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200612200141

Skagit County Auditor

12/20/2006 Page 1 of 43 3:39PM

Grantor: Gerrit Jan van den Engh and Barbara Jo Trask, husband and wife

Grantee: Skagit Land Trust

Brief Legal Description: Lots 4-9, Elysian Meadows, Gov. Lots 13-14, 12-35-17 E.W.M.,
Gov. Lots 3-4, 13-35-7 E.W.M.
Full legal description shown in Exhibit A.

Assessor's Tax Parcel Numbers:

P121059/4823-000-004-0000; P121060/4823-000-005-0000; P121061/4823-000-006-0000;
P121062/4823-000-007-0000; P121063/4823-000-008-0000; P121064/4823-000-009-0000;
P121065/4823-000-010-0000; P109565/350712-3-018-0100; P109566/350713-2-004-0100;
P42536/350712-4-019-0007; P42556/350713-0-003-0004

GRANT DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT is made this 19th day of December, 2006 ("Easement"), by Gerrit Jan van den Engh and Barbara Jo Trask, husband and wife residing at 9756 49th Ave NE, Seattle, WA 98115 ("Grantor"), in favor of the Skagit Land Trust, a Washington nonprofit corporation qualified to do business in Washington, having an address at P. O. Box 1017, Mt. Vernon, WA 98273 ("Grantee").

I. RECITALS

A. Grantor is the owner in fee of that certain real property inclusive of all standing and down timber (hereinafter referred to as "Protected Property"), situated on the Skagit River west of the city of Concrete, in Skagit County, State of Washington, more particularly described in Exhibit A (legal description) and shown on Exhibit B (site map), and Exhibit G (Baseline Summary), all of which are attached and made part hereof by this reference.

B. The Protected Property consists of approximately 119 acres within a large bend of the Skagit River. It is currently in 11 contiguous Assessor's tax parcels and includes six building lots platted in 2002, together with a tract designated for road right-of-way, and

additional "Government Lots" that were not included in the 2002 plat. Approximately 65 acres are forested with healthy second and third growth mixed lowland forest. Approximately 50 acres are in open grassland, most of which has been managed as pasture for grazing and hay harvest. An existing farmhouse and outbuildings are located on a upland terrace on the northwest portion of the Protected Property, and the paved road comprise approximately four acres.

C. Because of its location and orientation, the Protected Property would be desirable for residential development, timber harvest, and other uses inconsistent with conservation. A subdivision of the Protected Property was completed and recorded by the former landowners in 2003. The subdivision created six separate building lots on a portion of the Protected Property. In the absence of this Easement, these lots could be sold individually for residential development and the Protected Property could be fragmented into separate ownerships and developed with an additional five residential sites. The Protected Property includes a dynamic portion of the Skagit River floodplain with an active river channel migration area. The aggregation of the existing subdivided lots, extinguishment of residential development potential, and additional restrictions in this Easement will allow the natural floodplain processes to occur; and will prevent habitat modification activities associated with flood control measures, and other more intensive uses that would destroy or diminish the natural character, open-space of the Protected Property and its ecological value.

D. The Protected Property includes an area consisting of wetlands, sensitive floodplain areas, riparian areas and riparian buffers collectively identified as *Habitat Conservation Zone*, consisting of approximately 66 acres, legally described in Exhibit D and depicted in Exhibit B. The Habitat Conservation Zone includes approximately 5,800 feet of shoreline and 2,900 feet of side channel habitat on the Skagit River. This Habitat Conservation Zone contains important riparian habitat. For purposes of this Easement, riparian habitat is the land area adjacent to aquatic systems with flowing water that contains elements of both aquatic and terrestrial ecosystems that influence each other and provide habitat for fish and wildlife species. Riparian habitat provides vital functions to aquatic and upland ecosystems including: among others, soil and streambank stability, moderation of stream temperature and reduction of nutrients to the aquatic system. The Habitat Conservation Zone includes all areas designated as "Protected Critical Areas" (PCA) in the 2003 plat, and identified as Tracts 'D', 'E', 'F' and 'H', survey recorded under AF# 200310070060, and shown in Exhibit C. A small, 7,000 square foot wetland and buffer was identified on said survey, and is also included within the designated PCA. For the purposes of this Easement, the boundaries of the Habitat Conservation Zone correspond to the boundaries of Tracts 'D' and 'E' on the northern portion of the Protected Property, and to Tract 'H' on the southeast portion of the Protected Property.

E. The Protected Property includes an area consisting of farmland designated in Skagit County's Comprehensive Plan for long-term preservation, collectively identified as *Agricultural Zone*, consisting of approximately 45 acres, legally described in Exhibit E and depicted in Exhibit B. The Protected Property is zoned Agricultural Natural Resource Land under the Skagit County Zoning Ordinance. Skagit County Zoning Ordinance (SCC



§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.”

F. The Protected Property includes an area consisting of a small upland area with an existing house, and numerous outbuildings associated with past agricultural uses, collectively identified as *Building Zone*, consisting of approximately six acres and legally described in Exhibit F and depicted in Exhibit B. Existing structures and improvements comprise approximately 11,500 square feet of impervious surface.

G. The Protected Property possesses ecological, open space, scenic and forest land values (collectively “Conservation Values”) of great importance to Grantor, Grantee, and the people of Skagit County and the State of Washington. The Protected Property enhances the open space character of Skagit County and provides a natural wooded and open space setting that can be enjoyed from the Skagit River and from the neighboring properties. The Protected Property provides excellent scenic quality, open space, forestland and diversified wildlife habitat that maximizes the number of wildlife species that use the area. Many passerines (song birds), woodpeckers, owls, waterfowl, and raptors use the Protected Property as do coyote, bear, cougar, elk, deer, as well as small mammals and amphibians.

H. The declared policies of Skagit County in the Critical Areas Ordinance of Skagit County (SCC §14.24.20), as adopted July 24, 2000, or as amended, is “to assist in orderly development, conserve the value of property, safeguard the public welfare, and provide for the protection of the quality and quantity of groundwater used for public water supplies (RCW 36.70A.070(1)) and provide protection for the following critical areas. . . . Wetlands, Frequently Flooded Areas . . . and Fish and Wildlife Habitat Conservation Areas. . . . It is the purpose of this Chapter to protect, restore where practical, and enhance fish and wildlife populations and their associated habitats.”

I. The Protected Property includes shoreline and floodplain of the Skagit River. The Washington State legislature in RCW 90.70.001 has recognized “that Puget Sound and related inland marine waterways of Washington State represent a unique and unparalleled resource. A rich and varied range of marine organisms composing an interdependent, sensitive communal ecosystem reside in these sheltered waters.” The legislature has further recognized that residents of this region enjoy a way of life centered around the waters of Puget Sound which depends upon a clean and healthy marine resource. Restrictions on the uses of the Protected Property would benefit the Skagit River and Puget Sound because of the protection of the riparian woodland in the floodplain, and decreased erosion and siltation due to the exclusion of logging and residential construction.

J. All five species of Pacific Northwest native salmon utilize the adjoining waters and seasonal side-channel on the Protected Property, which include rearing habitat for Coho and spawning habitat for Puget Sound Chinook. The Skagit Watershed Council, the designated lead entity under Washington State Legislation ESHB 2496, has identified the Protected Property as key habitat for the Puget Sound Chinook, listed as ‘Threatened’ under



the federal Endangered Species Act, and for Coho salmon and therefore important to restore and protect. Biological surveys have identified significant concentrations of Chinook spawning redds (nests) in the river channel directly adjacent to the Protected Property, and heavy use by juvenile Chinook salmon, who seek refuge in the debris along the banks.

K. In recognition of the importance of the Protected Property, The Washington State Salmon Recovery Funding Board, administered by the Interagency Committee for Outdoor Recreation (IAC-SRFB), has provided federal grant funds (IAC/SRFB Project #05-1520C) to assist in securing the Easement on said property.

L. The legislatively declared policies of the State of Washington, in the Revised Code of Washington (hereinafter referred to as "RCW") Chapter 84.34, provide that it is in the best interest of the State to maintain, preserve, conserve and otherwise continue in existence, adequate open-space lands and to assure the use and enjoyment of natural resources, wetlands, farmlands, riparian areas and scenic beauty for the economic and social well-being of the state and its citizens. The Protected Property constitutes "open-space land" as defined in such statute.

M. The specific Conservation Values of the Protected Property are documented in an inventory of relevant features of the Protected Property, dated December 14, 2006, a copy of which is on file at the offices of both Grantor and Grantee, is signed by each party, and is 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. Grantor and Grantee further agree that, within twelve (12) months of the execution hereof, a collection of additional Baseline Documentation may be compiled by Grantee, and incorporated herein by this reference. Failure to timely compile the additional Baseline Documentation shall not affect the enforceability or validity of any other provision hereof. A summary of said documentation is contained in Exhibit G ("Baseline Report Summary"). Any characterization of the timing of this Easement contained in the Baseline Documentation shall not be interpreted so as to alter, amend or otherwise modify this Easement. In any conflict or inconsistency between the terms of this Easement and the Baseline Documentation, the Baseline documentation shall prevail.

N. Grantor intends that the Conservation Values of the Protected Property be preserved and maintained by the continuation of uses and activities on the Protected Property that do not significantly impair or interfere with the Conservation Values. These current and future uses consist of, but are not limited to: (1) a historic cabin currently used as a single family residence; barns and outbuildings associated with agricultural uses, and a converted farm building to be used as an accessory dwelling unit and/or guest house and business office within the Building Zone; (2) farming and woodlot management in the designated Agricultural Zone, including livestock pasture, hay cutting, cultivation of a vegetable garden and orchard, and planting and harvest of trees for fiber and firewood; (3) management and restoration of the forestland and riparian areas in both the designated Agricultural Zone and Habitat



Conservation Zone, for fish, wildlife, native flora, open space and scenic quality. These current and future uses are consistent with this Easement.

O. Grantor, owner in fee of the Protected Property, has the right to protect and preserve in perpetuity the Conservation Values of the Protected Property, and desires to transfer such rights to Grantee to the extent provided herein. This grant, however, shall not be interpreted to deprive Grantor of its reserved rights to also protect and preserve the Conservation Values.

P. Grantee is a publicly supported, tax-exempt nonprofit organization, qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986 (the "Code"), as amended, and also qualified as a nonprofit nature conservancy corporation under RCW 64.04.130 and 84.34.250, whose primary purpose is to preserve open space, wildlife habitat, wetlands, forestland, farmland, shoreline and scenic views. Grantee also is a "qualified conservation organization" under Section 170 of the Code. Grantee will provide Grantor, upon request, any documentation relating to its qualifications if requested for Grantor's filings or compliance with any applicable state law or Code provisions.

Q. Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Protected Property for the benefit of this generation and the generations to come.

The foregoing recitals are incorporated into this Easement by this reference.

II. CONVEYANCE AND CONSIDERATION

A. For the reasons stated above, and in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, Grantor hereby voluntarily grants, conveys, and warrants to Grantee a conservation easement in perpetuity over the Protected Property, consisting of the rights in the Protected Property, hereinafter enumerated, subject to Grantor's reserved rights and uses and to the restrictions set forth herein ("Easement").

B. This is a conveyance of an interest in real property under the provisions of RCW 64.04.130 and RCW 84.34.210. A payment of two-hundred thousand dollars (\$200,000) is made by Grantee to Grantor, in consideration of the conveyance, the receipt of which is acknowledged. Grantor and Grantee intend this conveyance to be a charitable bargain sale of real property pursuant to Section 170 of the Code, and acknowledge that said payment is less than the market value of the Easement, and the difference between the appraised fair market value and the payment is an absolute, unconditional, unqualified, and completed gift subject only to the mutual covenants and terms, conditions, and restrictions hereinafter set forth. Grantee acknowledges that the amount of any such difference is intended to be a charitable contribution by Grantor to Grantee, and that Grantor is receiving no goods or services in exchange for any such contribution. Grantee shall cooperate with Grantor in Grantor's efforts to confirm charitable bargain sale treatment, including without limitation, executing the donee section of Form 8283 within fourteen days of receipt of said form from Grantor and *provided*

Grantor's claims on said form are consistent with Grantee's information regarding said charitable donation. Grantee makes no assurances or representations as to the tax consequences of this transaction to Grantors.

C. Grantor expressly intends that this Easement runs with the land and that this Easement shall be binding upon Grantor's personal representatives, heirs, successors, and assigns.

III. PURPOSE

A. **The Conservation Purposes.** The purpose of this Easement is to preserve and protect the scenic, open-space, natural character and ecological value of the Protected Property, and to prevent any use of, or activities on, the Protected Property that will impair or interfere with the Conservation Values on the Protected Property, subject to Grantor's reserved rights for residential agricultural and forestry and other uses and activities as set forth in this Easement. This purpose includes to: (1) assure that the Habitat Conservation Zone as defined in Recital I.D will be retained in, or restored to predominantly its natural condition for the benefit of fish and wildlife; and (2) to assure that the Agricultural Zone as defined in Recital I.E may be retained for agricultural productivity, and/or restored to predominantly its natural condition. Grantor intends that this Easement will confine the use of, or activities on, the Protected Property to such uses and activities that are consistent with this Purpose, and that the Protected Property shall not be converted or directed to any uses other than those provided herein.

B. **Public Access.** Preservation of the Protected Property will, subject to Grantor's reserved rights, enhance the general public's visual access to natural, undeveloped environments. Nothing contained herein, however, shall be construed as affording the general public physical access to any portion of the Protected Property.

IV. RIGHTS CONVEYED TO GRANTEE

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

A. **Identification and Protection.** To identify, preserve and protect in perpetuity and to enhance by mutual agreement the Conservation Values of the Protected Property.

B. **Access and Signage.**

1. Grantee and Grantee's representatives and agents may enter upon the Protected Property annually, at a mutually agreeable time and upon prior written notice to Grantor, for the purpose of: (a) making a general inspection to assure compliance with this Easement, and (b) to place and maintain signs along the perimeter and within the Protected Property to declare that a Conservation Easement has been placed on the property. The number, size, and placement of said signs are to be mutually agreeable to Grantor and Grantee. Grantee shall keep in force and effect a policy of general liability insurance at all

Page 6 of 26



200612200141

Skagit County Auditor

times when entering onto the Protected Property pursuant to this subsection. Grantee shall provide proof of such insurance upon reasonable request of Grantor.

2. Grantee and Grantee's representatives and agents may enter upon the Protected Property at such other times as are necessary if there is reason to believe that a violation of the Easement is occurring, for the purposes of enforcing the provisions of this Easement, *provided*, that Grantee shall, prior to such entry, make a good faith effort to contact Grantor by telephone.

C. **Scientific/Educational Use.** For the benefit of the public, to allow persons or small groups to enter upon the Protected Property (other than the Building Zone) for educational and/or scientific purposes to observe and study on the Protected Property; provided that any such persons or groups must first make a written request for approval to enter upon the Protected Property from Grantor who shall not unreasonably withhold permission therefore, provided that such research is of limited duration, does not damage or significantly alter the Protected Property, and does not involve specimen collection. Such persons shall agree to provide Grantor with copies of any data or reports resulting from such research, and agree to abide by any restrictions on access set forth by Grantor.

D. **Injunction and Restoration.** To seek to enjoin any activity on, or use of, the Protected Property by any person or entity which is inconsistent with this Easement, including trespasses by members of the public, and to undertake or cause to be undertaken the restoration of such areas or features of the Protected Property as may be damaged by activities contrary to the provisions hereof, all in accordance with Section IX (Grantee's Remedies).

E. **Assignment.** To assign, convey, or otherwise transfer Grantee's interest in the Protected Property in accordance with Section XIV (Assignments) herein.

F. **Assignment of Rights to State.** 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 Interagency Committee for Outdoor Recreation. This Assignment of Rights shall be substantially in the form attached to this Easement as Exhibit H.

V. RESTRICTIONS AND RESERVED RIGHTS

A. **Generally.** The Protected Property shall be used only for habitat conservation and agriculture, and for other uses specifically reserved herein below by Grantor. Any use of, or activity on the Protected Property inconsistent with the purposes of and restrictions in 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 prohibited uses and activities described below, though not an exhaustive list, are inconsistent with the purposes of this Easement and shall be prohibited, except as expressly provided herein, or as deemed reasonably necessary by Grantee to preserve or protect the Conservation



Values of the Protected Property. 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; *provided* that all such uses and activities shall be consistent and in compliance with applicable federal, state, and local laws.

B. Specified Use Zones. For the purposes of use restrictions and reserved rights in this Easement, the Protected Property is treated as three (3) specified use zones: the "Building Zone," the "Agricultural Zone" and the "Habitat Conservation Zone" and, hereinafter so called; and, depicted in Exhibit B (Site Map), legally described in Exhibits D, E and F, and more particularly described in Exhibit G (Baseline Report). Restrictions and Reserved rights apply to the entire Protected Property, or to specific land use zones, as described below.

C. Entire Protected Property. The following restrictions and reserved rights apply to the entire Protected Property.

1. Specific Prohibited Activities and Uses. The following are specific activities and uses that are prohibited on the Protected Property:

- i. Surface or subsurface mining, or mining exploration of any kind whatsoever;
- ii. Construction or maintenance of multiple unit housing including farmworker housing;
- iii. Construction or maintenance of feedlots, commercial arenas, racetracks, golf courses, commercial campgrounds, or aircraft landing sites (except in an emergency), and roads other than roads intended to provide access to and mobility within the Protected Property, as discussed in Section V.C.5 hereof.
- iv. Operation of off road vehicles, all terrain vehicles, motorcycles, dune buggies, snow mobiles, or other type of motorized recreational vehicles, or the operation of other sources of excessive noise pollution except for equipment normally used for proper maintenance and associated with activities permitted in this section.

2. Specific Allowed Activities and Uses. The following are specific activities and uses that are allowed on the Protected Property provided they are conducted in a manner and intensity that does not adversely impact the Conservation Values of the Protected Property:

- i. Low impact recreation (such as hiking, dog walking or bird watching);
- ii. Noncommercial hunting and fishing by Grantor and guests in compliance with all federal, state and local regulations;



iii. Foot trail construction, renovation and maintenance provided that such trails shall not exceed three feet in width;

iv. Construction, repair and replacement of fences to contain livestock, protect crops within the Agricultural Zone and Building Zone from grazing livestock or wildlife, or to preserve or protect the Conservation Values of the Protected Property; *provided*, Grantor shall exercise reasonable effort to construct and maintain fences that will not harm or trap wildlife, and that allow for the safe passage of wildlife across the Protected Property.

3. **Subdivision.** The Protected Property shall remain in unified ownership which may be joint and undivided, but without division, partition, subdivision, or other legal or *de facto* creation of lots or parcels in separate ownership, notwithstanding that the Protected Property was acquired in separate parcels or lots and is the subject of an approved subdivision. *Except*, any portion of the Protected Property may be conveyed to an entity that meets the qualifications under the provisions of RCW 64.04.130, for permanent conservation ownership by such qualified entity, subject to the prior written approval of Grantee and the continuation of the terms of this Easement; *and except*, Grantor may enter into boundary line adjustments with adjoining lands, or to aggregate existing lots within the Protected Property area, subject to prior written approval by Grantee, which shall not be unreasonably withheld, and *provided* that such boundary line adjustments do not result in any net loss of acreage to the Habitat Conservation Zone or the Agricultural Zone, and do not adversely impact the Conservation Values on the Protected Property, and that no new parcel may be created by such boundary line adjustments. Any new land added to an existing parcel of the Protected Property through a boundary line adjustment shall be made subject to the terms of this Easement and shall be considered an extension and governed by the provisions related to the Specified Use Area (i.e., Habitat Conservation Zone, Agricultural Zone, Building Zone) to which it is adjacent.

4. **Development Rights.** Grantor shall not exercise its development rights on the Protected Property, transfer such development rights to any other portion of the Protected Property as it is now or hereafter may be bounded or described, or to any other property adjacent to the Protected Property or otherwise, nor use such development rights or the area of the Protected Property for the purpose of calculating permissible lot yield of the Protected Property or any other property. *Except*, Grantor may use the one development right associated with the existing house on the Protected Property for the continued occupancy and use of the one existing single family residence or office and subject to the restrictions set forth in Section V.D (Building Zone) below.

5. **Roadways.** Grantor may maintain, renovate, expand or replace roads or construct new roads that may be reasonably necessary and incidental to carrying out permitted uses and activities on the Protected Property. Roadways that are paved with impervious materials such as concrete or asphalt are subject to the impervious surface limitations in Section V.D.1 (Structures) below. Roads may be built or relocated within the



Habitat Conservation Zone for habitat restoration purposes only, and only with prior written approval of Grantee.

6. **Habitat Restoration.** Grantor may conduct management practices designed to enhance or restore naturally occurring habitats. Such activities include forest management as described below in Section V.E.2; removal of the existing paved road together with restoration of natural topography; planting native species of trees and shrubs; as well as removal of plants that are listed as noxious plants by the State of Washington Department of Agriculture or other non-native invasive species such as Himalayan blackberries. Any such restoration activities to be performed in the Habitat Conservation Zone or the Agricultural Zone that involve major earth moving, water course alteration or forest management, shall be subject to prior written approval by Grantee.

7. **Erosion Protection.** Shoreline erosion control measures designed to protect structures and property improvements within the Building Zone from flood or other water-related damage are allowed. To the extent practical, Grantor shall consult with Grantee prior to taking such actions, and such activities shall be conducted in a manner that protects the Conservation Values of the Protected Property to the greatest practicable extent, taking into account all the surrounding circumstances.

8. **Alteration of Wetlands or Water Courses.** The alteration or manipulation of wetlands or watercourses, including bank hardening, draining, filling, dredging, ditching, diking, water impoundments or surface or subsurface water withdrawal is prohibited, except in the Building Zone and except as necessary to protect public health or safety on the Protected Property or adjacent property, or in association with permitted uses in Sections V.C.6 (Habitat Restoration) and V.C.7 (Erosion Protection).

9. **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 including the use of manure lagoons or disposal of wastewater in manners inconsistent with the terms of this Easement is prohibited.

10. **Waste Disposal.** The disposal or storage of rubbish, garbage, debris, hydrocarbons, pesticides, animal or human waste, abandoned vehicles or equipment or parts thereof or other unsightly, offensive, or hazardous waste or material, *except* an on-site domestic waste disposal system, and composting of vegetable or animal waste for on-site use is allowed within the Building Zone and Agricultural Zone.

11. **Signage.** Placement of commercial signs, billboards, or other advertising material are prohibited, *except* to advertise for sale or rent, to advertise agricultural products produced on-site, or to declare that a Conservation Easement has been placed on the property, or to post notice of a wildlife area or to state the conditions of access to the Protected Property such as no hunting or trespassing.

12. **Emergencies.** Activities necessary to protect public health or safety on



the Protected Property or adjacent property, or which are actively required by and subject to compulsion of any governmental agency with authority to require such activity are allowed, provided that any such activity shall be conducted in a manner that protects the Conservation Values of the Protected Property to the greatest practicable extent, taking into account all the surrounding circumstances.

D. Building Zone. Together with the restrictions and reserved rights on the entire Protected Property, listed in Section V.C above, the following additional restrictions and reserved rights apply to the Building Zone.

1. Structures. Maintenance, alteration, removal and replacement of existing structures and construction of new structures is allowed within the Building Zone; *provided* that only one single family residence and one accessory dwelling unit, as defined and allowed by Skagit County Code, are permitted on the entire Protected Property; and provided that total impervious surface of all existing and future structures, excluding associated roads, shall not exceed 14,000 square feet. To ensure compliance with this Easement, construction, addition to or removal of structures over 1,000 square feet shall be subject to prior written approval of Grantee.

2. Residential and Agricultural Uses. Unless specifically prohibited herein, uses customarily associated with a single-family residence and family farm are allowed within the Building Zone including landscaping, gardening, orcharding, firewood harvest, viticulture, processing and selling agricultural products grown on-site, and the keeping of livestock and household pets. In addition, the structures in the Building Zone may be used for office purposes, including use as the headquarters for a non-profit organization to the extent allowed by Skagit County Unified Development Code (SCC Title 14) now or hereafter amended. **Agriculture-Related Commercial Activities.** Processing, storage and sale of agricultural products produced principally on-site, and conducting commercial activities related to on-site livestock production is allowed, provided that such activities are conducted in a manner and intensity that does not materially and adversely impact the Conservation Values of the Protected Property.

E. Agricultural Zone. Together with the restrictions and reserved rights on the entire Protected Property, listed in Section V.C above, the following additional reserved rights and restrictions apply to the Agricultural Zone.

1. Agricultural Use. Grantor may maintain and practice agricultural activities within the "Agricultural Zone." "Agricultural Uses" include: agronomy, farming, dairying, row cropping, pasturage, apiculture, viticulture, orcharding, horticulture, floriculture, animal and poultry husbandry, and the cultivation, management and harvest of forest crops. Agricultural uses shall be subject to the following limitations:

i. Best Management Practices defined as follows: Best Management Practices (BMP) are practices or structures designed to reduce the quantities of pollutants such as sediment, nitrogen, phosphorus, and animal wastes that are washed by rain



and snow melt from farms into nearby surface waters. BMP refers to the most current conservation practice standards developed by the Natural Resource Conservation Service (NRCS) and contained in the Field Office Technical Guide, or other practices identified by NRCS, an NRCS technical service provider.

ii. **Stewardship Plan:** Future agricultural practices shall be subject to a Stewardship Plan to be developed as described below in Section VI.

2. **Structures.** The placement or construction of any buildings, structures, or other improvements of any kind (including, without limitation, roads, utilities and parking lots) is prohibited in the Agricultural Zone, *except* as permitted in Section V.C.5 (Roadways).

3. **Alteration of Land.** The alteration of the surface of the land, including, without limitation, road building, the excavation or removal of soil, sand, gravel, rock, peat, or sod are prohibited within the Agricultural Zone, *except* for the study of any incidental archeological findings, and *except* in association with permitted uses in Section V.C.6 (Habitat Restoration) and Agricultural Uses in this Section (V.E).

F. Habitat Conservation Zone. Together with the restrictions and reserved rights on the entire Protected Property, listed in Section V.C above, the following additional reserved rights and restrictions apply to the Habitat Conservation Zone:

1. **Specific Prohibited Activities and Uses.** The following are specific activities and uses prohibited within the Habitat Conservation Zone, *except* in association with permitted uses in Sections V.C.6 (Restoration) and V.C.7 (Erosion Control) above and *except* as permitted by an approved Forest Management Plan as described below:

i. **Structures.** The placement or construction of any buildings, structures, or other improvements of any kind (including, without limitation, roads, utilities and parking lots);

ii. **Crop Cultivation.** The cultivation of any crops including timber products, nursery stock, fruit and vegetables, row crops, and livestock feed;

iii. **Application of Agricultural Chemicals.** The application of agricultural chemicals including fertilizers, animal wastes and pesticides is prohibited;

iv. **Wildlife Disruption.** The intentional disruption of native wildlife breeding and nesting activities;

v. **Domestic Animals.** The keeping of domestic animals, including grazing livestock;

vi. **Alteration of Land.** The alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat, or



sod are prohibited, except for the study of any incidental archeological findings;

vii. Introduced Vegetation. The introduction of nonnative or invasive plant species.

2. Forest Management. Grantor may conduct forest management practices designed to enhance or restore native wildlife habitat including thinning or topping of existing trees, *provided* that any cut trees are not removed from the Habitat Conservation Zone. Prior to such forest management activities, Grantor shall submit to Grantee, for review and approval, a Forest Management plan that describes the habitat enhancement objectives of the plan and the specific practices proposed

3. Removal of Trees and Other Vegetation. The pruning, topping, cutting down, burning or other destruction or removal of live and dead trees and other vegetation is prohibited in the Habitat Conservation Zone, except as permitted by the Forest Management Plan. This prohibition includes harvesting or cutting trees for lumber, firewood or Christmas trees, as well as cutting or digging of trees, shrubs or herbs for commercial sale; *Except* that such activities are permitted for: (1) educational or research activities consistent with the purpose of the Easement; (2) in association with permitted uses in Sections V.C.6 (Restoration) and V.C.7 (Erosion Control) above, V.F.2 (Forest Management); or (3) trees or other vegetation that pose a threat to property, public health and safety of neighbors, the general public or users of the Protected Property may be trimmed or removed. A certified arborist shall arbitrate any disagreement regarding the identification of hazardous or diseased trees.

VI. STEWARDSHIP

Grantor agrees to exercise reasonably diligent efforts to protect the fish and wildlife habitat on the Protected Property. No activities that would materially damage the Conservation Values of the Protected Property shall be permitted. Grantor further agrees to manage the Protected Property consistent with the goals in a Stewardship or Conservation Plan to be developed as described below:

Grantor and Grantee agree that, within twelve (12) months of the execution hereof, a Stewardship or Conservation Plan that is mutually agreed to by Grantor and Grantee shall be developed. Said plan shall address the following: (1) best management practices for anticipated agricultural activities; (2) within the Habitat Conservation Zone, protection and restoration of healthy riparian forest; (3) maintenance of restoration plantings and control of invasive species; (4) best options for erosion control and restoration in response to possible future changes in river channel location; (5) restoration options for the small wetland identified on the 2003 survey of the Protected Property. If a Stewardship or Conservation Plan is not agreed to within such twelve (12) month period, either party may



invoke the dispute resolution process in Article VIII hereof. Failure to timely complete said plan shall not affect the enforceability or validity of any other provision hereof. Said plan may be revised or updated as appropriate and mutually agreed to by Grantor and Grantee.

VII. NOTICE AND APPROVAL

A. Notice. Grantor shall notify Grantee and receive Grantee's written approval prior to undertaking certain permitted activities provided in Sections V.C.3 (Subdivision), V.C.5 (Roadways), V.C.6 (Habitat Restoration); V.D.1 (Structures), and V.F.2 (Forest Management). The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted uses and activities is to afford Grantee an opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the purposes of this Easement. Whenever notice is required, Grantor shall notify Grantee in writing not fewer than thirty (30) days prior to the date Grantor intends to undertake the use or activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

B. Approval. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request for approval. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purposes of this Easement. Grantee's approval may include reasonable conditions which must be satisfied in undertaking the proposed use or activity. If Grantor must undertake emergency action to protect health or safety on the Property or must act by and subject to compulsion of any governmental agency, Grantor may proceed with such action without Grantee's approval only if Grantor notifies Grantee prior to taking such action and Grantee cannot provide its approval, with or without conditions, within such time as is reasonable under the circumstances.

C. Grantee's Failure to Approve Within the Required Time. Where Grantee's approval is required, and if Grantee does not grant or withhold its approval in the time period and manner set forth herein, Grantor may assume Grantee's approval of the permitted use or activity in question.

D. Addresses for Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing either served personally or sent by first class mail, postage prepaid, addressed to as follows:

To Grantors: Gerrit Jan van den Engh and Barbara Jo Trask
9756 49th Ave NE
Seattle, WA 98115



To Grantee: Skagit Land Trust
P. O. Box 1017
Mt. Vernon, WA 98273

or to such other address as either party from time to time shall designate by written notices to the other.

VIII. DISPUTE RESOLUTION

All disputes between the parties concerning the construction or implementation of the rights and liabilities of the parties pursuant to this agreement shall be subject to this dispute resolution section.

A. Either party may give written notice to the other party of a dispute and request that the matter be subject to mediation with the mediator to be selected from those available from a recognized dispute resolution center or mediation service, with each party to pay 50% of the mediator's fees. Both parties shall meet in good faith as is reasonably requested by the mediator in an attempt to resolve the dispute. Thirty (30) days after appointment of a mediator, if no resolution has been reached to the mutual satisfaction of the parties, either party may pursue arbitration.

B. Any arbitration shall be conducted pursuant to Washington State statutes, Washington Superior Court Rules and Skagit County Local Rules for Mandatory Arbitration, no matter the amount in controversy or the remedy sought. The arbitrator shall have full powers in law and equity to award damages, declare rights and liabilities, prohibit acts, require that acts be performed or to enjoin any activity or use. To commence arbitration, a party must commence an action in Skagit County Superior Court to compel. The arbitrator's award shall include an award of attorney's fees and costs to the prevailing party and shall be subject to appeal only pursuant to the provisions of Chapter 7.04 RCW now or as hereafter amended. The prevailing party in any appeal shall receive its attorney's fees and costs. The court shall have full jurisdiction to enforce the arbitrator's decision, including Civil and Criminal contempt.

C. The foregoing notwithstanding, either party may commence an action in Superior Court (whether mediation or arbitration has commenced or not) to seek a temporary injunction or preliminary injunction pursuant to Washington State Laws and the Superior Court Rules. The Court shall have exclusive jurisdiction to hear such temporary or preliminary injunction matters and the Superior Court's decision with respect to such injunction requests shall stand until a hearing on the merits is conducted before the arbitrator and an arbitrator's award is made. The prevailing party in any request for a temporary injunction or preliminary injunction shall be awarded its attorney's fees and costs related thereto by the Superior Court irrespective of the ultimate outcome of the dispute before the arbitrator. The Court shall enter an injunction at any time it is shown by a preponderance of



the evidence that a violation of the terms of this easement will cause any injury to the conservation values protected by this easement.

IX. GRANTEE'S REMEDIES

A. General. Grantor and Grantee have a common interest in the reasonable application of the terms of this Easement to the Protected Property and the parties undertake the grant and acceptance of the Easement in a spirit of cooperation which presupposes regular consultation between Grantor and Grantee, not less frequently than annually.

B. Notice of Failure. 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 purported violation which specifies the provision of this Easement being violated and specifies the 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.

C. Grantor's Failure to Respond. If Grantor: (1) fails to cure a violation within thirty (30) days after receipt of a notice thereof from Grantee or under circumstances for which the violation cannot be reasonably cured within the thirty (30) day period, fails to commence curing such violation within thirty (30) days of notice; or fails to continue diligently to cure such violation until finally cured; Grantee may then invoke dispute resolution as set forth in Section VIII above.

D. Grantee's Action. Pursuant to this section, Grantee may bring action in Skagit County Superior Court to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including damages for the loss of the Conservation Values; and to require the restoration of the Protected Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property.

E. Immediate Action Required. 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.

F. Nature of Remedy. Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement, and 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 proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

G. Costs of Enforcement. In the event that Grantor or Grantee find it necessary to bring an action at law or other proceeding against the other party to enforce the terms of this Easement, the prevailing party in any such action or proceeding shall be paid all reasonable costs and attorneys' and consultant fees (whether incurred at the trial, appellate or administrative level) by the other party and all such costs and fees shall be included in any judgment secured by the prevailing part.

H. Grantee's Discretion. Enforcement of Grantee's rights under the terms of this 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 shall not be deemed or construed to be a waiver by Grantee of such term of any Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

I. Waiver of Certain Defenses. Grantor acknowledges that it has carefully reviewed this Grant Deed of Conservation Easement and has consulted with and been advised by legal counsel of its terms and requirements. In full knowledge of the provisions of this Grant Deed of Conservation Easement, Grantor hereby waives any claim or defense it may have against Grantee or its successors in interest under or pertaining to this Grant Deed of Conservation Easement based upon waiver, laches, estoppel, adverse possession, or prescription, except as contemplated by Section IX.K, the estoppel certificate procedure, and except as affected by written agreements prepared pursuant to Section XIII.A.

J. Acts Beyond Grantors 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, fire, flood, storm, and earth movement, or from any action taken by Grantor in good faith under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

K. Estoppel Certificates. Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance or lack thereof with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as requested by Grantor.

L. Limitation on Damages and Actions. Notwithstanding any other provision of this Easement, Grantee shall have no right of action for damages, specific performance, or



other remedy pertaining to any condition existing prior to the effective date of this Easement, *except* as to Grantee's right to obtain indemnification as set forth in Section XI.F.

X. ACCESS BY PUBLIC

Nothing contained herein, shall be construed as affording the general public access to the Protected Property.

XI. COSTS, LIABILITIES, TAXES, AND INDEMNIFICATION

A. 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 comprehensive general liability insurance coverage. Such insurance shall include Grantee's interest and name Grantee as an additional insured and provide for at least thirty (30) days notice to Grantee before cancellation and that the act or omission of one insured will not invalidate the policy as to the other insured party.

B. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantee is authorized, in the absence of any formal protest from Grantor as to the validity of such taxes, but in no event obligated to make or advance any payment of taxes, upon ten (10) working 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 rate of one percent per month.

C. Liens Subordinated. Grantor represents that as of the date of this grant, there are no liens or mortgages outstanding against the Protected Property. Grantor may hereafter use the Protected Property as collateral to secure the repayment of debt, provided that any lien or other rights granted for such purpose are subordinate to Grantee's rights under this Easement. Under no circumstances may Grantee's rights be extinguished or otherwise affected by the recording, foreclosure, or any other action taken concerning any future lien or other interest in the Property.

D. Environmental Provisions.

1. Grantor represents and warrants that to the best of Grantor's knowledge there has been no release, dumping, burying or abandonment on the Protected Property; and there is no pending or threatened litigation affecting the Protected Property or any portion thereof which will materially impair the value or usefulness of the Protected Property or any portion thereof to the Grantee. No civil or criminal proceedings have been instigated or are pending against the Grantor or its predecessors by government agencies or third parties



arising out of alleged violations of environmental laws, and neither Grantor nor its predecessors in interest have received any notices of violation, penalties, claims, demand letters, or other notifications relating to a breach of environmental laws.

2. If, at any time, there occurs, or has occurred, a Release, not caused by Grantee, in, on, or about the 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 Remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee should be responsible for Remediation. Notwithstanding the foregoing, if such Release or Grantor's performance of such remediation adversely affects the Conservation Values, Grantee's rights regarding restoration of the Conservation Values shall be as provided under Section IX above.

3. **The following definitions apply to this section:**

The term "Remediation" shall mean a clean up, containment or other action relating to Hazardous Substances required by law or an agency enforcing a law.

The term "Release" shall mean any release, generation, treatment, disposal, storage, dumping, burying, abandonment, or migration (other than incidental migration) from off-site.

The term "Hazardous Substance" shall mean 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 or as a pollutant by any federal, state, or local law, regulation, statute, or ordinance, including, but not limited to, petroleum or any petroleum product. The term "Hazardous Substances" shall not include "biosolids" applied in accordance with federal, state and local law.

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 the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") or the Model Toxics Control Act, as amended ("MTCA").

F. **Grantor's Indemnification.** Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, 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, attorneys' and consultants' fees, arising from Grantor's acts or omissions relating to the



Protected Property or this Easement, the obligations specified in subsections A and B of this section, the breach of the environmental provisions in subsection D of this section or the existence or administration of this Easement. The foregoing provision shall not be narrowed, limited, or otherwise affected by Grantor's disclosure of any condition on the Protected Property or the absence of any representation or warranty, express or implied, relating to any condition on the Protected Property, whether existing as of the effective date of this Easement or thereafter.

G. Grantee's Indemnification. Grantee shall hold harmless, indemnify, and defend Grantor and Grantor's members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, 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, attorneys' and consultants' fees, arising from Grantee's acts or omissions relating to the Protected Property or this Easement.

XII. SUBSEQUENT TRANSFER OR EXTINGUISHMENT

A. Extinguishment. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at the time, in accordance with subsection B herein. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant.

B. Termination and Proceeds. Notwithstanding that this Conservation Easement is an obligation, and not a financial asset, should it be extinguished, which may be accomplished only by judicial proceedings, or should any interest in the Protected Property be taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation subject to prior written consent of Grantee; Grantee is entitled to a share of the proceeds of any sale, exchange, or involuntary conversion of the property formerly subject to this easement, according to Grantee's proportional interest in the Protected Property as determined and as required under Treasury Regulations 1.170-A-14(g)(6)(ii). Grantee's proportional interest is determined as of the date of this grant and will not include value attributable to authorized improvements to the Protected Property made after the date of this grant, except as to improvements that are made by or at the expense of Grantee. Grantee will use such proceeds for its conservation purposes.

C. Subsequent Transfers. Grantor agrees (1) to incorporate the terms of this Easement 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, and (2) to describe this Easement in and append it to, any executory contract for the transfer of any



interest in the Protected Property. Grantor further agrees to give written notice to Grantee of the transfer of any interest of at least thirty (30) 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 his or her representative. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

XIII. AMENDMENT

A. General. 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 shall affect the qualification of this Easement or the status of Grantee under any applicable laws, including RCW 64.04.130, Chapter 84.34 RCW, or Section 170(h) of the Internal Revenue Code, as amended, and any amendment shall be consistent with the purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Skagit County, Washington, and any other jurisdiction in which such recording is required.

B. Amendment to Include Legal Descriptions. The parties acknowledge that at the time of execution of this conservation easement, a survey has not been completed to provide legal descriptions for the Sub-Areas described in Exhibits D, E and F. The parties hereby agree: (1) that depiction contained in Exhibit B is sufficient to establish the Sub-Areas pending completion of a survey and creation of full legal descriptions; (2) to waive any defense or claim of invalidity based on the adequacy of the Sub-Area legal descriptions; and (3) to execute and record an amendment to this conservation easement promptly after completion of the survey and legal descriptions of the Sub-Areas to complete Exhibits D, E and F by including therein such legal descriptions.

XIV. ASSIGNMENTS

A. Assignment. This Easement is transferable, but Grantee may assign its rights and obligations under this easement *except* as provided in Section IV.F (Assignment of Rights to State) above only to an 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 then applicable). As a condition of such transfer, Grantee shall require that the Conservation Purposes that this Easement is intended to advance continue to be carried out by the transferee. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment.

B. Succession. If at any time it becomes impossible for Grantee to ensure compliance with the covenants contained herein and Grantee has not named a successor organization, or Grantee shall cease to exist, then its rights and duties hereunder shall become

vested and fall upon the following named entities to the extent that they shall accept this Easement, in the following order:

1. Whatcom Land Trust
PO Box 6131
Bellingham, WA 98227
2. The Nature Conservancy
1917 First Ave
Seattle, WA 98101
3. San Juan Preservation Trust
P.O. Box 327
Lopez Island, WA 98261
4. Such other entity, with purposes similar to the Skagit Land Trust, constituting a "qualified organization" within the meaning of the Code (or corresponding provision of any future statute), and authorized to hold the Easement under RCW 64.04.130 (or corresponding provision of any future statute); provided that if such vesting in the entities named above is deemed to be void under the Rule Against Perpetuities, the rights and obligations under this Easement shall vest in such organization as a court of competent jurisdiction shall direct, pursuant to the applicable Washington law and the Internal Revenue Code (or corresponding provision of any future statute) and with due regard to the purposes of this Easement.

XV. RECORDATION

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.

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 the application thereof 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 thereby.

D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section XIII herein.

E. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

F. "Grantor" - "Grantee". The terms "grantor" and "grantee" whenever used herein, and any pronouns used in the place thereof shall mean and include, respectively, the above-named Grantor, and its personal representatives, heirs, successors and assigns and the above-named Grantee, and its personal representatives, heirs, successors and assigns. All covenants, terms, conditions, restrictions and rights of this easement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

G. 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.

H. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

I. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, 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.

60418
SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

DEC 20 2006

Amount Paid 356.50
By Skagit Co. Treasurer
By [Signature] Deputy

Page 23 of 26



200612200141

Skagit County Auditor

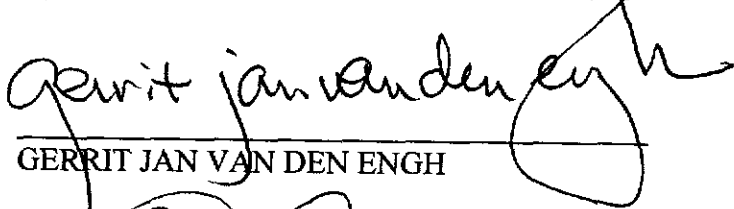
SCHEDULE OF EXHIBITS

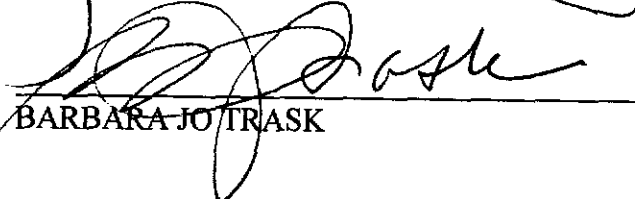
- A. Legal Description of Property Subject to Easement
- B. Site Map
- C. Recorded Survey of 2003 Subdivision
- D. Legal Description of Habitat Conservation Area *(to be determined by survey, pursuant to Section XIII.B (Amendment to Include Legal Description))*
- E. Legal Description of Agricultural Area *(to be determined by survey, pursuant to Section XIII.B (Amendment to Include Legal Description))*
- F. Legal Description of Building Zone *(to be determined by survey, pursuant to Section XIII.B (Amendment to Include Legal Description))*
- G. Baseline Report Summary
- H. Example Assignment of Rights Document



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

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 15th day of December, 2006.


GERRIT JAN VAN DEN ENGH


BARBARA JO TRASK

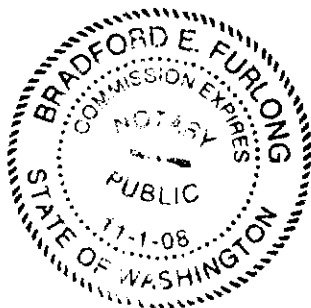
STATE OF WASHINGTON


COUNTY OF SKAGIT

} ss.
}

On this 15th day of December, 2006, before me, a Notary Public in and for the State of Washington, personally appeared Gerrit Jan van den Engh and Barbara Jo Trask, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed this instrument and acknowledged it to be their free and voluntary acts and deeds for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.




NOTARY PUBLIC in and for the State of
Washington, residing at Mt. Vernon
My appointment expires 11-1-8
Print Name Bradford E Furlong



THE SKAGIT LAND TRUST does hereby accept the above Grant Deed of Conservation Easement.

Grantee: Skagit Land Trust

Marlene J. Moore

Marlene Moore, President

Dated: 12/19/06

Attestation:

Jerald Haegele
Jerald Haegele, Secretary

Dated: Dec 19, 2006

STATE OF WASHINGTON

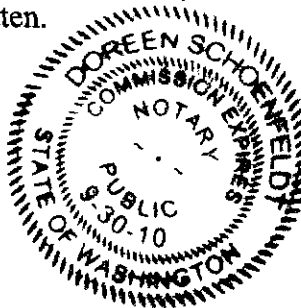
COUNTY OF SKAGIT

)
) ss.

*President, Skagit Land Trust

On this 19th day of December, 2006, before me, a Notary Public in and for the State of Washington, personally appeared Marlene Moore,*personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed this instrument and acknowledged it to be their free and voluntary acts and deeds for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



Doreen Schoenfeldt
NOTARY PUBLIC in and for the State of
Washington, residing at Sedro Woolley
My appointment expires 09/30/2010
Print Name Doreen Schoenfeldt



Exhibit A
legal description of property subject to conservation easement

PARCEL "A":

Lots 4, 5, 6, 7, 8 and 9, "ELYSIAN MEADOWS," recorded October 7, 2003, under Auditor's File No. 200310070060, records of Skagit County, Washington.

TOGETHER WITH that portion of Tract J in said plat, lying Easterly of the Westerly line of Lot 4 of said plat.

ALSO TOGETHER WITH ingress and egress rights as established in that instrument recorded on October 29, 2004, under Auditor's File No. 200410290028.

Situate in the County of Skagit, State of Washington.

PARCEL "B":

Government Lot 14 and that portion of Government Lot 13, Section 12, Township 35 North, Range 7 East, W.M., lying Easterly of the following described line:

Beginning at the Southwest corner of said Section 12;
thence South 88°43'11" East along the South line thereof, a distance of 2,413.00 feet to the point of beginning of this line description;
thence North 28°03'51" West, a distance of 136.07 feet;
thence North 52°57'19" West, a distance of 196.15 feet;
thence North 00°25'25" West, a distance of 208.99 feet;
thence North 37°04'40" West, a distance of 134.58 feet to the Skagit River and terminus of this line description.

Situate in the County of Skagit, State of Washington.

PARCEL "C":

Government Lot 3 and that portion of Government Lot 4, Section 13, Township 35 North, Range 7 East, W.M., lying Easterly of the following described line:

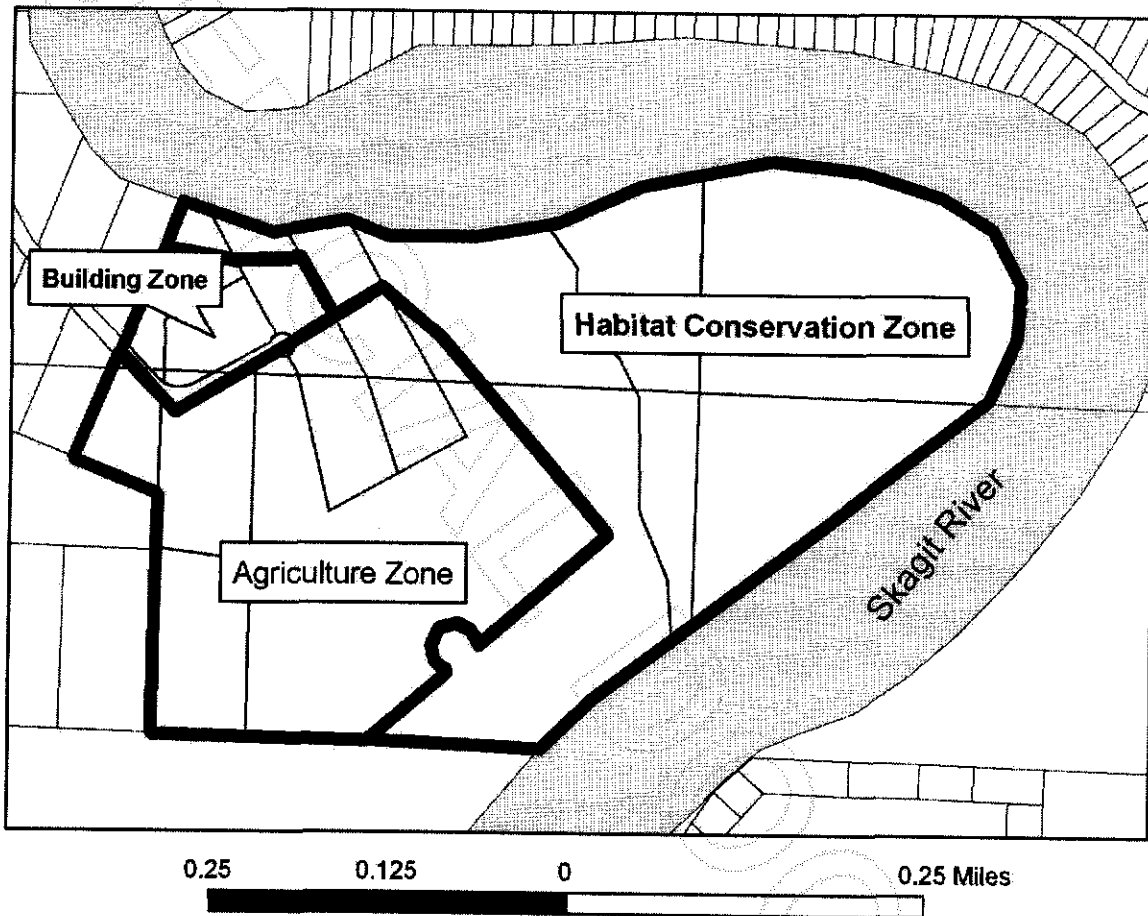
Beginning at the Northwest corner of said Section 13;
thence South 88°43'11" East along the North line thereof, a distance of 2,413.00 feet to the point of beginning of this line description;
thence South 28°03'51" East, a distance of 33.09 feet;
thence South 01°36'21" East, a distance of 425.51 feet;
thence South 24°23'04" East, a distance of 265.29 feet;
thence South 04°59'14" East, a distance of 116.82 feet to the Skagit River and terminus of this line description.

Situate in the County of Skagit, State of Washington.



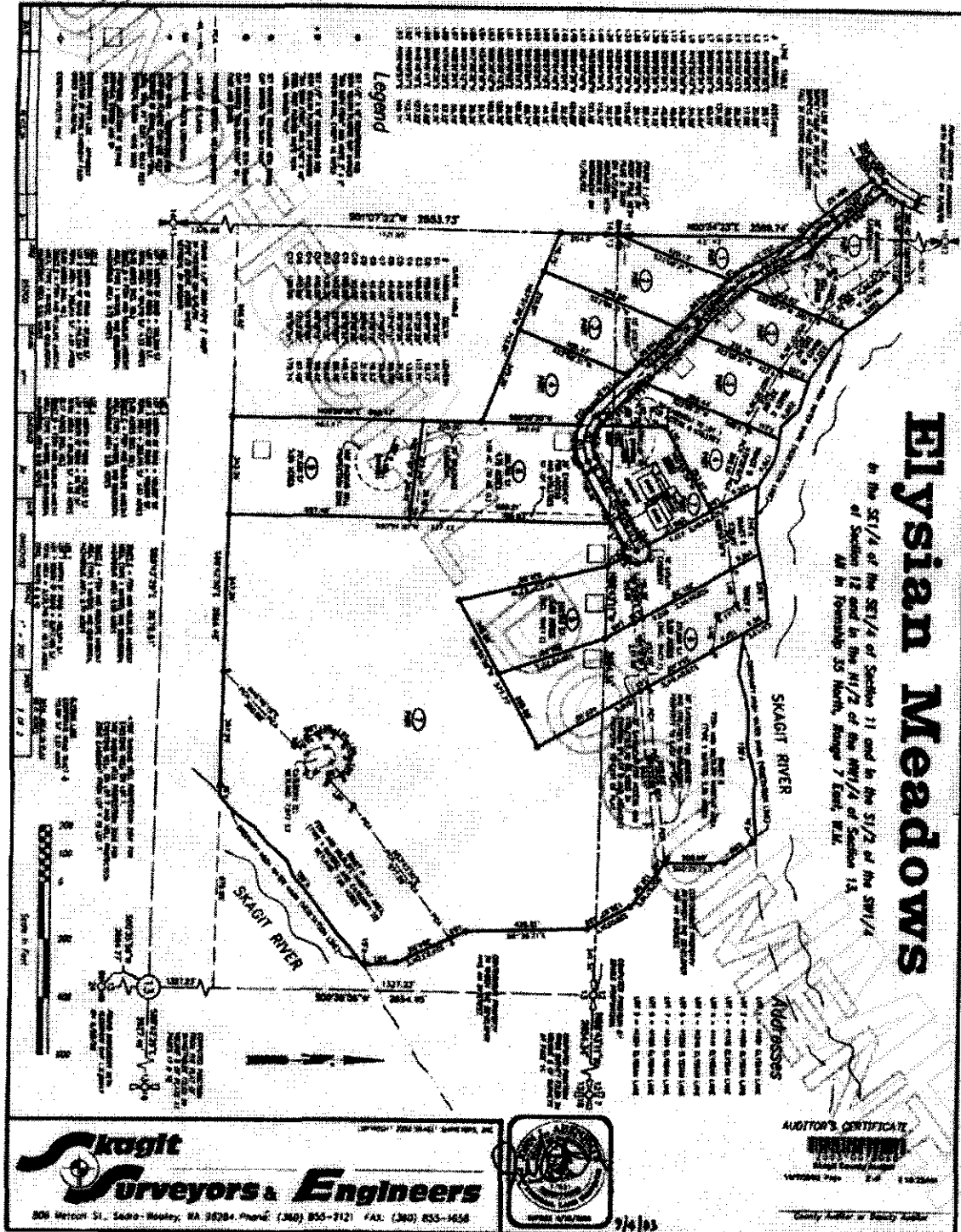
200612200141
Skagit County Auditor

EXHIBIT B
Site Map
Sections 12 and 13 Township 35 N Range 7 E



200612200141
Skagit County Auditor

EXHIBIT C
2003 PLAT (Aff# 200310070060)



200612200141
Skagit County Auditor

Exhibit D

Legal Description of Habitat Conservation Area

To be determined by survey pursuant to Section XIII.B ('Amendment to Include Legal Description')

Exhibit E

Legal Description of Agricultural Area

To be determined by survey pursuant to Section XIII.B ('Amendment to Include Legal Description')

Exhibit F

Legal Description of Building Zone

To be determined by survey pursuant to Section XIII.B (Amendment to Include Legal Description)



200612200141
Skagit County Auditor

EXHIBIT G

Baseline Report Summary Elysian Meadows

Date Prepared: December 14, 2006 by Brenda Cunningham

Location and Parcels (acres according to Skagit County Assessor):

Section 12 and 13 of Township 35N and Range 7E:

P121059 (4.85);
P121060 (5.66);
P121061 (5.09);
P121062 (48.73);
P121063 (4.75);
P121064 (5.09);
P121065 (that portion running through lots 4 – 8);
P109565 (5.9);
P109566 (4.25);
P42536 (18.7); and
P42556 (8.8)

Acres: 112

Habitat types and acres of each: pasture (~49 acres) and forest, including forested wetlands and riparian areas (~57 acres)

Structures: 6: 1 house (log cabin), and 5 farm buildings.

County Zoning: Agriculture

Land Use tax classification: Current Use – Open Space

Legal Description: Lots 4-9, Elysian Meadows, Gov. Lots 13-14, 12-35-17 E W.M., Gov. Lots 3-4, 13-35-7 E W.M.

Soil types: see attached soil survey map and descriptions (USDA 1989)

Pilchuck loamy sand (*104 on 1989 USDA Soil Survey map*): ~65%

Larush silt loam (*88 on 1989 USDA Soil Survey map*): ~23%

Barneston gravelly loam (*5 on 1989 USDA Soil Survey map*): ~12%

County Critical Areas: Surface waters (type 1 stream), wetlands, salmon habitat and flood hazard area. The floodplain of this property is designated by FEMA as Zone AE.



200612200141
Skagit County Auditor

meaning that it is within the 100-year floodplain and flood insurance would be required for any buildings constructed in this area. This applies just to the lower portion of the property. The terrace on which the house and farm buildings sit is in the 500-year floodplain (FEMA Zone B).

Washington Department of Fish and Wildlife Priority Species and Habitat classifications (WDFW):

Priority species include State Endangered, Threatened, Sensitive, and Candidate species; animal aggregations considered vulnerable; and those species of recreational, commercial, or tribal importance that are vulnerable. *Priority habitats* are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element.

Priority Species found on Protected Property: The river adjacent to the Protected Property contains habitats for many species of salmon and steelhead, including the Evolutionarily Significant Units (ESUs) for coho, Chinook, fall chum, steelhead and bull trout. More specifically, the area provides spawning habitat for fall runs of Chinook and chum salmon, as well as pink salmon, and winter steelhead. Coho, sockeye and bull trout are reared in the waters surrounding the Protected Property and spring and summer runs of Chinook and summer steelhead have been documented in these waters (WDFW SalmonScape). Foraging and nesting habitats are also present on the property for Vaux's swift, pileated woodpeckers, bald eagles and several species of bats. More than 80 elk have been seen on the Protected Property, feeding in the pasture and finding shelter in the adjacent forests.

Priority Habitats found on Protected Property: Instream, Riparian, Rural Natural Open Space and Freshwater Wetlands.



200612200141
Skagit County Auditor

12/20/2006 Page 32 of 43 3:39PM

Federally Listed Endangered and Threatened Species (USFWS 2005):

The following listed species are found on the Protected Property or in the adjacent river: Chinook salmon, bull trout and bald eagles. Chinook salmon use the river adjacent to the Property for spawning and juvenile migration. Bull trout use this habitat for rearing, migration and foraging. Bald eagles use the riparian area adjacent to the river as day and night roost habitat, and for foraging. Pacific lamprey (*Lampetra tridentata*), a federal candidate species, is also present in the Skagit River adjacent to the Protected Property.

Special features and conservation values: The Protected Property has significant value for conservation of both natural and cultural values in the area. The Agriculture Zone protects a substantial piece of farmland in the floodplain of the Skagit River, an ever decreasing asset as the valley becomes more populated and subdivided into smaller lots for residential use. This farmland provides feed for local cattle, while also providing open space for native species of songbirds and bats. It is also used by a herd of elk, sometimes as many as 80 animals in the fall and winter months. The combination of pasture and forest lands on this property results in a large variety of habitats and species using the property and contributes to the viability of a neighboring farm.

The Protected Property also includes more than 1 mile of shoreline on the Skagit River in an area of important Chinook spawning habitat as identified in aerial counts of redds. Two areas of between 6 and 20 Chinook redds each and one area with 5 or fewer Chinook redds have been identified along this shoreline (PSE 2002). As detailed in the Priority Species and Habitats section above, many species of salmon use this area.

Several wetland types are recognized on this property in the National Wetlands Inventory (NWI). An open area within the forest has been classified as a Palustrine, forested, semi-permanent wetland of approximately 2 ½ acres. Although this area is identified and classified in the National Wetland Inventory it does not appear to be nor ever been a wetland. Former owners and the Grantors have noted that the area stays drier than the



200612200141
Skagit County Auditor

surrounding land during flood events. It appears as an opening in the forest canopy in historic, as well as recent aerial photos, and there is no explanation for why trees have not colonized the site. Former owners, the Tennesons, hayed the area briefly during their ownership. Before they sold the property they planted conifer trees on the perimeter, but felt that elk damage to the trees limited the success of that planting.

A smaller area (7,077 square feet) at the south end of the pasture area was identified as a Category III wetland in a survey conducted in 2003 for the creation of the shortplat. This survey also delineated Fish and Wildlife Habitat Areas and areas of Geologic Hazard (Tracts D, E, F, G and H). These areas are excluded from development zones for the protection of the Type 1 water (Skagit River) and because of the eroding bank in the Tracts D, E and F). In addition, more than 10 acres of gravel bars along the river have been identified in the NWI as Riverine, Upper perennial wetlands. These are wetlands that are characterized by the high gradient and water velocity found along rivers such as the Skagit.

The Habitat Conservation portion of the Protected Property (approximately 67 acres) is a rare remnant of forest on a peninsula in the Skagit River. Several similar peninsulas in the Skagit River have long been cleared (Cumberland Creek area) or developed for residential use (Cape Horn). The forest on this property performs many functions that protect the water quality downstream. As floodwaters pass over the peninsula, the presence of trees and shrubs protects the land from erosion and traps sediments carried by the water from upstream. There is also an exchange of nutrients, some leaving the site, while others are accumulated in the forest. Not only is sediment and plant debris captured in this forest, but after a flood it is not unusual to find salmon carcasses far from the shoreline. In this way nutrients from the sea are transported and made available to the lands surrounding the river.



200612200141
Skagit County Auditor

12/20/2006 Page 34 of 43 3:39PM

History of previous ownership and land uses:

Several locally-prominent farming families have owned and farmed the Protected Property. The Youngquist family (grandparents of Mike and Jeanne Youngquist) owned the property in the mid-20th Century and sold the land to the Tennesons in the late 1970s. In the process of cleaning up the farm buildings the Tennesons discovered an old foundation and walls for a milking parlor that appeared to date to the 1930s, likely built under a federal aid program. They reused those structures in the buildings presently on the site. The Tennesons kept a small number of milking cows to demonstrate the production capabilities of their animals. The primary purpose of the herd was to produce breeding stock and sperm for export. In 1992 the Tennesons sold their milk cows and kept a small beef herd there until they sold the property in 1995. Cavalero Estates purchased the property from Tenneson in 1995 and sold it shortly after that, in 1996, to Port Gardner Timber. Under Port Gardner Timber's ownership the property was subdivided into 9 lots intended for residential use. This owner thinned the forest in the lots along Elysian Lane, leading into the Protected Property. In 2004 all the lots were sold to the Grantors, Barbara Jo Trask and Gerrit Jan van den Engh. The Grantors have cleared a significant amount of blackberry brush away from the farm buildings and removed many truckloads of rubbish from inside and around the buildings.

Condition of property (December 2006):

With a few exceptions, the pasture on the property is in good condition. At the south end of the pasture, there are native trees between the river and the pasture, however, the width of this riparian buffer is insufficient for the protection of the water quality (Tract H in the shortplat). There is electric fencing in this location, keeping livestock in the pasture from the riverbank. A small wetland also identified in Tract H of the survey for the shortplat is subject to grazing, with little natural wetland vegetation remaining. At this time the pasture is used seasonally by a neighbor for grazing beef cattle.



200612200141

Skagit County Auditor

12/20/2006 Page 35 of 43 3:39PM

There appears to be a new channel forming across the pasture, from north to south. At this time water moves through this area only during flood events. Future flood events may establish a more permanent channel. In the meantime, the erosion that occurs during flood events carries away the top soils and exposes the underlying cobbles, causing a decline in pasture quality in that area. Blackberries have colonized the border between the pasture and the forest, particularly in the southeast corner of the pasture. This occurs wherever disturbances are minimized, either by grazing or flooding and where sunlight is maximized by lack of forest cover.

The forested portion of the Protected Property is in good condition, with very few exceptions. It is a young forest with a mixture of deciduous and coniferous tree species. The oldest trees in the forest may be 80 to 90 years old, but most are 40 to 50 years old. Evidence of past logging and forest characteristics can be found in the numerous old, rotting stumps of conifer trees in this area. There are several river channels forming across the peninsula in the forest, with exposed cobbles indicating the paths. At the same time the peninsula is growing through accretion as the river deposits material on the inside of the curve. Concentric rings of successively younger deciduous trees marks the growth of the peninsula outward from the pasture. There are a number of non-native, invasive species in the forest, such as Scotch broom and knotweed. Although total eradication of these species is ideal, it is likely that new populations will arise after future flood events. Initial removal of these invasive species is recommended, followed by vigilant control.

Buildings and Roads:

There are 6 buildings in the Building Zone at this time. The current residence is a log structure with covered porches on 3 sides. The footprint of this structure, including the covered porches, is approximately 1,325 square feet. A large barn, shop (cinder block building), small barn, 2 open-sided sheds and the surrounding concrete cover



200612200141
Skagit County Auditor

12/20/2006 Page 36 of 43 3:39PM

approximately 22,600 square feet. These buildings date to the use of the property for dairy operations. They are currently used for hay and farm equipment storage.

At this time there is a paved road extending from west of the house, south to the front of the house in the pasture and northeastward to the east end of the building zone. This was built by the previous owners as an access road to the residential lots. The natural contour of the slope was changed during construction of the road, cutting into the slope and ditching the adjacent pasture for drainage. The Grantors intention is to remove this access road and restore the natural contours of the landscape. This road currently occupies approximately 19,760 square feet. An old access road to the house site and farm buildings has been graded directly from Elysian Lane, entering the Protected Property from the northwest. This will become the only access road to the house once the road in front of the house is removed, resulting in a significant decrease in impervious surfaces in the Building and Agricultural Zones.

Grantor and Grantee Statement:

This natural resources inventory is an accurate representation of the property at the time of conservation easement donation.



Grantor

Grantor

date:

12/15/06



Skagit Land Trust, Grantee

Stewardship Director

Title

date:

12-15-06



200612200141
Skagit County Auditor

12/20/2006 Page 37 of 43 3:39PM

References used to prepare this report:

Puget Sound Energy (PSE), *Longitudinal distribution of Chinook redds in the middle Skagit River*, December 2002

Washington Department of Fish and Wildlife (WDFW) *Priority Species and Habitats*:

<http://wdfw.wa.gov/hab/phshabs.htm>

WDFW *SalmonScape*: <http://wdfw.wa.gov/mapping/salmonscape/>

US Department of Agriculture (USDA) *Soil Survey of Skagit County Area, Washington*, Sept. 1989

US Fish and Wildlife Service (USFWS) Western Washington Office:

<http://www.fws.gov/westwafwo/>

USFWS *National Wetland Inventory*: <http://www.fws.gov/nwi/>

Attachments (available in baseline file):

- T Ground photos (photopoint collection)
- T Landscape photos
- T Orthophoto
- T Assessor's maps (Section 12 and 13 of Township 35N and Range 7E)
- T Site map (Exhibit B from Conservation Easement)
- T NWI map
- T Soil Survey map and descriptions
- T Vegetation Map and Inventory
- T FEMA Floodplain Designation Map
- T Title Report



200612200141

Skagit County Auditor

12/20/2006 Page 38 of 43 3:39PM

'EXHIBIT H'

ASSIGNMENT OF RIGHTS

This ASSIGNMENT OF RIGHTS (this "Assignment") is executed as of the _____ day of _____, 2006, by Skagit Land Trust ("Assignor"), to and in favor of THE STATE OF WASHINGTON ("State"), through the Salmon Recovery Funding Board (SRFB) administered by the Interagency Committee for Outdoor Recreation ("IAC").

RECITALS

A. Assignor has entered into a conservation easement ("Conservation Easement") with [a] certain property owner[s] (collectively "Owner") in the northwest portion of the Skagit watershed (W.R.I.A. number # _____ under WAC 173-500-040) in Skagit County Washington. The name[s] and address of the Owner and the recording number of the Conservation Easement are set forth in Exhibit 1 attached hereto and incorporated herein. The legal description of the Property subject to the Conservation Easement are set forth in Exhibit 2 attached hereto and incorporated herein.

B. The conservation purpose of the Conservation Easement is described in the Conservation Easement. That purpose is also described in the Project Agreement entered into between the recipient of SRFB funds ("Sponsor") and the State through the SRFB entitled _____, Project Number _____ dated _____ and the application and supporting materials which are on file with the State in connection with the Project Agreement, which Project Agreement is incorporated herein by this reference. That purpose includes protection and restoration of riparian habitat, as defined in the Conservation Easement.

C. Owner has authorized Assignor to assign to the State certain rights for access to and stewardship of the property covered by the Conservation Easement. Assignment of such rights is a necessary condition to receipt of grant funding under the Project Agreement and the policies of the Salmon Recovery Funding Board (SRFB) administered by the IAC. Such rights are valuable to the State in connection with ensuring protection of habitat under the terms of the Conservation Easement, and are particularly valuable because Assignor and Owner have agreed that Assignor will retain all responsibility for obligations of the Assignor under the Conservation Easement.

D. These recitals are incorporated herein by this reference.

Now, therefore, Assignor and the State agree as follows:



200612200141
Skagit County Auditor

12/20/2006 Page 39 of 43 3:39PM

AGREEMENT

1. **Assignment.** For and in consideration of monies coming in whole or in part from the State of Washington and in fulfillment of terms of the Project Agreement identified herein, Assignor does hereby assign, transfer, set over, convey and deliver to the State individually, and as the representative of all the people of the State, the following rights (collectively referred to as "Rights") under the Conservation Easement the recording number of which is listed in Exhibit 1 attached hereto and incorporated herein by this reference:

a. **Access.** To enter the Protected Property, as defined in the Conservation Easement, subject to the Conservation Easement at a reasonable time and upon prior arrangement with Assignor and Owner, in order to monitor and evaluate performance, compliance, and/or quality assurance under the Project Agreement.

b. **Injunction and Restoration.** In the event of the failure of Assignor to undertake such injunction and restoration, to enjoin any use of, or activity in, the Protected Property which is inconsistent with the terms of the Conservation Easement, including trespass by members of the public, and undertake or cause to be undertaken the restoration of such areas or features of the Protected Property as may be damaged by uses or activities contrary to the provisions of the Conservation Easement.

c. **Enforcement.** In the event of the failure of Assignor to undertake such enforcement, to enforce the terms of the Conservation Easement, and thereby assume the Assignor's remedies under the Conservation Easement.

d. **Amendments.** To review and approve any proposed amendments to the Conservation Easement. Review and approval by IAC's Director will be for compliance with the terms of the Project Agreement.

e. **Termination For Reasons of Impracticability.** To review and approve any proposed agreements to terminate the Conservation Easement, or release a portion of the Protected Property from the terms of the Conservation Easement, for the reason that circumstances have rendered the conservation purpose of the Conservation Easement impractical to achieve.

f. **Stewardship Plans.** To review any Stewardship Plans, including riparian habitat restoration and enhancement plans, as defined in the Conservation Easement. Review by IAC's Director will be for compliance with the terms of the Project Agreement.

These Rights shall be held in common with Assignor or Assignor's successors and assigns.

2. **State's Exercise of Rights.** The State hereby represents and warrants that its exercise of rights under this Assignment will be consistent with the conservation purpose defined in the Conservation Easement and the Project Agreement.

3. **Representations and Warranties of Assignor.** Assignor hereby represents and warrants to the State that:

a. Owner, identified in Exhibit 1 attached hereto and incorporated herein, has authorized and approved this Assignment.

b. Assignor shall enforce the terms of the Conservation Easement as provided in the Conservation Easement.

c. Assignor shall comply with, and SRFB and IAC shall not be responsible for determining compliance with, all applicable federal, state, and local laws, regulations, and policies in its administration of the Conservation Easement or the undertaking of any of its rights under the Conservation Easement.

d. Neither Assignor nor Owner has any claims or causes of action, at law or in equity, with respect to any Conservation Easement as of the date provided above.

4. **Obligations.** It is expressly understood and agreed that, by the acceptance of this Assignment, the State has not assumed, and shall not become obligated to keep, fulfill, observe, perform or discharge, any duty or obligation of Assignor under the Conservation Easement.

5. **Indemnity.** Assignor shall defend, protect and hold harmless the State, the SRFB, the IAC, or any employees thereof, from and against any and all costs, claims, fees and expenses arising out of or in any way relating to Assignor's representations and warranties under this Assignment, Assignor's obligations under the Conservation Easement, or the acts by or omissions of Assignor or Owner.

6. **Replacement Property.** The Conservation Easement may be extinguished in whole or in part under certain circumstances identified in the Conservation Easement. Assignor may be entitled to compensation in such event. Assignor shall use all such proceeds for acquisition, restoration and/or enhancement of substantially equivalent property or property interests within the same watershed, and if no feasible opportunity exists in the same watershed, within another watershed; provided, however, that any such project must be identified in an eligible watershed plan or accomplish an objective cited in such a plan. Assignor hereby agrees to consult with, and receive the approval of, the SRFB and the IAC in the selection of any replacement property and to assign to the State the same or substantially equivalent rights for access to and stewardship of the replacement property as provided for in this Assignment.

7. **Restriction on Assignment.** Assignor shall not assign the Conservation Easement, or the performance of any obligations to the State under the Conservation Easement, without the express written consent of the IAC's Director.

8. **Assignment Term.** The term of this Assignment shall be the same as the term of the Conservation Easement.

9. **Disputes.** Any disputes between Assignor and the State under this Assignment shall be governed by the terms of the Project Agreement.

10. **Governing Law/Venue.** This Assignment shall be governed by the laws of the State of Washington. In the event of a lawsuit between Assignor and the State involving this Assignment, venue shall be proper only in Thurston County. Assignor by executing this Assignment, acknowledges the jurisdiction of the courts of the State of Washington in this matter.

11. **Severability.** If any provision of this Assignment or any provision of any document incorporated by reference herein shall be held invalid, such invalidity shall not affect the other provisions of this Assignment which can be given effect without the invalid provision and to this end the provisions of this Assignment are declared to be severable.

ASSIGNOR:

Skagit Land Trust, a Washington
nonprofit corporation

STATE:

THE STATE OF WASHINGTON, through
its Interagency Committee for Outdoor
Recreation

By _____
Its _____

By _____
Its Director

ATTACHMENTS:

Exhibit 1 - Owner and Conservation Easement Recording Number

Exhibit 2- Legal Description of Property Subject to Conservation Easement

STATE OF WASHINGTON)
) ss:
COUNTY OF _____)



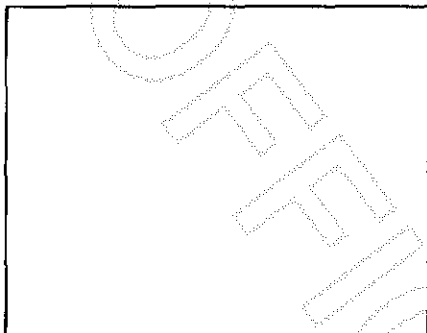
200612200141
Skagit County Auditor

12/20/2006 Page 42 of 43 3:39PM

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the

_____ of
_____ to be the free and
voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



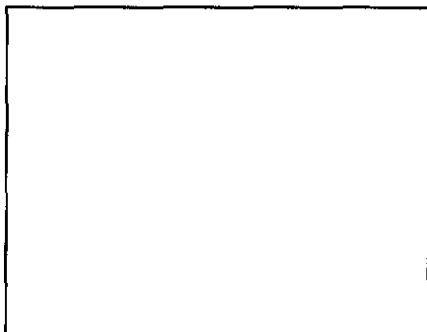
(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

STATE OF WASHINGTON)
COUNTY OF _____) ss: _____

I certify that I know or have satisfactory evidence that _____ is the person who
appeared before me, and said person acknowledged that he/she signed this instrument, on oath
stated that he/she was authorized to execute the instrument and acknowledged it as the
_____ 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 _____



200612200141

Skagit County Auditor

12/20/2006 Page 43 of 43 3:39PM