any areas treated with chemical repellants, biological agents, or pesticides should be inspected to assess the need to reapply or use alternative techniques.
- Evaluate habitat manipulation measures annually for effectiveness and adjust as necessary to achieve desired results. Evaluate the need for continued vegetation control measures semi-annually.
- Inspect tree shelters monthly. Check for deer, rodents, and beaver damage.
- Protect seedlings from livestock, foot traffic, recreation, and other activities that may cause damage.



## RECREATION AREA MANAGEMENT

The area designated as the "recreation area" presently is about 1,200 square feet of grass near the bank of the Samish River. This area will be maintained by the landowner and is used for tent camping and as an exercise area. No removal of existing vegetation will take place in the recreation area except fallen limbs or other debris on the ground in the recreation area.

