



200605100108

Skagit County Auditor

5/10/2006 Page

1 of

46 1:48PM

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

Gary T. Jones  
Jones & Smith  
PO Box 1245  
Mount Vernon, WA 98273

**GRANT DEED OF CONSERVATION EASEMENT**

SKAGIT COUNTY WASHINGTON  
REAL ESTATE EXCISE TAX

Grantor: Skagit County Diking District No. 3

Grantee: Skagit County

MAY 10 2006

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

**Legal Description**

Abbreviated form: Portion of Govt. Lot 1, Section 13, Township 33 N., Range 3 E. W.M.  
Additional legal at Exhibit A.

Assessor's Tax Parcel Number: P15788, P15789, P15810

THIS GRANT DEED OF CONSERVATION EASEMENT ("Easement") is made this 8<sup>th</sup> day of May, 2006, by Skagit County Diking District No. 3, a municipal corporation, having an address at PO Box 324, Conway, WA 98238, (hereinafter referred to as "Grantor"), in favor of Skagit County, a political subdivision of the State of Washington, having an address at Skagit County Farmland Legacy Program, c/o Skagit County Board of Commissioners, County Administration Building, 1800 Continental Place, Mount Vernon, WA 98273 (hereinafter referred to as "Grantee").

## I. RECITALS

- A. Grantor is the sole owner in fee simple of that certain real property (the "Protected Property") in Skagit County, Washington, more particularly described in Exhibit A (legal description) and shown on Exhibit B (site plan), which are attached and incorporated into this Easement by this reference. The Protected Property is approximately thirty (30) acres in size and is levee site and open farmland from which Grantor has removed three dwellings and several buildings and improvements to make land available for added floodway and fish and wildlife conservation purposes.
- B. The Protected Property expands the capacity of the Skagit River floodway, providing additional flood protection, to benefit Grantor, the people of Skagit County and the people of the State of Washington (Conservation Values). The Conservation Values also include restoration of salmon and wildlife habitat by reconnection of Skagit River main stem to shoreline flood plain.
- C. The Protected Property is zoned Agricultural Natural Resource Land under the Skagit County Zoning Ordinance. Skagit County Zoning Ordinance 14.16.400 states that the goal of the Agricultural Natural Resource Land zone is to "provide land for continued farming activities, conserve agricultural land, and reaffirm Agricultural use, activities and operations as the primary use of the district." By restoring some of the flood protection and interior drainage that was eliminated by setting back the levee to Dike Road, this Protected Property will uphold the uses and values of the Agricultural Natural Resource Land zone.
- D. The Protected Property includes approximately thirty (30) acres of frequently flooded land of which approximately eighteen and eighty-nine hundredths (18.89) acres were formerly protected by levee and interior drainage.
- E. The specific Conservation Values and characteristics of the Protected Property are further documented in an inventory of relevant features of the Protected Property, dated February 2005 and Revised: April 2005, on file at the offices of Grantee and incorporated into this Easement by this reference ("Baseline Documentation.") The Baseline Documentation consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. Exhibit B, included as part of the Baseline Documentation, is a scaled site map delineating the new levee, an existing groin with riprap armor at the upstream end of the parcel, and other key features and improvements on the site at the time of this grant.
- F. Grantor, as owner of the Protected Property, has the right to protect and preserve the Conservation Values of the Protected Property provided that flood protection values are realized and hereby transfers such rights to Grantee in perpetuity.
- G. The foregoing recitals are incorporated into this Easement by this reference.



## II. CONVEYANCE AND CONSIDERATION

- A. For the reasons stated above, in consideration of the mutual covenants, terms, conditions, and restrictions contained in this Easement, and in consideration of payment of One Hundred Seventy-Five Thousand Dollars (\$175,000.00) 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.
- B. This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130, subject only to the mutual covenants, terms, conditions, and restrictions set forth in this Easement which are consistent with the authority exercised by the District under Chapters 85.05 and 85.36 RCW and to title matters of record as of the Effective Date of this Easement.
- C. Grantor expressly intends that this Easement run with the land and that this Easement shall be binding upon Grantor's personal representatives, heirs, successors, and assigns.

## III. PURPOSE

It is the primary purpose of this Easement to restore and protect flood plain habitat and riparian corridor on the South Fork of the Skagit River by removing barriers to food, tidally influenced estuary and slough habitat for salmon and wildlife. The Easement will provide off-channel habitat for migrating salmon which protects from predators and high flows while contributing detritus to the food chain and reducing siltation. The Easement will be re-vegetated by natural processes and will expand blind channel and backwater inter-tidal wetland use off the main channel of the South Fork of the Skagit River.

## IV. RIGHTS CONVEYED TO GRANTEE

To accomplish the Purpose of this Easement, the following rights are conveyed to Grantee by this Easement:

- A. **Protection.** To preserve and protect in perpetuity, and to enhance by mutual agreement, the Conservation Values of the Protected Property.
- B. **Access for Monitoring and Enforcement.**
  - 1. To enter the Protected Property annually, at a mutually agreeable time and upon prior written notice to Grantor, for the purpose of making a general inspection to monitor compliance with this Easement.
  - 2. To enter the Protected Property at such other times as are necessary if Grantee has a reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of evaluating, mitigating, or terminating the violation and otherwise enforcing the provisions of this Easement. Such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Protected Property.



- C. **Injunction and Restoration.** To enjoin any use of, or activity on, the Protected Property that is inconsistent with the Purpose of this Easement, including trespasses by members of the public, and to require or undertake the restoration of such areas or features of the Protected Property as may be damaged by uses or activities prohibited by Section V or inconsistent with the provisions of this Easement, all in accordance with Section X.
- D. **Enforcement.** To enforce the terms of this Easement, consistent with Section X.
- E. **Assignment.** To assign, convey or otherwise transfer Grantee's interest in the Protected Property in accordance with Section XV.

## V. PROHIBITED USES AND ACTIVITIES

- A. **General.** Any use of, or activity on, the Protected Property inconsistent with the Purpose of this Easement is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in or permit any such use or activity. Without limiting the generality of this subsection, the following uses of, or activities on, the Protected Property, though not an exhaustive list, are inconsistent with the Purpose of this Easement and shall be prohibited; except as expressly permitted in Section VI.
- B. **Subdivision and Development Rights.** Residential development rights and other agricultural, forestry, and mineral resource land use development rights are extinguished by this Conservation Easement. The legal or *de facto* division, subdivision, or partitioning of the Protected Property is prohibited; except that boundary line adjustments are permitted. Grantor shall not exercise its development rights in the Protected Property, transfer such development rights to any other portion of the Protected Property as it is now or hereafter may be bounded or described or to any other property adjacent to the Protected Property or otherwise, nor use such development rights or the area of the Protected Property for the purpose of calculating permissible lot yield of the Protected Property or adjacent property.
- C. **Construction.** The placement or construction of any residential buildings, structures, or other residential improvements of any kind is prohibited, except as expressly permitted in Section VI.B, and the placement or construction of any commercial or industrial buildings, structures, or other improvements of any kind is prohibited, except as permitted by the Skagit County Code regulating Critical Areas, including frequently flooded areas and fish and wildlife habitat conservation areas.
- D. **Impervious surface.** The total area covered by structures of any kind and impervious surfaces such as asphalt, concrete or gravel shall be limited to 5% of the area of the Protected Property.
- E. **Recreation.** The following forms of recreation are prohibited on the Protected Property: golf courses; commercial use of motorized or mechanized recreational vehicles such as motorcycles, snowmobiles and dune buggies; commercial overnight camping; athletic fields; use of the property for any commercial public recreation; and other developed recreational uses of the property which require special buildings, structures, or facilities. Undeveloped recreational uses,



and the leasing of such uses for economic gain, may be permitted insofar as they are consistent with the Purpose and terms of this Easement.

- F. **Forestry Use.** Commercial Forestry sale or removal of marketable trees is prohibited including production and harvest of nursery stock and Christmas trees.
- G. **Feedlots.** The establishment and maintenance of a commercial feedlot is prohibited. For the purposes of this Easement, a commercial feedlot is a confined area or facility within which the land is not grazed or cropped at least annually and which is used to receive livestock that has been raised off the Protected Property for feeding and fattening for market.
- H. **Erosion or Water Pollution.** Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters is prohibited.
- I. **Waste Disposal.** Except as expressly permitted in Section VI, the disposal or storage of rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or hazardous waste or material on the Protected Property is prohibited. Spreading of sewage, sludge, or sewage treatment byproducts is prohibited.
- J. **Commercial Signs.** The placement of commercial signs, billboards, or other advertising material on the Protected Property is prohibited; except in connection with the education of the public about the Protected Property, or to state the conditions of access to the Protected Property.
- K. **Mining.** The exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Protected Property is prohibited. The extraction of rock, dirt, sand, and gravel shall be permitted only if removal of such material is necessary to carry out other permitted activities on the Protected Property and will not interfere with the Conservation Values of the Protected Property.
- L. **Kennels.** Kennels as defined in the Skagit County Zoning Ordinance are prohibited.
- M. **Farm Worker Housing.** Construction or placement of farm worker housing is prohibited.
- N. **Alteration of Wetlands and Watercourses.** Alteration of wetlands and watercourses is prohibited except for Natural processes and planting of seeds or nursery stock for salmon and wildlife conservation and flood protection as may be necessary in an emergency or post flood restoration of the site to maintain structures, which protect life and property and repair damage. This prohibition will not apply to watercourse alteration to enhance salmon habitat.

## VI. PERMITTED USES AND ACTIVITIES

- A. **General.** Grantor reserves for itself and its personal representatives, heirs, successors and assigns, all rights accruing from ownership of the Protected Property, including the right to engage in, or permit or invite others to engage in, any use of, or activity on, the Protected Property that is not inconsistent with the Purpose of the Easement and that is not prohibited by this Easement. Without limiting the generality of this subsection, Grantor specifically reserves



for itself and its personal representatives, heirs, successors, and assigns, the following uses and activities, which shall be limited in the manner provided below.

- B. **Flood Fighting or Levee Maintenance.** Grantor may maintain, renovate, expand or replace the existing structures and improvements on the Protected Property; provided that such maintenance is located within the existing developed area as delineated in Exhibit B.
- C. **Roads.** Grantor may maintain, renovate, or replace existing roads or construct new roads necessary to serve diking and activities on the Protected Property. The design and location of any such construction, renovation, expansion, or replacement shall be subject to the prior written notice of Grantee, and maintenance of the roads may not adversely impact the Conservation Values of the Protected Property.
- D. **Hunting.** Subject to state and local regulations and on such terms as Grantor may impose licensed hunting and trapping shall be allowed.
- E. **Fences.** Grantor may construct and maintain fences on the Protected Property.
- F. **Fishing.** Subject to state and local regulations and on such terms as may be imposed by Washington Department of Fish and Wildlife on use of an Easement recorded September 30, 1955, under Skagit County Auditor's File No. 525073 licensed fishing shall be allowed provided that no parking or use of motorized vehicles on the Easement premises is hereby authorized.
- G. **Drainage structures.** Grantor may construct and maintain drainage structures, including ditches, tubes, pipes, pumps, gates or other facilities and appurtenances for enhancement of drainage systems, or off-channel salmon habitat areas.
- H. **Grading.** Grantor may grade and/or riprap portions of the Protected Property consistent with the Purpose of this Easement; provided that such grading and riprap shall be limited to that necessary to serve other permitted uses on the site. Prior to initiating any grading activities requiring a permit from Skagit County or any riprap activities, the Grantor must provide written notice to the Grantee.
- I. **Creation of Mortgage Liens.** Grantor may create consensual liens, whether by mortgage, deed of trust, or otherwise, for the purpose of securing indebtedness of Grantor, so long as such liens remain subordinate to the Easement.
- J. **Emergencies.** Grantor may undertake other activities necessary to protect public health or safety on the Protected Property, or that are actively required by and subject to compulsion of any governmental agency with authority to require such activity; provided that any such activity shall be conducted so that interference with the Conservation Values of the Protected Property is avoided, or, if avoidance is not possible, minimized to the extent possible.
- K. **Utilities.** Grantor may maintain, renovate, expand existing utilities or install new utilities to serve permitted uses on the Protected Property, provided that their installation will not conflict with the Purpose of this easement.



## VII. STEWARDSHIP

Grantor agrees to maintain the Protected Property for salmon and wildlife habitat conservation, and to protect the wetlands and Critical Areas on the site. No activities violating sound soil and water conservation management practices shall be permitted. No activities which would damage the Conservation Values of the wetland and/or Critical Areas shown in Exhibit B shall be permitted.

## VIII. NOTICE

### A. Notice.

1. Grantor. The following permitted uses and activities require Grantor to notify Grantee in writing prior to undertaking the use or activity:

- a) salmon habitat enhancement project;
- b) road construction related to dike maintenance;
- c) grading activities requiring a permit from Skagit County; and
- d) 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 (as required under Subsection XIII.E).

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 use or activity in question. Grantor may notify Grantee at the time of permit application, for concurrent review, or may provide notice and initiate review prior to permit application, at the Grantor's discretion. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose of this Easement. 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. Optional Consultation. If Grantor is unsure whether a proposed use or activity is prohibited by this Easement, Grantor may consult Grantee by providing Grantee a written notice describing the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to the consistency with the Purpose of this Easement and to provide comments thereon to Grantor for the purposes of this easement only.

C. 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 County Dike District No. 3  
PO Box 324  
Conway, WA 98238

And to: Gary T. Jones  
Jones & Smith, Attorneys at Law

PO Box 1245  
Mount Vernon, WA 98273

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

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

#### IX. DISPUTE RESOLUTION: GRANTEE'S REMEDIES

- A. **Preventive Discussions.** Grantor and Grantee will promptly give the other notice of problems or concerns arising in connection with the parties' actions under this Easement or the use of or activities or conditions on the Protected Property, and will meet as needed, but no later than 15 days after receipt of a written request for a meeting, to minimize the same.
- B. **Optional Alternative Dispute Resolution.** If a dispute is not resolved through preventive discussions under subsection A, Grantor and Grantee may by mutual agreement submit the matter to mediation or arbitration upon such rules of mediation or arbitration as Grantor and Grantee may agree.

#### X. GRANTEE'S REMEDIES

- A. **Notice of Violation, Corrective Action.** If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee.
- B. **Grantor's Failure to Respond.** Grantee may bring an action as provided in subsection X.C if Grantor:
1. Fails to cure the violation within thirty (30) days after receipt of a notice of violation from Grantee; or
  2. Under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.
- C. **Grantee's Action.**
1. **Injunctive Relief.** Grantee may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Easement:
    - a. To enjoin the violation, ex parte as necessary, by temporary or permanent injunction; and





- b. To require the restoration of the Protected Property to the condition that existed prior to any such injury.

2. **Damages.** Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of Conservation Values. Without limiting Grantor's liability in any way, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking corrective or restoration action on the Protected Property.

D. **Emergency Enforcement.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire.

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

F. **Costs of Enforcement.** In the event Grantee must enforce the terms of this Easement, the costs of restoration necessitated by acts or omissions of Grantor, its agents, employees, contractors, invitees or licensees in violation of the terms of this Easement and Grantee's reasonable enforcement expenses, including attorneys' and consultants' fees, shall be borne by Grantor or those of its personal representatives, heirs, successors, or assigns, against whom a judgment is entered. In the event that Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of such restoration and Grantee's reasonable expenses shall be borne by Grantor and those of its personal representatives, heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized use or activity.

G. **Grantee's Discretion.** Grantee acknowledges its commitment to protect the Purpose of the Easement. Enforcement of the terms of the Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, invitees or licensees shall not be deemed or construed to be a waiver by Grantee of such term or any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver of such term or any of Grantee's rights under this Easement. No grant by Grantee in its governmental or regulatory capacity of any building permit, grading permit, land use approval or other development approval shall be deemed or construed to be a waiver of any term or any of Grantee's rights under this Easement.



- H. Waiver of Certain Defenses.** Grantor acknowledges that it has carefully reviewed this Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Grantor hereby waives any claim or defense it may have against Grantee or its successors or assigns under or pertaining to this Easement based upon waiver, laches, estoppel, or prescription.
- I. Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including, without limitation, natural changes, fire, flood, storm, or earth movement, or from acts of trespassers, that Grantor could not reasonably have anticipated or prevented or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. In the event the terms of this Easement are violated by acts of trespassers that Grantors could not reasonably have anticipated or prevented, Grantor agrees, at Grantee's option, to join in any suit, to assign its right of action to Grantee, or to appoint Grantee its attorney in fact, for the purpose of pursuing enforcement action against the responsible parties.
- J. Estoppel Certificates.** Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, that certifies, to the best of Grantee's knowledge, Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Protected Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within thirty (30) days of receipt of Grantor's written request.

#### **XI. ACCESS BY PUBLIC NOT REQUIRED**

This Easement does not provide and shall not be construed as providing, the general public access to any portion of the Protected Property.

#### **XII. COSTS, LIABILITIES AND INSURANCE, TAXES, ENVIRONMENTAL COMPLIANCE, AND INDEMNIFICATION**

- A. Costs, Legal Requirements, Liabilities and Insurance.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of adequate liability insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approval for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall prevent the perfection of any liens against the Protected Property arising out of any work performed for, material furnished to, or obligations incurred by Grantor.



**B. Taxes.** Grantor shall pay all taxes levied against the Protected Property by government authority as they become due, and shall furnish Grantee with satisfactory evidence of payment upon request. If Grantor fails to pay any taxes when due, Grantee is authorized, but in no event obligated, to make or advance such payment of taxes upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the maximum rate allowed by law.

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

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

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

**E. Control.** Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of Grantor's activities on the Protected Property, or otherwise to become an operation with respect to the Protected Property within the



meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"), and MTCA.

**F. Indemnification.** Grantor hereby agrees to release and hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with:

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

### **XIII. EXTINGUISHMENT, CONDEMNATION AND SUBSEQUENT TRANSFER**

**A. Extinguishment.** If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction and only upon a finding and declaration to that effect. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined in accordance with Section XIII.B, Valuation, of this Easement.

**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 resulting from the taking or in lieu purchase. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantor and Grantee agree that Grantee's share of the balance of the amount recovered shall be determined by the method described in Subsection B, with the remainder due to the Grantor.

**D. Application of Proceeds.** Grantee shall return any proceeds received under the circumstances described in this Section XIII to Dike District 3 (or successor fund) for use in purchasing conservation easements or development rights on other eligible sites under the program (or successor program).



**E. Subsequent Transfers.** Grantor agrees to:

1. Incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest;
2. Describe this Easement in and append it to any executory contract for the transfer of any interest in the Protected Property;
3. Obtain a certificate from the purchaser, leaseholder or other party gaining an interest in all or part of the Protected Property and any financier, acknowledging their awareness of this Easement and their intent to comply with it. Such certificate shall be appended to and recorded with any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Protected Property; and
4. Give written notice to Grantee of the transfer of any interest in all or a portion of the Protected Property no later than forty-five (45) days prior to the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

The failure of Grantor to perform any act required by this subsection shall not impair the validity of this Easement or limit its enforceability in any way.

**XIV. AMENDMENT**

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

**XV. ASSIGNMENT**

This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to the Grantee's judicial successor. As a condition of such transfer, Grantee shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.



## XVI. RECORDING

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

## XVII. GENERAL PROVISIONS

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

**I. Joint and Several.** The obligations imposed by this Easement upon Grantor shall be joint and several.

**J. Counterparts.** The parties may execute this instrument in two or more counterparts, which shall be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

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

**A.** Legal Description of Property Subject to Easement.

**B.** Site Map(s).



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

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SKAGIT COUNTY DIKING DISTRICT NO. 3

David J. Olson  
DAVID OLSON, Chairman

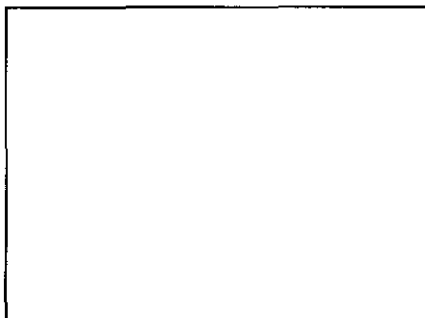
Brad Smith  
BRAD SMITH, Commissioner

Darrin Morrison  
DARRIN MORRISON, Commissioner

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF SKAGIT        )

I certify that I know or have satisfactory evidence that DAVID OLSON, BRAD SMITH, and DARRIN MORRISON 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 as the Chairman, Commissioner, and Commissioner of SKAGIT COUNTY DIKING DISTRICT NO. 3 to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: March 9, 2006



(Use this space for notarial stamp/seal)

Gary T. Jones  
Notary Public  
Print Name GARY T. JONES  
My commission expires 3/10/2006

Approved as to form:

MARC DUBOISKI



APPROVED:

BOARD OF COUNTY COMMISSIONERS  
SKAGIT COUNTY, WASHINGTON

Kenneth A. Dahlstedt

KENNETH A. DAHLSTEDT, Chairman

Ted W. Anderson

TED W. ANDERSON, Commissioner

Don Munks

DON MUNKS, Commissioner

For Contracts under \$5000

\_\_\_\_\_  
County Administrator

(Authorization per Resolution #R20030146)

Approved as to Form:

By: M. M. O.

Deputy Prosecuting Attorney

Attest:

Shirley C. Breck

Clerk of the Board

Recommended:

By: R. C. D.

Department Head

By: Lisha Logno

Budget & Finance Administrator

Approved as to Indemnification:

By: Billie Kadmas

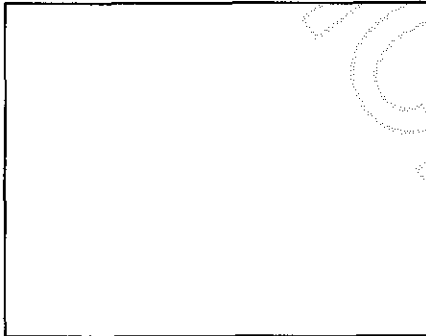
Risk Manager



STATE OF WASHINGTON    )  
  ) ss.  
COUNTY OF SKAGIT        )

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
are the persons who appeared before me, and said persons acknowledged that they signed this instrument,  
on oath stated that they were authorized to execute the instrument and acknowledged it as the  
\_\_\_\_\_ of \_\_\_\_\_ to be the free and  
voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_



(Use this space for notarial stamp/seal)

\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

## EXHIBIT A

### PROTECTED PROPERTY

Government Lot 1, Section 13, Township 33 North, Range 3 East, W.M. Situate in Skagit County, State of Washington. EXCEPT the land reserved by Grantor, Skagit County Diking District No. 3 for dike purposes legally described as follows:

#### Riprap Maintenance

The North 40.00 feet, and the Westerly 40.00 feet of the North 760.00 feet, all in Government Lot 1 of Section 13, Township 33 North, Range 3 East, W.M.

Situate in the County of Skagit, State of Washington.

#### Dike Maintenance

That part of Government Lot 1 of Section 13, Township 33 North, Range 3 East, W.M., being a strip of land 40.00 feet in width, the East line of said strip being more particularly described as follows:

Commencing at the Northeast corner of said Government Lot 1; thence South  $01^{\circ}13'50''$  West along the East line thereof a distance of 1963.45 feet to the TRUE POINT OF BEGINNING of said described line: thence North  $32^{\circ}51'31''$  West a distance of 145.58 feet; thence North  $00^{\circ}29'21''$  East a distance of 670.01 feet; thence North  $02^{\circ}05'35''$  East a distance of 1171.19 feet to a point on the North line of said Government Lot 1, said point lying South  $89^{\circ}45'18''$  West a distance of 72.66 feet from said Northeast corner thereof, said point being the end of said described line.

The West line of said strip shall be extended or shortened as necessary such that said strip forms a continuous corridor from the East line of said Government Lot 1 to its North line.

Situate in the County of Skagit, State of Washington.

#### Dike Easement

All in that part of Government Lot 1 of Section 13, Township 33 North, Range 3 East, W.M., lying East of the following described line.

Commencing at the Northeast corner of said Government Lot 1; thence South  $01^{\circ}13'50''$  West along the East line thereof a distance of 1963.45 feet to the TRUE POINT OF BEGINNING of said described line: thence North  $32^{\circ}51'31''$  West a distance of 145.58 feet; thence North  $00^{\circ}29'21''$  East a distance of 670.01 feet; thence North  $02^{\circ}05'35''$  East a distance of 1171.19 feet to a point on the North line of said Government Lot 1, said point lying South  $89^{\circ}45'18''$  West a distance of 72.66 feet from said Northeast corner thereof, said point being the end of said described line.

Situate in County of Skagit, State of Washington.



## Exhibit B

SKAGIT COUNTY  
Contract # C20060217

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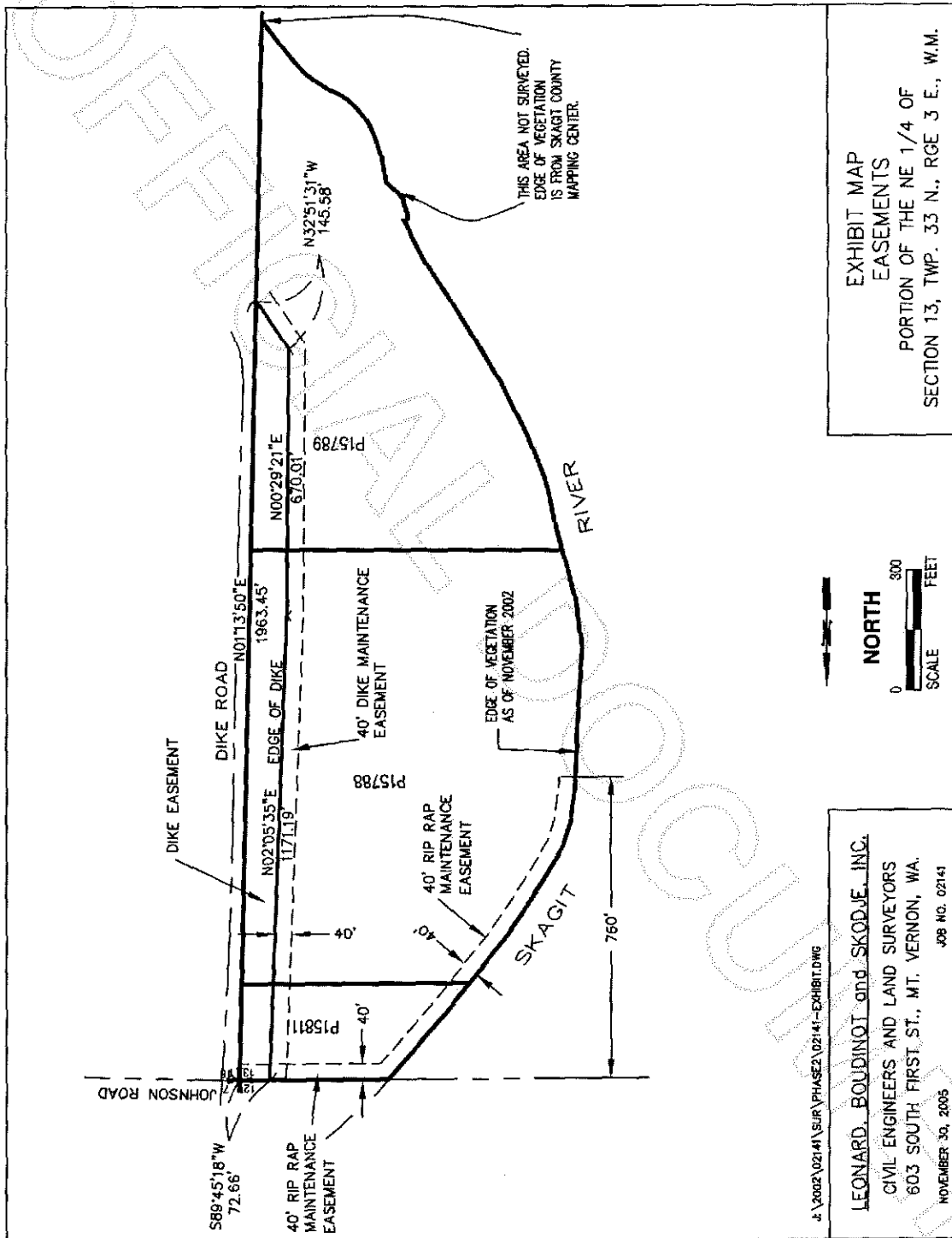


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### Site Map(s)



SKAGIT COUNTY  
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# Baseline Documentation Report

**Prepared for:**  
Skagit County Dike District #3  
C/o Dave Olson  
P.O. Box 324  
Conway, WA 98238

**Project:** IAC Conservation Easement

**Prepared by:**  
Graham-Bunting Associates  
Environmental & Land Use Services  
3643 Legg Rd.  
Bow, WA 98232  
PH. 360.766.4441  
FX 360.766.4443

**Date:** February 2005  
**Revised:** April 2005



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Contract # C20060217

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## Attachments

Attachment A: Vicinity and USGS

Attachment B: Aerial Photo

Attachment C: Assessor Parcel Map with Scale

Attachment D: Pre-Existing Conditions Overlying Parcel Map With Southern Boundary  
Acreages and Site Features Added

Attachment E: Watershed Map

Attachment F: Dike Maintenance/Easement Map

Attachment G: Reduced Map with Photo Stations Overlying Existing and Proposed  
Conditions

Attachment H: Photo Log

SKAGIT COUNTY

Contract # C20060217

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Graham-Bunting & Associates  
DD#3 FINALDRAFTBDR12/04-02/05



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Skagit County Auditor

## **BASELINE DOCUMENTATION REPORT**

**For:** Skagit County Dike District #3 Conservation Easement  
**Project:** Skagit River Levee Relocation/Fish Enhancement Project  
**Site:** Fronting Dike Road and the Skagit River  
**Date:** December 2004 through February 2005

### **Property Location**

The subject property is located along the left bank of the South Fork of the Skagit River approximately 3 miles south of Mount Vernon and 1 mile north of Conway within the Northeast ¼ of Section 13, Township 33 North, Range 3 East, W.M., Skagit County WA. The site consists of 3 parcels, which total approximately 35 acres and is bordered by the Skagit River and associated levee to the north, south and west. The site is bordered on the east by a county road known as Dike Road. The intersection of Peter Johnson Road and Dike Road is located at the northeast corner of the property. (Attachment A: USGS Topo Map and Vicinity Map)

### **Property Description and History**

Beginning near the northeast corner of the site, the Skagit River levee along with the site's northern boundary begin to follow the river bend approximately 400 feet to the west. Going in a southwesterly direction, the levee also borders the western boundary of the site. Then, just north of the common property line between the Howell and Olson parcels, the levee turns to the southeast until it merges with Dike Road, 1,800 feet south of the northern boundary. The property line, however, continues to follow the shoreline until it terminates at the section line. The total length of the pre-existing levee was 2,500 lineal feet. The northerly 1/3 of the riverbank is modified by hardening with rock rip-rap. A narrow band of native shrub vegetation is growing on the bank. The southerly 2/3 of the riverbank consists of a riparian forest approximately 10 acres in size. (Attachment B: Aerial Photo)

The site is two miles downstream of the "forks" of the Skagit River, which is commonly understood to be the upper extent of the tidal influence under average river flows (SRFB Application, November 13, 2003). The Skagit River flows south into Skagit Bay when the tide is ebbing. When the tide changes to flooding the river water will eventually be pushed upstream until the tide starts to ebb again. Tidal back-water effects the sand bar and riparian forest by partial inundation twice daily (SRFB Application, November 2003). A river gauge and a river gauge inside a 48" diameter vertical corrugated metal pipe, 9 feet tall, were installed years ago (amount unknown) to monitor river levels. They exist on the Olson property near the riverbank.

Approximately 19 acres located landward of the existing levee was diked in the early 1900's and converted to residential and agricultural use. After levee failures in 1894 & 1909, the current levee location became established in 1932 (SRFB Application, November 2003). The site consisted of 3 separate residences on 3 separate parcels with associated outbuildings, fences, farmland, gravel driveways and landscaping for each residence.



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### **Easements and Acreages**

The entire site (3 parcels) will be split into two (2) separate easements, a Salmon Conservation Easement and a Conservation Easement (CE). (Attachment C: Assessor Parcel Map)

#### **Salmon Conservation Easement**

Parcel number 15811, known as the Glasscock property is approximately 2.53 acres in size and is the most northerly property of the three parcels. It consisted of a residence on a small farm and mowed grass levee with a mowed grassy strip waterward of the levee, inclusive of a hardened riverbank. WDFW has a fishing access on this parcel (pers. Communication Gary Jones 12/16/04). The IAC will hold a deed of right to use the land for salmon habitat on this parcel.

#### **Conservation Easement to be held by Skagit County**

Parcel number 15788, is known as the Olson Property and is approximately 18.89 acres. The site consisted of 14.7 acres of agriculture land, 2.37 acres of mowed levee and 1.58 acres of riparian forest and grassy riverbank waterward of the levee. The north end of the riverbank is hardened with rip-rap rock. Two eagle nests exist on site. Prior to moving the buildings off-site in preparation of the levee being pulled back the site had a residence with garage, out buildings and a barn. This parcel had one development right.

Parcel number 15789, is known as the Howell Property and is approximately 13.56 acres. The site consisted of 2.57 acres of farmhouse, barns, agriculture land and approximately 9.78 acres of substantial wildlife and riparian habitat waterward of the existing levee and 1.38 acres of mowed grassy levee. This parcel had one development right.

Attached to this BDR is a reduced survey map with the assessors parcel overlaid on the survey map. The maps indicate pre-existing conditions after removal of the residences and some trees. The map identifies the 35 acre subject property enrolled in the IAC program for the conservation easements. Unit acreages are also called out for each parcel. The easements include collectively, levee improvements such as retained rock armor along the ordinary high water mark on the northerly bank, agriculture land and an established riparian forested area. (Attachment D: Pre-Existing Conditions with Acreages and Features)

### **Climate**

The lower Skagit River delta is part of the Puget Sound region and experiences a temperate, mid-latitude west coast marine climate. Maritime air has a year round moderating influence on temperature. A rain shadow effect is created on the lee side of the Olympic Mountains reducing rainfall in the lower Skagit basin including the subject property. Rainfall averages approximately 32 inches annually. Average winter maximum temperature is 40 degrees Fahrenheit (F), with average minimums of 34 degrees F. The summer average maximum temperature is 73 degrees F with minimums of 60 degrees F. Prevailing winds are southerly during the winter resulting from marine air



flows from southern Puget Sound. The prevailing winds switch to the northwest during the summer.

### **Hydrology**

The property is relatively flat (< 1% slope) with approximately 3 feet of topographic relief landward of the levee with the lowest areas located on the eastern property boundary along Dike Road. Dike Road is approximately 2-4 feet higher than the general topography (Geo-Engineers 3/7/03). A ditch runs between the easterly property line and Dike road approximately 350 feet south of the north end of the subject property and extends a distance of about 950 feet. The bottom of the ditch is 5 to 7 feet below the surface of Dike Road with steep side slopes (Geo-Engineers 3/7/03) and drains to the south where it eventually outfalls to the Skagit River. The site is bordered on the west side with a levee approximately ten feet higher than the main farmland. The levee is moderately sloped on two sides, approximately 25%-30% slope. The site is located in the Skagit County Drainage District No. 17 and Dike District No. 3 on the common border of Mount Vernon and Fir Island Watershed Boundaries. (Attachment E: Watershed Map)

A combination of the marine system from Skagit Bay and freshwater from the Skagit River constitutes the primary hydrologic influence on the subject property. Ground water in May 2004 was below 20". Geo-Engineers documented in their Geo-Technical Report (March 7, 2003) that ground water levels were between 10 and 13 feet below the surface in November 2002 stating that these "levels likely represent at least seasonal maximum depths if not unusual depths". The site most likely experiences drastic changes in ground water levels due to climate, season, tidal elevations and river elevations. The Flood Insurance Rate Map indicates that the site landward of the levee is an area subject to shallow flooding to 3 feet in depth. Approximately 2,500 linear feet of river levee prevents periodic tidal backwater and river freshwater flow through the interior property.

The National Wetland Inventory (NWI), compiled by the U.S. Department of Interior, Fish and Wildlife Service classifies wetlands in accordance with the Cowardin classification system. The NWI map indicates a riverine intermittent, unconsolidated shore, seasonal tidal (RIUSR) wetland and palustrine, forested, temporarily flooded (PFOA) wetland which corresponds to the sand bar and hardwood forested riparian area respectively. These areas are located waterward of the levee and on the southerly half of the combined properties. During seasonal flood events, the forested area receives high river levels, which draws down rapidly with the ebbing of the tide. The NWI maps were produced through the interpretation of aerial photographs and rely on visible indicators of wetland hydrology, vegetation and geography.

### **Soil**

Soils landward of the levee have been farmed for many years for commodity crops and hay. The soil has been subject to farm practices such as tilling and or grazing. Generally, the soils on both sides of the levee consist of very fine and fine sandy loams. Test pits dug in the forested area waterward of the levee displayed sandy silt loams. The Skagit County Soil Survey (USDA 1989) identifies soils in this area as #96 Mount Vernon very fine sandy loam. The Mount Vernon Series are very deep moderately well drained soils



on flood plains and natural levees. Soils landward of the levee are identified by the Soil Survey as #21 Briscott fine sandy loam. The Briscott Series consists of very deep, poorly drained soils on flood plains. Drainage is usually altered by tiling.

### **Vegetation**

#### **Farmland**

Construction of the levee in the early 1900's for flood control has allowed the current use of the area landward of the levee to be altered from native vegetation to agriculture. Cumulatively, the three parcels had 17 acres in production of farm crops and or grazed land. Lombardy poplars (*Populus nigra*) and an occasional native fir (*Abies grandis*) and spruce (*Picea sitchensis*) trees were planted in rows along the 3 access driveways leading to the homesteads. Tree rows consisting of these species are often used for windbreaks and shade on wide-open farmland. Domestic landscape shrubs were planted around the immediate lawn areas of the home sites. The street front has a total of 7 adult native trees growing along the Dike Road right-of-way. They consist of black cottonwoods (*Populus trichocarpa*) and big leaf maples (*Acer macrophyllum*) ranging in size from 38" dbh to 60" dbh. One of the cottonwood trees along the road is approximately 580 feet south of the northern property boundary, has an eagle's nest in it. This nest is known as Eagle Nest Tree #2 in the Dike District #3, Trees with Eagle Nests Report (Barborinas 1/22/03). The tree is described in the report as a "double trunked black cottonwood that measures 55" on trunk A and 50" on trunk B. The nest is in trunk A".

#### **Riparian Forest Vegetation**

There is an approximate 10 acre riparian forest waterward of the levee. The majority of the forest is located on the Howell property in the southern portion of the conservation easement. The forest consists predominantly of a tall, deciduous tree canopy layer and a scrub-shrub layer. The trees consist of alder (*Alnus rubra*) and black cottonwood. The shrubs consist of red-osier dogwood (*Cornus stolonifera*), sno-berry (*Symphoricarpos alba*), salmonberry (*Rubus spectabilis*) and wild rose (*Rosa nutkana*). One small patch of the invasive Japanese knotweed (*Polygonum cuspidatum*) was identified near the south end of the Howell property close to the sand bar. Sparse grass (*Agrostis spp.*) appears in patches throughout the forest and Himalayan blackberry (*Rubus discolor*) can be seen on the bank with red-osier dogwood.

#### **Levee Vegetation**

The levee consists of erosion control grasses, which receive mowing all year for maintenance of the levee. The grass consists of orchard grass (*Dactylis glomerata*) and tall fescue (*Festuca arundinacea*). The levee serves as a topographic boundary between the farms and the riparian vegetation.

#### **Hardened River Bank Area**

There is approximately 1000ft of rip-rap rock on the river bank from the most northerly portion of the easement going south. The riparian vegetation on the immediate bank near the OHWM consists of a narrow width (approximately 10-15 feet wide) of shrub alders, 1"-2" dbh with occasional snowberry and wild rose. Between the top of bank and the levee is an area of mowed orchard and tall fescue grasses, which are continuous with the

levee grass. The riparian vegetation eventually becomes more substantial with larger trees beginning at the south end of the hardened bank and north of the forested area.

#### Ecological Characterization

Four fundamental ecological units occurred within the property boundaries of the three parcels prior to moving the levee and excavation of the off-channel. These units and their approximate sizes are listed below:

Ecological Unit	Approx. Area
1. Farmed land with 3 residences and barns historically utilized for small farms and commercial agriculture.	18.89 acres
2. Riparian Forest	10.5 acres with 2000 linear feet of natural shoreline
3. Hardened riverbank, narrow riparian vegetation approximately 10-15ft wide with shrubs and 1" alders.	1000 linear feet of shoreline
4. River Levee, mowed grass	4.6 acres (2500 linear feet)

Approximately 2000 linear feet of the 3000 linear feet of shoreline is natural riverbank with an associated sand bar. The location of the levee and levee maintenance has a direct effect on the width and growth of the riparian zone and vegetation communities. The levee has impeded the natural migration zone of the river, resulting in reduced riparian off channel habitat and riparian vegetation. The river receives backwater flow twice daily when the tide in Skagit Bay floods, however, the vegetation does not display brackish characteristics but more of the freshwater species. The lower Skagit River and associated estuaries are home to many wildlife species including waterfowl, raptors, beavers, otters, salmon and trout.

In addition to the property's proximity and location to the rich biotas of the estuarine system, the riparian forest extends off site to the south. After the levee is pulled back, the existing farms will become additional areas connected to the existing riparian forest for wildlife species to feed, breed and rear their young.

#### Wildlife

The Skagit River supports all species of pacific salmon and trout of the genus *Oncorhynchus*. They include: chum (*O. keta*), pink (*O. gorbuscha*), sockeye (*O. nerka*), Chinook (*O. tshawytscha*), and coho salmon (*O. kisutch*); and rainbow trout (called steelhead when anadromous) (*O. mykiss*) and coastal cutthroat trout (*O. clarki clarki*). Some of these species, including the sockeye salmon, rainbow and cutthroat trouts, have both anadromous and nonanadromous forms (Cederholm et al. 2000). Anadromous bull trout (*Salvelinus confluentus*) and dolly varden (*Salvelinus malma*) are also present in the Skagit River. There is a lot of information available regarding fish species and utilization of certain species in the Skagit River. The project area contains both isolated and degraded main channel riparian and flood plain habitat. Some off-channel habitat exists in the forested area waterward of the levee while other areas in the forest and landward of the levee are degraded or modified and could greatly benefit from

restoration. The Skagit basin is limited for coho winter habitat with winter rearing habitat concentrated in side-channel sloughs on the river floodplain (Hansen Watershed Analysis, 1994). The subject property is tidally influenced which will encourage restoration of off-channel habitat and refugia from the main stem, particularly after the levee has been pulled back. Many different species of animals scavenge on spawned salmon.

The Skagit River Delta including the subject property is noted for significant concentrations of birds of prey. Two bald eagle nests are located on site. All five species of North American falcon (*Falco spp.*) have been observed at various Skagit County locations including Skagit Bay. Skagit County also supports the largest known wintering peregrine falcon populations in the U.S. Bald eagle territories are designated by the Washington State Department of Fish and Wildlife along both banks of the Skagit River in this area.

Winter waterfowl have historically utilized unharvested grain, corn and potatoes in the Skagit Delta. Waterfowl species observed on the property and the river during our site inspection included mallards (*Anas platyrhynchos*), common mergansers (*Mergus merganser*), and green winged teal (*Anas crecca*).

Although none were observed, small mammals including voles, mice and other rodents would be expected to utilize the property. Similarly, reptiles and amphibians would likely use the site for breeding in lower wetter areas and upland forested areas for the adult portion of their life cycle. The grassy nature of much of the area is good habitat for reptiles.

#### **Land Use Management**

The property landward of the levee has recently been managed for commercial and small farming practices. Both currently and historically, commodity and hay crops were grown. Soils have been subject to annual tilling and planting of grain. Three farmsteads recently existed on site prior to the removal of the buildings. The proposed project includes pulling back the levee to align with Dike Road and excavation of a small side channel. Pulling back the levee will allow for less restrictive channel migration and create off channel riparian habitat associated with the backwater events from high tides.

The side channel is proposed for excavation through the forest and into the farmland after the levee is pulled back to the road. It is expected that fish will utilize this channel as refuge during high water events. Some of the large trees that were growing on site along the driveways to the residences have been removed with rootwads attached so that they can be utilized in the new channel for fish habitat.

The subject property, as well as the surrounding properties, are zoned for agriculture use. Historical diking practices have allowed the farms to exist along the riverbanks while being protected from flooding. The site is located in the 100 year flood plain and is surrounded by drainage ditches and tiled fields. Agriculture zoning limits intensive development as the density allowed is one unit per 40 acres. The low density zoning



compliments pulling back the levee for enhancement and restoration of fish and wildlife areas.

Dike District No. 3 will continue maintenance of the relocated levee and the existing rip-rap rock on the northerly river bank through maintenance easements. (Attachment F)

### Photo Stations

Eleven (11) photo stations were established at representative locations after the existing residences and outbuildings were either moved to another location or demolished. All but one of the photo stations were established before the relocation of the levee and the excavation of the off-channel. A photo log of existing conditions at these stations is intended to provide baseline documentation of the property and may be utilized as a point of reference to monitor site conditions over time. (Attachment G: Reduced Map of existing conditions and Proposed Conditions with Photo Stations; Attachment H: Photo Log)

Table 2

Photo Station	Description of View
No. 1	View N 10 E: looking at the area where the proposed off channel will connect to the main stem of the South Skagit River. In the foreground is the south end of the sand bar and the associated river bank consisting of a deciduous forest.
No. 2	View E 100S: standing inside the deciduous forested area with shrub understory. Note the bare ground area with survey stakes is laden with silt from previous flood events.
No. 3	View S218W standing on the pre-existing levee with mowed grass looking at the northwest edge of the forested area and the area of the proposed off-channel.
No. 4	View W270: Looking down fence line between Olson and Howell parcels toward the river and eagle nest #1 on the right hand side of the picture.
No. 5	View E120S: standing on the pre-existing levee on Howell parcel looking at the area where the house and barn were located. Note Dike Road is in the background. Some trees have also been removed for the restoration project.
No. 6	View N20E: standing on the existing levee looking at the Olson parcel where the row of trees along the access drive were located prior to relocating the house and some trees. The farmland is in hay grass.
No. 7	View S160E: looking down the fence line at the top of bank approximately 80 ft north of eagle tree #1. A grove of large cottonwoods stand along the top of bank. Note the orange fencing around the eagle tree.
No. 8 (Taken after the levee was moved)	View S220W: from the mowed grassy area at top of bank where the river bank has historically been hardened with rip-rap rock. Note that the riparian vegetation in the foreground consists of small overhanging shrubs and as you look further downstream the riparian vegetation gradually gets taller. The silt fence is located along the toe of the pre-existing levee, which had been removed prior to this photo.
No. 9	View S240W: from levee looking at the area where the Glasscock residence was located. Note the vehicle on the levee and the access drive to the levee which also served as the access drive to the residence.
No. 10	View South: from the access drive looking down Dike Road at the street trees, farmland and the area where the levee has been pulled back to. Eagle tree #2 is located along the street behind the foreground tree.
No. 11	View N340W: from the sand bar at waters edge looking up-stream

### **Monitoring**

Photo stations should be marked with permanent markers on site and/or GPS stations to assist with relocating the stations each time. Compass bearings are indicated in Table 2 above and will assist with the view direction of the baseline photo documentation. Photos should be taken twice annually. Once in the summer after foliage is fully developed and once in the winter after foliage has fallen off.

Since new side-channels are being developed it is important to document any fish use as well as other wildlife species at the time of monitoring. Vegetation should be observed for invasive species and survival. The ground must remain covered with vegetation to reduce erosion potential.

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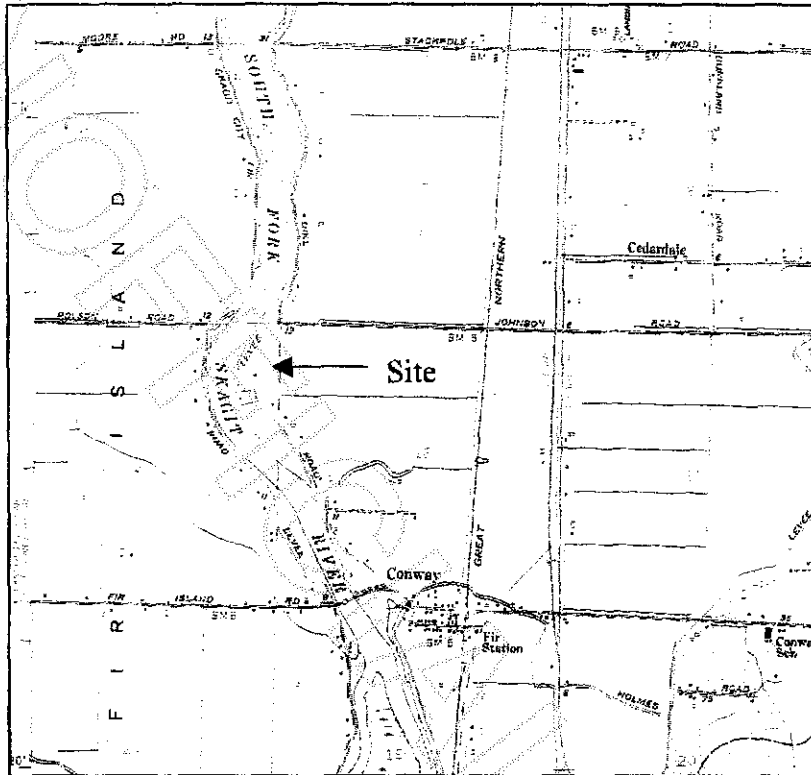
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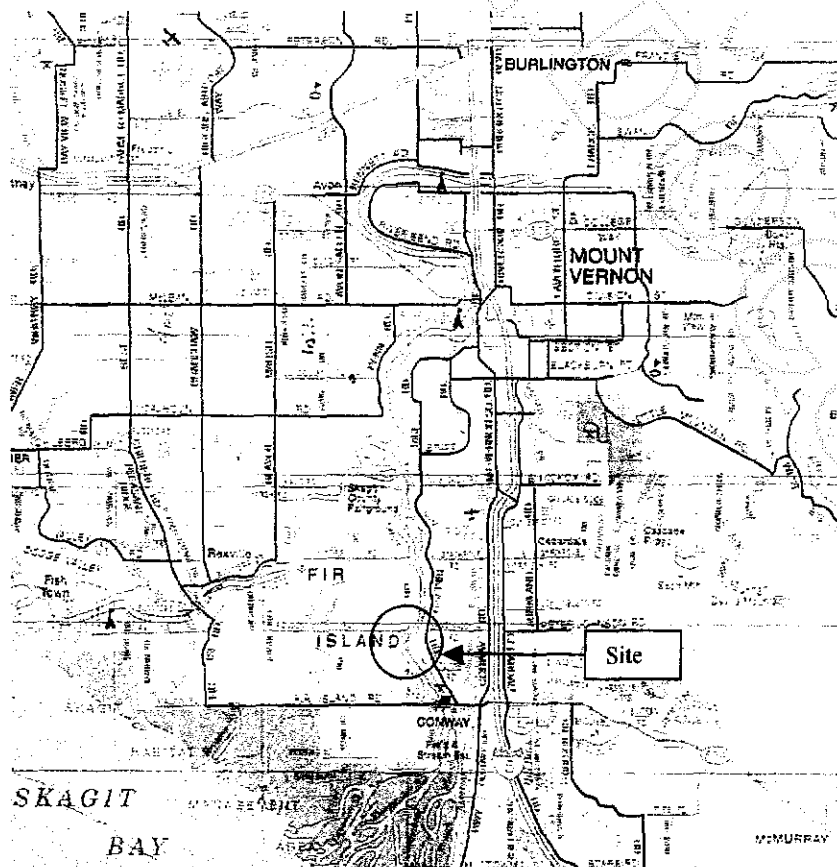


USGS Topo Map  
Conway, Washington Quad



North

No Scale



Vicinity Map

No Scale

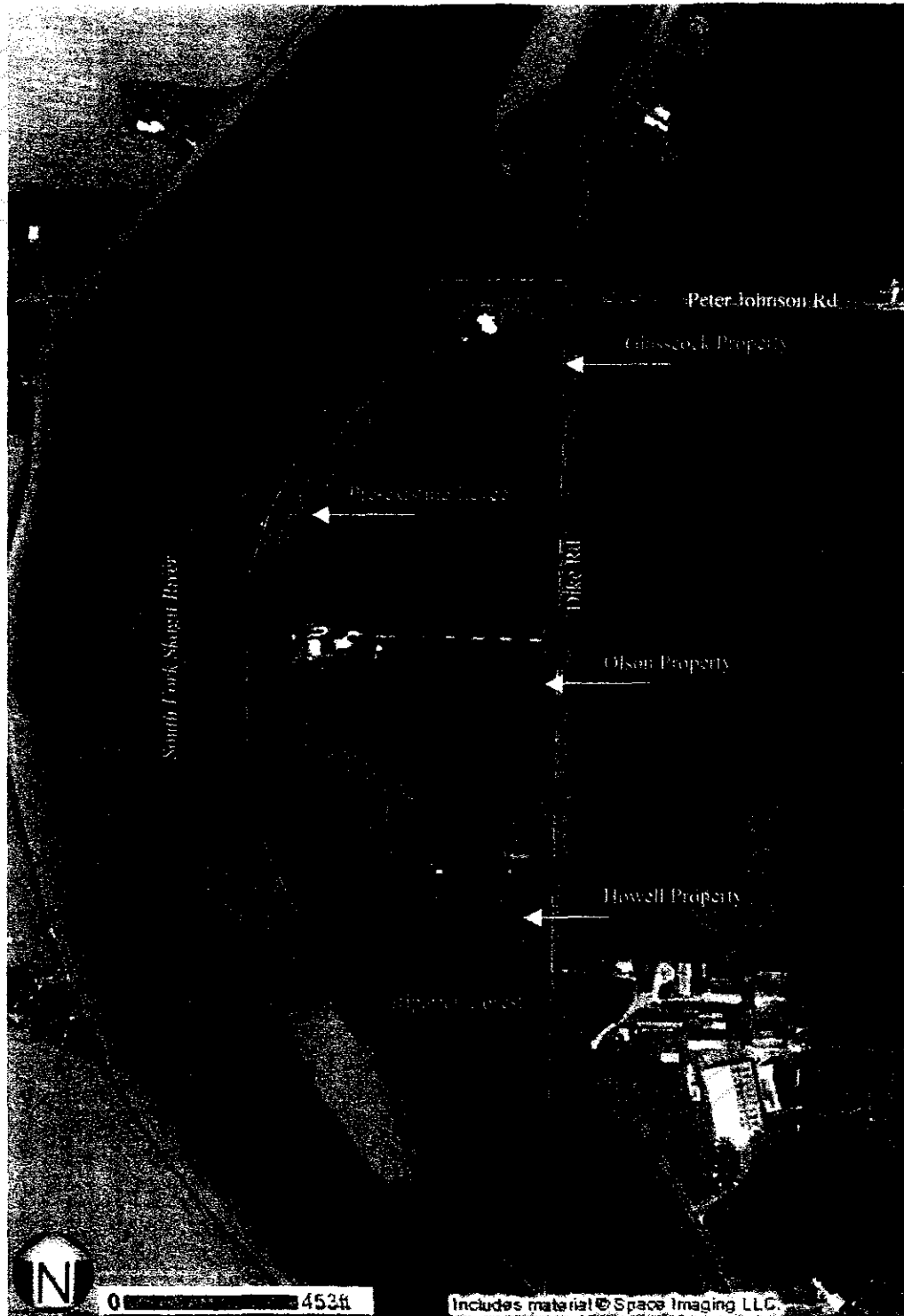


North

Source: King of the Road Map Service, Inc., Skagit County



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Source: Skagit County iMap

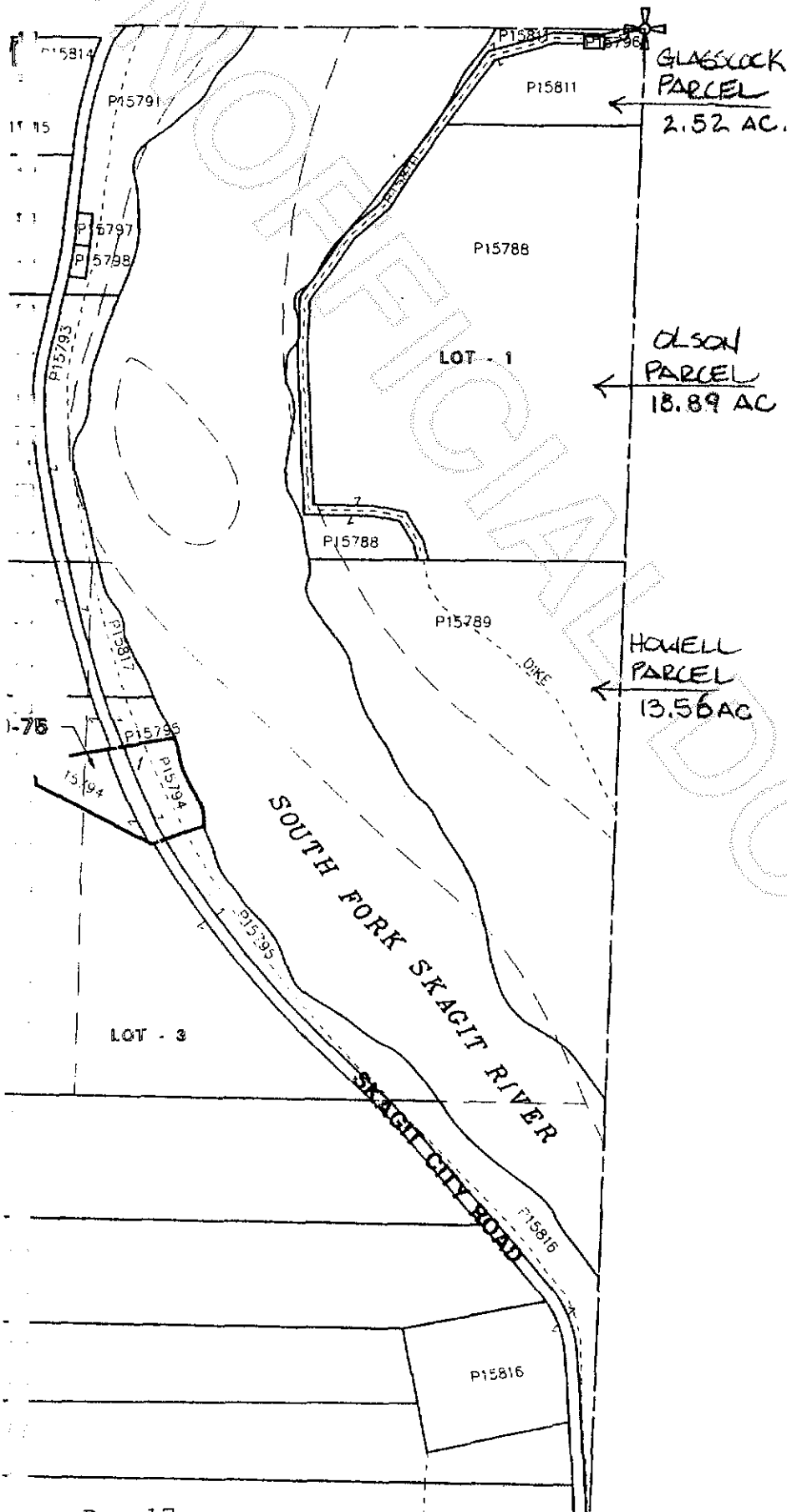
This photo was taken prior to the removal of the residences and relocation of the levee.

Legend	
	Subject property boundary
	Individual Parcel Boundaries

Attachment B



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# SKAGIT COUNTY

## ASSESSOR MAP

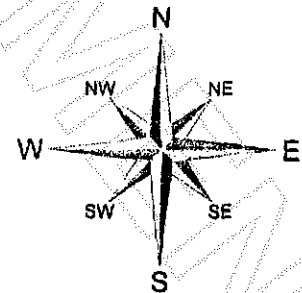
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19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

T 33 N R 03 E



### ATTENTION

THIS MAP CONTAINS A PARCEL ACCOUNT THAT HAS BEEN PLACED WITH THE BEST AVAILABLE INFORMATION. THE EXACT LOCATION OF THIS PARCEL IS UNKNOWN.

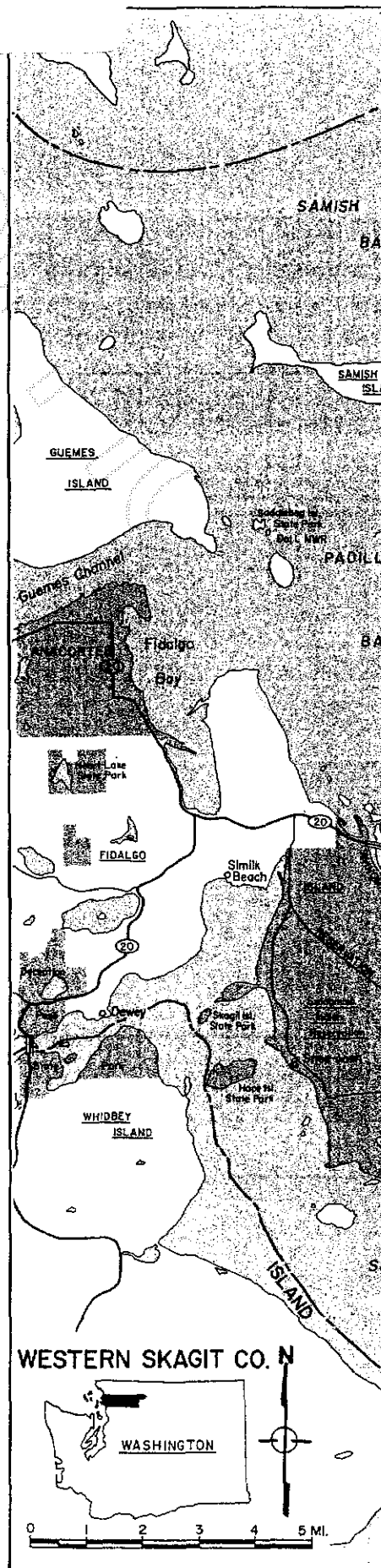


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**FIGURE 1**

# LOWER SKAGIT RIVER BASIN MONITORING PROJECT

SKAGIT COUNTY, WASHINGTON

## STUDY AREA MAP

### STUDY AREA



— STUDY AREA BOUNDARY  
- - - WATERSHED BOUNDARIES



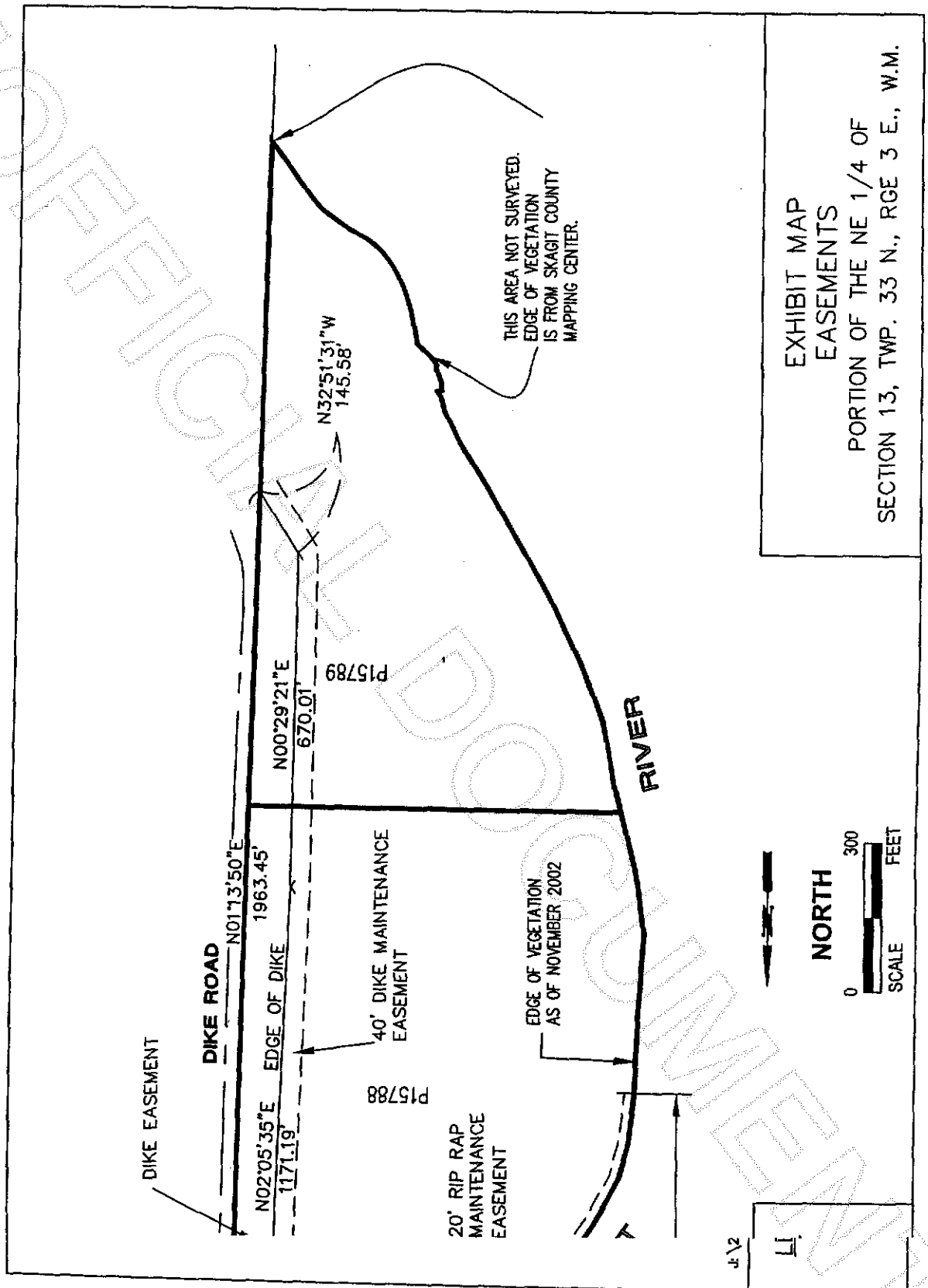
SKAGIT COUNTY DEPARTMENT  
OF

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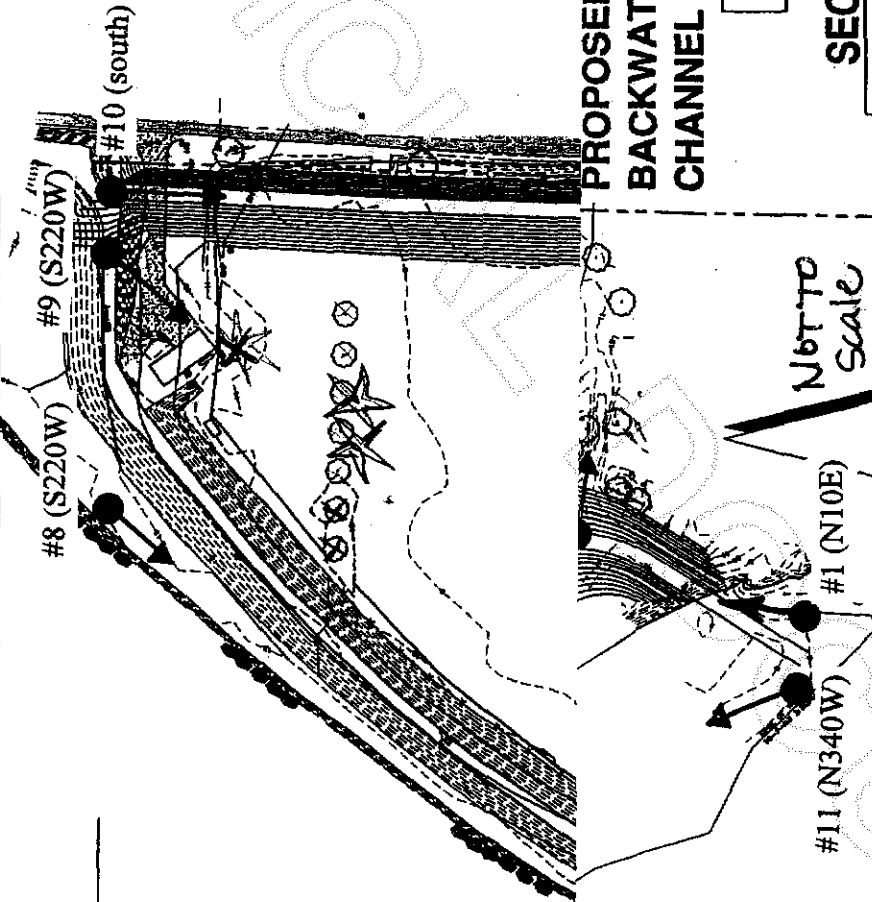


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# PLAN VIEW

EXISTING  
DIKE LOCATION

LATITUDE:  
48°21'10" N  
LONGITUDE:  
123° W



EXPIRES 12/03/

SECTION 13. TWP. 33 N.. RNG. 3 E.

Photo Station

## Site Plan

For Baseline Documentation Report  
(Includes Pre-existing and Proposed Conditions)

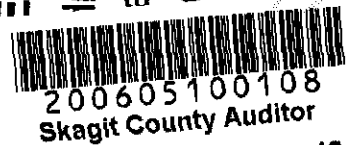
Applicant: Dike District #3  
Purpose: Conservation Easement  
Date: February 2005

## LOCATION PROJECT

Address:

Ad

ernon, Skagit County,  
ton 98273



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# Photo Log

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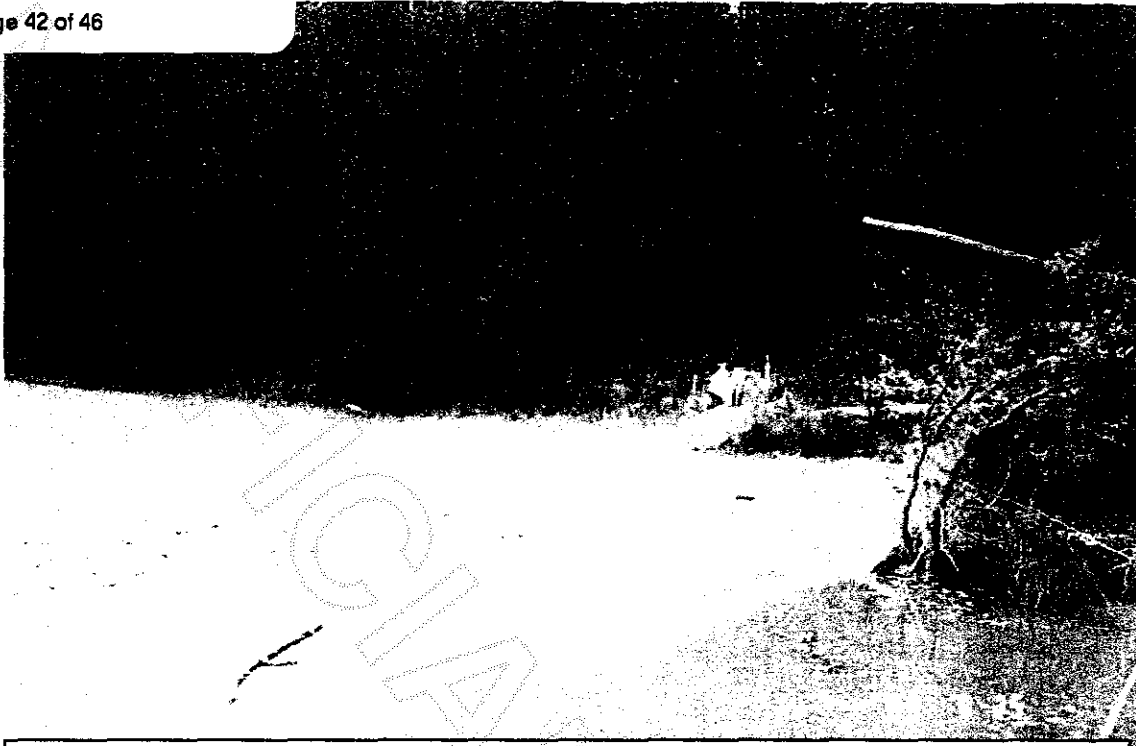
B - 22 *Graham-Bunting Associates*  
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Attachment H



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**Photo #1:** Sand bar and the mouth of the proposed back channel in the riparian forest before levee was moved.



**Photo #2:** Looking at natural low area in riparian forest.



**Photo #3:** Looking down the proposed backwater channel (stake with flag) through the riparian forest from pre-existing levee.



**Photo #4:** Looking down fence line towards the river from the pre-existing levee between Olson and Howell parcels. Note eagle nest in tree

*Graham-Bunting Associates*

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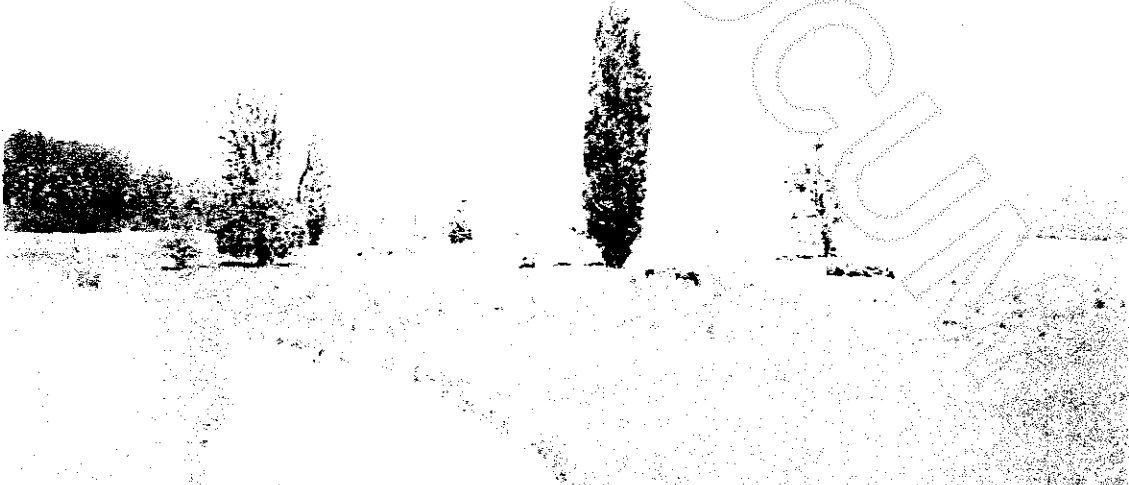


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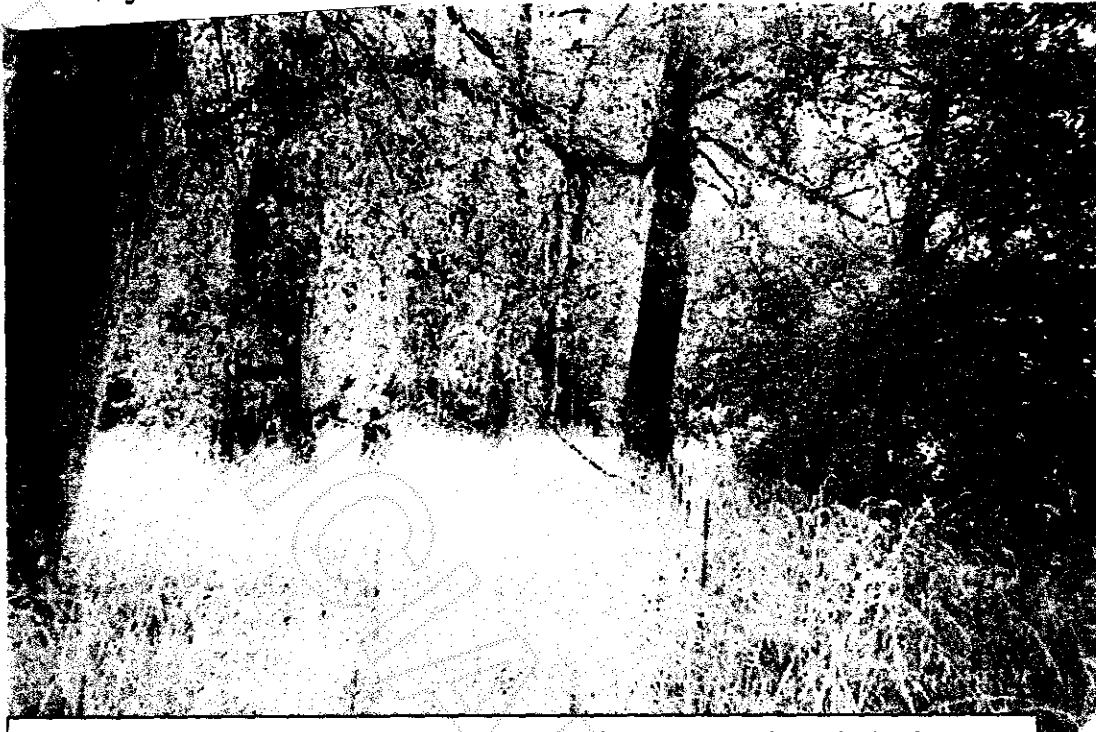


**Photo #5:** Looking at the area where the Howell homestead previously existed. The pre-existing levee is to the right with the edge of the riparian forest. Note, Dike Rd. in the background.



**Photo #6:** Looking at the Olson parcel after the buildings and trees have been removed and prior to the relocation of the levee. Dike Rd. is to the right.





**Photo #7:** Looking down river on the top of bank approximately 80 feet north of the eagle nest tree near a pre-existing fence line. Note orange fencing around eagle tree in back ground.



**Photo #8:** Looking down river along river bank with rip-rap rock. The silt fence to the left of the picture is located near the toe of the pre-existing levee.





**Photo #9:**  
Looking where the Glasscock residence was located and the pre-existing levee before pulling the levee back to the road.



**Photo #10:**  
Looking south down Dike Rd. from the north end of the subject properties prior to relocating the levee.



**Photo #11:**  
Looking upriver at the sandbar.

