



200712050081

Skagit County Auditor

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

126457-8e

Grantor: Nelson Brothers Properties, LLC

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Grantee: SKAGIT COUNTY

Legal Description

Abbreviated form: Located in the Northwest 1/4 of Section 22/T35N/R03E W.M., Bow (Skagit County), WA 98232

Additional legal at Exhibit A.

SKAGIT COUNTY WASHINGTON  
REAL ESTATE EXCISE TAX

Assessor's Tax Parcel Number: P34649, P34651

5536  
DEC 05 2007

Amount Paid \$ 1375.60  
Skagit Co. Treasurer  
By nam Deputy

### GRANT DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT ("Easement") is made this 24<sup>th</sup> day of September, 2007, by Nelson Bros. Properties, LLC, husband and wife, having an address at \_\_\_\_\_ (hereinafter referred to as "Grantor"), in favor of Skagit County, a political subdivision of the State of Washington, having an address at Skagit County Farmland Legacy Program, c/o Skagit County Administration Building, 1800 Continental Place, Mount Vernon, WA 98273 (hereinafter referred to as "Grantee").

### I. RECITALS

- A. Grantor is the sole owner in fee simple of that certain real property (the "Protected Property") in Skagit County, Washington, more particularly described in Exhibit A (Legal Description) and

shown on Exhibit B (Baseline Documentation), which exhibits are attached to and incorporated into this Easement by this reference. The Protected Property is approximately 45.07 acres in size and is predominately open farmland.

- B. The Protected Property is of significant agricultural value to Grantor, the people of Skagit County and the people of the State of Washington (collectively, "Conservation Values"). The Conservation Values include protection of agricultural productivity and protection of prime and important agricultural soils.
- C. The Protected Property is zoned Agricultural Natural Resource Land under the Skagit County Zoning Ordinance. Skagit County Zoning Ordinance 14.16.400 states that the goal of the Agricultural Natural Resource Land zone is to "provide land for continued farming activities, conserve agricultural land, and reaffirm Agricultural use, activities and operations as the primary use of the district."
- D. The Protected Property is primarily open farmland that has been classified as "prime farmland" of local importance by the Natural Resources Conservation Service, U.S. Department of Agriculture, because the soils are classified as Skagit Silt Loam and Field Silt Loam.
- E. The specific Conservation Values and characteristics of the Protected Property are further documented in an inventory of relevant features of the Protected Property, dated September 18, 2007, attached hereto as Exhibit B and incorporated into this Easement by this reference ("Baseline Documentation"). The Baseline Documentation consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant.
- F. Grantor, as owner of the Protected Property, has the right to protect and preserve the Conservation Values of the Protected Property, and desires to transfer such rights to Grantee in perpetuity.
- G. The purpose of the Farm and Ranch Lands Protection Program's (16 U.S.C. 3838 h and I) is to purchase conservation easements to protect prime, unique, and other productive soils from conversion to nonagricultural uses. Grantor and grantee acknowledge that, under the authority of the Farm and ranch lands Protection Program, the Natural Resources Conservation Service (hereinafter referred to as "NRS" or the "United States") has contributed \$38,500.00 to purchase this conservation easement and thus entitles the United States to the rights identified herein.
- H. The foregoing recitals are incorporated into this Easement by this reference.

## II. CONVEYANCE AND CONSIDERATION

- A. For the reasons stated above, in consideration of the mutual covenants, terms, conditions, and restrictions contained in this Easement, and in consideration of payment of \$77,000.00 by Grantee to Grantor, the receipt of which is acknowledged, Grantor hereby grants, conveys and warrants to Grantee a conservation easement in perpetuity over the Protected Property, consisting of certain rights in the Protected Property, as defined in this Easement, subject only to the restrictions contained in this Easement.

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- B. This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130, subject only to the mutual covenants, terms, conditions and restrictions set forth in this Easement and to title matters of record as of the effective date of this easement.
- C. Grantor expressly intends that this Easement run with the land and that this Easement shall be binding upon Grantor's personal representatives, heirs, successors, and assigns in perpetuity.

### III. PURPOSE

It is the purpose of this Easement to assure that the Protected Property will be retained forever for agricultural productivity and use, to ensure no net loss of agricultural lands and to protect prime and important agricultural soils, and to prevent any use of, or activity on, the Protected Property that will significantly impair or interfere with its agricultural values, character, use or utility. To the extent that the preservation and protection of the additional Conservation Values of the Protected Property referenced in the above Recitals is consistent with the primary purpose of protecting the agricultural soils, agricultural viability and agricultural productivity of the Protected property in perpetuity, it is also the purpose of this Easement to assure protection of Critical Areas, wetlands and Fish and Wildlife Protection Areas on the Protected Property, and to prevent any use of, or activity on, the Protected Property that will significantly impair or interfere with these natural values. Grantor intends that this Easement will confine the use of, or activity on, the Protected Property to such uses and activities that are consistent with the purpose described above (the "Purpose").

### IV. RIGHTS CONVEYED TO GRANTEE

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

- A. **Protection:** To preserve and protect in perpetuity, and to enhance by mutual agreement, the Conservation Values of the Protected Property.
- B. **Access for Monitoring and Enforcement:**
1. To enter the Protected Property annually, upon prior written notice to Grantor, for the purpose of making a general inspection to monitor compliance with this Easement.
  2. To enter the Protected Property at such other times as are necessary if Grantee has a reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of this Easement. Such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Protected Property.
- C. **Injunction and Restoration:** To enjoin any use of, or activity on, the Protected Property that is inconsistent with the Purpose of this Easement, including trespasses by members of the public, and to require the restoration of such areas or features of the Protected Property as may be damaged by uses or activities inconsistent with the provisions of this Easement, all in accordance with Section X.
- D. **Enforcement:** To enforce the terms of this Easement, consistent with Section X.

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- E. Assignment:** To assign, convey or otherwise transfer Grantee's interest in the Protected Property in accordance with Section XV.

## **V. PERMITTED USES AND ACTIVITIES**

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

**B. Retained Uses:**

1. **Agricultural:** Grantor retains the right to use the Protected Property for agricultural production, or to permit others to use the Protected Property for agricultural production, in accordance with applicable law. As used herein, "agricultural production" shall mean the production, processing, storage or retail marketing of crops, livestock, and livestock products. For purposes hereof, crops, livestock and livestock products include, but are not limited to, crops commonly found in the community surrounding the Protected Property; field crops; fruits; vegetables; horticultural specialties; livestock and livestock products; timber, wood and other wood products derived from trees; and aquatic plants and animals and their byproducts.
2. **Recreational:** Grantor retains the right to use the Property for otherwise lawful recreational uses, including, but not limited to, hunting and fishing.

- C. Construction of Buildings and Improvements:** Except as otherwise specifically provided for in this Easement, Grantor may undertake construction, reconstruction or other improvement of the Protected Property only as provided below. Grantor shall advise Grantee prior to undertaking any construction, reconstruction or other improvement on the Protected Property that requires a development permit from Skagit County as provided for in Section VIII, so as to enable Grantee to review the proposed activity for compliance with the terms and conditions of this Easement.

1. **Fences:** Existing fences may be repaired and replaced, and new fences may be built on the Protected Property, for purposes of reasonable and customary management and protection of crops, livestock and wildlife.
2. **Ancillary Improvements:** Other improvements, including, but not limited to, small-scale facilities for the generation and transmission of electrical power, may be built on the Protected Property only with the permission of Grantee as provided for in Section VIII.
3. **Utility Services and Septic Systems:** Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services to the improvements permitted under this Easement may be installed, maintained, repaired, removed, relocated and replaced, and Grantor may grant easements over and under the

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Protected Property for such purposes. Septic or other underground sanitary systems serving the improvements permitted under this Easement may be installed, maintained, repaired or improved.

4. **Existing Agricultural Structures and Improvements (site specific):** Agricultural structures and improvements existing as of the Effective Date of this Easement may be repaired, reasonably enlarged and replaced at their current locations, which are shown on Exhibit B.
- D. **Roads and Paving.** Grantor may maintain, renovate, expand or replace roads or construct new roads that may be reasonably necessary and incidental to carrying out permitted uses and activities on the Protected Property; provided that any roads paved or otherwise covered with concrete, asphalt, or any other impervious paving material shall be subject to the surface coverage limitations set forth in Subsection VI.D.
- E. **Composting, Use and Storage of Agricultural Wastes or other Waste Materials:** Grantor may compost, use and store agricultural waste and by products on the Protected Property, consistent with the Purpose of this Easement; provided that any such wastes are stored temporarily in appropriate containment for removal at reasonable intervals and in compliance with applicable federal, state, and local laws.
- F. **Drainage structures:** Grantor may construct and maintain drainage structures, including ditches, tubes, pipes, pumps, gates or other facilities and appurtenances for enhancement of drainage systems in support of uses and activities permitted under this easement; provided that Grantor does not materially impair the natural course of the surface water drainage or runoff flowing over the Protected Property and that existing natural water courses are preserved in their natural state..
- G. **Creation of Mortgage Liens:** Grantor may create consensual liens, whether by mortgage, deed of trust, or otherwise, for the purpose of indebtedness of Grantor, so long as such liens remain subordinate to the Easement.
- H. **Emergencies:** Grantor may undertake other activities necessary to protect public health or safety on the Protected Property, or that are actively required by and subject to compulsion of any governmental agency with authority to require such activity; provided that any such activity shall be conducted so that interference with the Conservation Values of the Protected Property is avoided, or, if avoidance is not possible, minimized to the extent possible.

## VI. PROHIBITED USES AND ACTIVITIES

- A. **General:** Any use of, or activity on, the Protected Property inconsistent with the Purpose of this Easement is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in or permit any such use or activity. Without limiting the generality of this subsection, the following uses of, or activities on, the Protected Property, though not an exhaustive list, are inconsistent with the Purpose of this Easement and shall be prohibited; except as permitted in Section V.
- B. **Subdivision and Development Rights:** The legal or *de facto* division, subdivision, platting, partitioning or planned unit development of the Protected Property is prohibited even if that portion of the Protected Property constitutes a separate legal parcel. This restriction does not

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prohibit boundary line adjustments with adjoining agricultural land, provided that such boundary line adjustments do not result in any net loss of acreage to the Protected Property and that no new parcel may be created by such boundary line adjustments. Any new land gained through a boundary line adjustment shall be made subject to the terms of this Easement. Grantor shall not exercise its development rights in the Protected Property, transfer such development rights to any other portion of the Protected Property as it is now or hereafter may be bounded or described or to any other property adjacent to the Protected Property or otherwise, nor use such development rights or the area of the Protected Property for the purpose of calculating permissible lot yield of the Protected Property or any other property.

- C. **Construction:** The placement or construction of any buildings, structures, or other improvements of any kind is prohibited, except as permitted in Subsection V.C.
- D. **Impervious surface:** The total area covered by structures of any kind and impervious surfaces, such as rooftops, asphalt, or concrete shall be limited to no more than five percent (2%) of the area of the Protected Property, inclusive of any and all impervious surfaces prior to the established easement and the addition of any and all future creations of impervious surfaces on any portion of the original protected property. The total area covered by gravel shall be subject to this 2% limitation unless Grantor obtains prior approval from Grantee as provided in Section VIII to increase the percentage of total surfaces covered by gravel and other impervious surfaces above the 5% limitation, provided that the total amount of gravel and other impervious surfaces shall never exceed five percent (2%) of the total area of the Protected Property.
- E. **Recreation:** The following forms of recreation are prohibited on the Protected Property: golf courses; commercial use of motorized or mechanized recreational vehicles such as motorcycles, snowmobiles, and dune buggies; commercial overnight camping; athletic fields; use of the property for any commercial public recreation; and other developed recreational uses of the property which require special buildings, structures, or facilities. Undeveloped recreational uses, and the leasing of such uses for economic gain, may be permitted insofar as they are consistent with the Purpose and terms of this Easement.
- F. **Erosion or Water Pollution:** Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters is prohibited, including the use of manure lagoons or disposal of wastewater in manners inconsistent with the terms of this Easement.
- G. **Waste Disposal:** Except as expressly permitted in Section V, the disposal or storage of rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or hazardous waste or material on the Protected Property is prohibited.
- H. **Commercial Signs:** The placement of commercial signs, billboards, or other advertising material on the Protected Property is prohibited; except in connection with the on-site sale of agricultural products, sale or lease of the Protected Property, or to state the conditions of access to the Protected Property.
- I. **Mining:** The exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Protected Property is prohibited. The extraction of rock, dirt, sand, and gravel shall be permitted only if removal of such material is necessary to carry out other permitted activities on the Protected Property, and is limited to no more than one acre total of the Protected Property, and will not interfere with the Conservation Values of the Protected Property.

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Grantor shall use all practical means to mitigate any adverse effect on the Conservation Values of the Protected Property in carrying out any permitted extraction activities, and upon completion of said permitted extractive activities, Grantor shall promptly restore any portion of the Protected Property affected thereby as nearly as possible to its condition existing prior to commencement thereof.

- J. **Alteration of Wetlands and Watercourses:** The draining, filling, dredging, ditching or diking of wetland areas or any other action that would reduce the wetland area is prohibited, except as necessary to maintain existing drains consistent with the Purpose of this Easement and permitted by applicable law.
- K. **Water Rights:** Grantor shall not transfer, encumber, sell, lease or otherwise separate any water rights historically used on or otherwise appurtenant to the Protected property or change the historic use of such water rights without the permission of Grantee as provided for in Section VIII. Grantor shall not abandon or allow the abandonment of, by action or inaction, any of the water rights without the permission of grantee.



## VII. CONSERVATION PLAN

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

As required by Section 1238I of the Food Security Act of 1985, as amended, Grantor, and its heirs, successors, or assigns, shall conduct all agricultural operations on the Protected Property in a manner consistent with a conservation plan prepared in consultation with NRCS and approved by the Skagit County Conservation District. This conservation plan shall be developed using standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect on the date this Easement is executed. However, the Grantor may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with NRCS Field Office technical Guide standards and specifications. NRCS shall have the right to enter upon the Protected Property, with advance notice to Grantor, in order to monitor compliance with the conservation plan.

In the event of noncompliance with the conservation plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve (12) months, to take corrective action. If Grantor does not comply with the conservation plan, NRCS will inform grantee of grantor's noncompliance. Grantee shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan, (b) NRCS has worked with Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for highly erodible land are revised after the date of execution of this Easement based on an Act of Congress, NRCS will work cooperatively with Grantor to develop and implement a revised conservation plan. The provisions of this Section apply to the highly erodible land conservation requirements of the Farm and Ranchland Protection Program and are not intended to affect other natural resources conservation requirements to which Grantor may be or become subject.

## VIII. NOTICE

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

1. Construction of any buildings, structures or improvements requiring a permit from Skagit County (as required under Subsection V.C); and
2. Grading activities requiring a permit from Skagit County (as required under Subsection VI.D); and
3. Certain activities requiring a permit from Skagit County (as required under Subsection VI.D); and
4. The transfer of any interest in all or a portion of the Protected Property no later than forty-five (45) days prior to the date of such transfer (as required under Subsection XIII.C).

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The purpose of requiring Grantor to notify Grantee prior to undertaking these permitted uses and activities is to afford Grantee an adequate opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the Purpose and terms of this Easement. Whenever such notice is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the use or activity in question. Grantor may notify Grantee at the time of permit application, for concurrent review, or may provide notice and initiate review prior to permit application, at the Grantor's discretion. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose of this Easement.

- B. Approval:** Where approval by one of the parties to this Easement is required (e.g., Subsection V.D, Impervious Surfaces), such approval shall be granted or denied in writing within thirty (30) days of receipt of a written notice of the proposed use or activity, and such approval shall not be unreasonably withheld. Grantee's approval may include reasonable conditions which, if satisfied, would be the minimum necessary to assure that the proposed use or activity would not be inconsistent with the Purpose of this Easement. Failure by a party to grant or deny approval within the time provided shall create a presumption of approval.
- C. Optional Consultation:** If Grantor is unsure whether a proposed use or activity is prohibited by this Easement, Grantor may consult Grantee by providing Grantee a written notice describing the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to the consistency with the Purpose of this Easement and to provide comments thereon to Grantor for the purposes of this Easement only. This Subsection does not itself impose a requirement of prior approval of the activity described in any such notice; however, if Grantee does not provide written objections within thirty (30) days after Grantee's receipt of Grantor's notice, Grantee shall be deemed to have approved the proposed use or activity.
- D. Addresses:** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class certified mail, postage prepaid, addressed as follows:

To Grantor: Nelson Brothers Properties, LLC  
P.O. Box 444  
Burlington, WA 98233

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

To NRCS: State Conservationist: Gust Hughbanks  
USDA - Natural Resources Conservation Service  
316 W. Boon Ave., Suite 450  
Spokane, WA 99201-2248

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



## IX. DISPUTE RESOLUTION: GRANTEE'S REMEDIES

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

## X. ENFORCEMENT; GRANTEE'S REMEDIES

- A. **Notice of Violation, Corrective Action:** If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee.
- B. **Grantor's Failure to Respond:** Grantee may bring an action as provided in Subsection X.C if Grantor:
1. Fails to cure the violation within thirty (30) days after receipt of a notice of violation from Grantee; or
  2. Under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.
- C. **Grantee's Action:**
1. **Injunctive Relief:** Grantee may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Easement:
    - a. To enjoin the violation, ex parte as necessary, by temporary or permanent injunction; and
    - b. To require the restoration of the Protected Property to the condition that existed prior to any such injury.
  2. **Damages:** Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of Conservation Values. Without limiting Grantor's liability in any way, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking corrective or restoration action on the Protected Property.



- D. Emergency Enforcement:** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire.
- E. Scope of Relief:** Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- F. Costs of Enforcement:** In the event Grantee must enforce the terms of this Easement, the costs of restoration necessitated by acts or omissions of Grantor, its agents, employees, contractors, family members, invitees or licensees in violation of the terms of this Easement and Grantee's reasonable enforcement expenses, including attorneys' and consultants' fees, shall be borne by Grantor or those of its personal representatives, heirs, successors, or assigns, against whom a judgment is entered. In the event that Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of such restoration and Grantee's reasonable expenses shall be borne by Grantor and those of its personal representatives, heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized use or activity.
- G. Grantee's Discretion:** Grantee acknowledges its commitment to protect the Purpose of the Easement. Enforcement of the terms of the Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Grantee of such term or any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver of such term or any of Grantee's rights under this Easement. No grant by Grantee in its governmental or regulatory capacity of any building permit, grading permit, land use approval or other development approval shall be deemed or construed to be a waiver of any term or any of Grantee's rights under this Easement.
- H. Waiver of Certain Defenses:** Grantor acknowledges that it has carefully reviewed this Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Grantor hereby waives any claim or defense it may have against Grantee or its successors or assigns under or pertaining to this Easement based upon waiver, laches, estoppel, or prescription; except to the extent the defense is based upon an approval or deemed approval by Grantee pursuant to Section VIII of this Easement. Except for the foregoing, Grantor specifically retains any and all rights it has under the law as owner of the Protected Property, including but not limited to the right to make claims against Grantee for any breach by Grantee of the terms of this Easement.
- I. Acts Beyond Grantor's Control:** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on



the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including, without limitation, natural changes, fire, flood, storm, earth movement or climate change, or from acts of trespassers, that Grantor could not reasonably have anticipated or prevented or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. In the event the terms of this Easement are violated by acts of trespassers that Grantors could not reasonably have anticipated or prevented, Grantor agrees, at Grantee's option, to join in any suit, to assign its right of action to Grantee, or to appoint Grantee its attorney in fact, for the purpose of pursuing enforcement action against the responsible parties.

- J. Compliance Certificates:** Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor, or to any party designated by Grantor, any document, including a certificate, that certifies, to the best of Grantee's knowledge, Grantor's compliance or lack of compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Protected Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within thirty (30) days of receipt of Grantor's written request.

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

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

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

- A. Costs, Legal Requirements, Liabilities and Insurance:** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of adequate liability insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approval for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall prevent the perfection of any liens against the Protected Property arising out of any work performed for, material furnished to, or obligations incurred by Grantor; provided that the Protected Property shall be deemed to be free of such liens if Grantor, as the case may be, is diligently challenging the application of such liens to the Protected Property.
- B. Taxes:** Grantor shall pay before delinquency or file timely appeal of all taxes, assessments, fees, charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. If Grantor fails to pay any taxes when due, Grantee is authorized, but in no event obligated, to make or advance such payment of taxes upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the maximum rate allowed by law.



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

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

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

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

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

1. Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the

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Protected Property, regardless of cause unless due solely to the negligence of any of the Indemnified Parties; and

2. The obligations, covenants, representations and warranties in Subsections A, B, C, and D of this section.

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

- A. **Extinguishment:** If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction and only upon a finding and declaration to that effect. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at the time, in accordance with Subsection XIII.B, Valuation, of this Easement.
- B. **Valuation:** In the event of an extinguishment pursuant to Subsection A, or the taking of all or part of the Protected Property by the exercise of the power of eminent domain, then grantee and the United States, through the Department of Agriculture, are entitled to their proportional share each of gross sale proceeds or condemnation award representing an amount equal to the ratio of the appraised value of this Easement to the unrestricted fair market value of the Property as these values are determined on the date of this Deed. The proportional shares of the Grantee and the United States, through the Department of Agriculture, are 50% and 50% respectively, representing the proportion each party contributed to the purchase price of the Easement.
- C. **Condemnation:** If all or any of the Protected Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to extinguish this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interest in the Protected Property subject to the taking or in lieu purchase and all direct or incidental damages resulting from the taking or in lieu purchase. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Except as provided by applicable law, Grantor and Grantee agree that Grantee's share of the balance of the amount recovered shall be determined by the method described in Subsection B, with the remainder due to the Grantor. Due to its interest in this Easement, the United States must consent prior to the commencement of any condemnation action)
- D. **Application of Proceeds:** Grantee shall return any proceeds received under the circumstances described in this Section XIII to Skagit County's Conservation Futures Fund (or successor fund) for use in purchasing conservation easements or development rights on other eligible sites under the program (or successor program).
- E. **Subsequent Transfers:** Grantor agrees to:
  1. Incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest; and



2. Describe this Easement in and append it to any executory contract for the transfer of any interest in the Protected Property; and
3. Obtain a certificate from the purchaser, leaseholder or other party gaining an interest in all or part of the Protected Property and any financier, acknowledging their awareness of this Easement and their intent to comply with it. Such certificate shall be appended to and recorded with any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Protected Property; and
4. Give written notice to Grantee of the transfer of any interest in all or a portion of the Protected Property no later than forty-five (45) days prior to the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

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

**F. Contingent Right in the United States of America:** In the event that Skagit County, Washington, fails to enforce any of the terms of this Easement, as determined in the sole discretion of the Secretary of the United States Department of Agriculture, the said Secretary of Agriculture and his or her successors and assigns shall have the right to enforce the terms of the Easement through any and all authorities available under Federal or State law. In the event that Skagit County, Washington attempts to terminate, transfer, or otherwise divest itself of any rights, title, or interests of this Easement without the prior consent of the Secretary of the United States department of Agriculture and payment of consideration to the United States, then, at the option of such Secretary, all right, title, and interest in this Easement shall become vested in the UNITED STATES OF AMERICA.

#### **XIV. AMENDMENT**

This Easement may be amended by the execution and delivery of an amended easement deed, but only with the written consent of both Grantor and Grantee and the United States. The Grantee's consent shall not be given without prior consultation with the authorized representative of the United States Secretary of Agriculture. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will diminish the effectiveness of this Easement in carrying out the Purpose of the Easement in any way and that only those amendments which strengthen the effectiveness of the Easement in carrying out the Purpose of the Easement shall be permitted. Any such amendment shall not affect the perpetual duration of the Easement and shall be recorded in the official records of Skagit County, Washington, and any other jurisdiction in which such recording is required.

#### **XV. ASSIGNMENT**

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

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## XVI. RECORDING

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

## XVII. SUBORDINATION

At the time of conveyance of this Easement, the Protected Property is not subject to that certain mortgage or deed of trust.

## XVIII. GENERAL PROVISIONS

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

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- H. Termination of Rights and Obligations:** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- I. Joint and Several:** The obligations imposed by this Easement upon Grantor shall be joint and several.
- J. Counterparts:** The parties may execute this instrument in two or more counterparts, which shall be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- K. Effective Date:** The effective date of this Easement is the date of recording in the records of Skagit County, Washington.

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**XIX. SCHEDULE OF EXHIBITS**

- A. Legal Description of Property Subject to Easement.
- B. Site Plan and Baseline Documentation.
- C. Subordination Agreement.

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

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 20<sup>th</sup> day of September, 2007

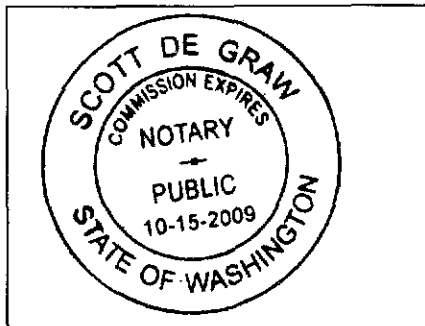
NELSON BROTHERS PROPERTIES LLC

By: [Signature]

STATE OF WASHINGTON    )  
  ) ss.  
COUNTY OF SKAGIT        )

I certify that I know or have satisfactory evidence that Geralde Nelson  
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  
Partner Member of Nelson Brothers Properties LLC to be the free and  
voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 9-20-07



(Use this space for notarial stamp/seal)

[Signature]  
Notary Public  
Print Name SCOTT DeGraw  
My commission expires 10-15-09

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The BOARD OF COUNTY COMMISSIONERS does hereby accept the above Conservation Easement, WSDA Grant.

Dated: September 24, 2007

SKAGIT COUNTY, WASHINGTON

Sharon D. Dillon  
Sharon D. Dillon, Chair

Don Munks  
Don Munks, Commissioner

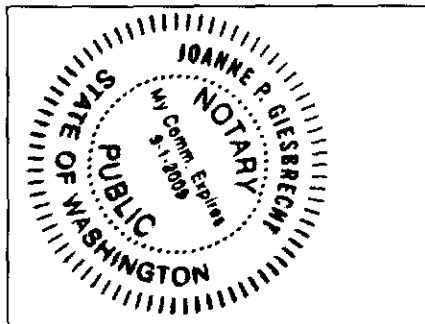
Kenneth A. Dahlstedt  
Kenneth A. Dahlstedt, Commissioner

Approved as to Form  
[Signature]  
Civil Attorney

STATE OF WASHINGTON ) \*Sharon D. Dillon, Chair  
                                  ) ss. Don Munks, Commissioner  
COUNTY OF SKAGIT     ) Kenneth A. Dahlstedt, Commissioner

I certify that I know or have satisfactory evidence that Sharon Dillon, Don Munks, Ken Dahlstedt are the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the \*see above of Skagit County, Washington to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 9-24-07



(Use this space for notarial stamp/seal)

Joanne P. Giesbrecht  
Notary Public  
Print Name JOANNE P. GIESBRECHT  
My commission expires 09-01-09

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The acceptance language below is to be incorporated into the easement deed and recorded as a part of the easement.

ACCEPTANCE OF PROPERTY INTEREST BY THE NATURAL RESOURCES  
CONSERVATION SERVICE

Nelson Brothers Properties Conservation Easement Purchase- Parcel Nos. 34649,  
34651, found in agreement appendix 73-0546-5-004

The Natural Resources Conservation Service, an agency of the United States  
Government, hereby accepts and approves the foregoing conservation easement deed, and  
the rights conveyed therein, on behalf of the United States of America.

A. Stefan Fechter

Authorized Signatory for the NRCS

11/29/2007

Date

(Notary Paragraph *Example:*)

State of Washington  
County of Spokane

On this 29<sup>th</sup> day of November 2007, before me, the undersigned, a Notary  
Public in and for the State, personally appeared A. Stefan Fechter  
known or proved to me to be the person whose signature appears above, and who being  
duly sworn by me, did say that he is the Contracting Officer of the Natural Resources  
Conservation Service, United States Department of Agriculture, is authorized to sign on  
behalf of the agency, and acknowledged and accepted the rights conveyed by the deed to  
be his voluntary act and deed.

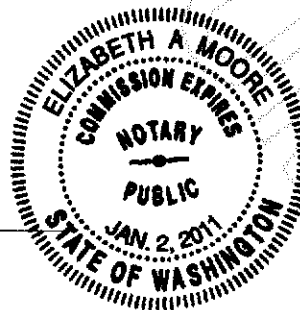
In witness whereof, I have hereunto set my hand and official seal the day and year first  
above written.

Elizabeth A. Moore

Notary Public for the State of Washington

Residing at Spokane, WA

My Commission Expires Jan 2, 2011



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**EXHIBIT A**

**Legal Description**

\_\_\_\_\_, approved \_\_\_\_\_, 2007 and recorded  
\_\_\_\_\_, 200\_ under Skagit Auditor's Number \_\_\_\_\_, and being portions of

The north ½ of the NW ¼ of Section 22, Township 35 North, Range 03 East, W.M. Except the east 980 feet thereof, and Except the County road right of way along the north line thereof, and Except the north 958 feet of the west 165 feet thereof.

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

Situate in the County of Skagit, State of Washington.

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A.



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**EXHIBIT B**

**Site Plan & Baseline Documentation**

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### LETTER OF INTENT

This letter of intent is between Skagit County's Farmland Legacy Program (hereafter "FLP") and the following named Landowner(s) (hereafter "Landowner"):

Name: Nelson Bros. Properties LLC.

Address: P.O. Box 4444  
Burlington, WA 98233

The FLP and Landowner agree that:

1. To further the program goals of protection of Skagit County's agricultural economy and lands, the Landowner intends to convey a conservation easement to Skagit County, a political subdivision of the State of Washington, on the land described or depicted on Exhibit A. (hereafter the "Property"). The conservation easement shall protect the significant agricultural and natural values of the Property.
2. Subject to approval, first, of the payment terms by the Skagit County Board of Commissioners and, secondly, agreement and approval by the FLP and Landowner of the terms and conditions of the conservation easement for the Property, the FLP will pay the Landowner \$ 77,000 subject to excise tax, for conveyance of the easement. The landowner agrees to accept this amount as the full and final compensation for the easement.
3. Subject to approval, first, of the payment terms by the Skagit County Board of Commissioners and, secondly, agreement and approval by the FLP and Landowner of the terms and conditions of the conservation easement for the

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Property, the Landowner agrees to convey to FLP a conservation easement extinguishing 1 development right(s) and protecting 45.07 acres.

4. All terms and conditions of this Letter of Intent are expressly stated herein, and there are no other related representations or promises.

Executed this 18 day of September, 2007.

Landowner(s): NELSON BROS. PROPERTIES, LLC

[Signature]

Farmland Legacy Program

[Signature]

Title Program Director

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## EXHIBIT B

Maps, photos, and/or aerial photo attached.

1. Site location (taken from Northwest Real Estate Valuations, LLC, August 2007)
2. Assessor's Map (taken from Northwest Real Estate Valuations, LLC, August 2007)
3. Aerial Photo (taken from Northwest Real Estate Valuations, LLC, August 2007)
4. Topographic Map (taken from Northwest Real Estate Valuations, LLC, August 2007)
5. Soils Map (taken from Northwest Real Estate Valuations, LLC, August 2007)
6. Photographs of existing site conditions at the time that the conservation easement was put into place (taken from Northwest Real Estate Valuations, LLC, August 2007)

See Appraisal dated August 21, 2007

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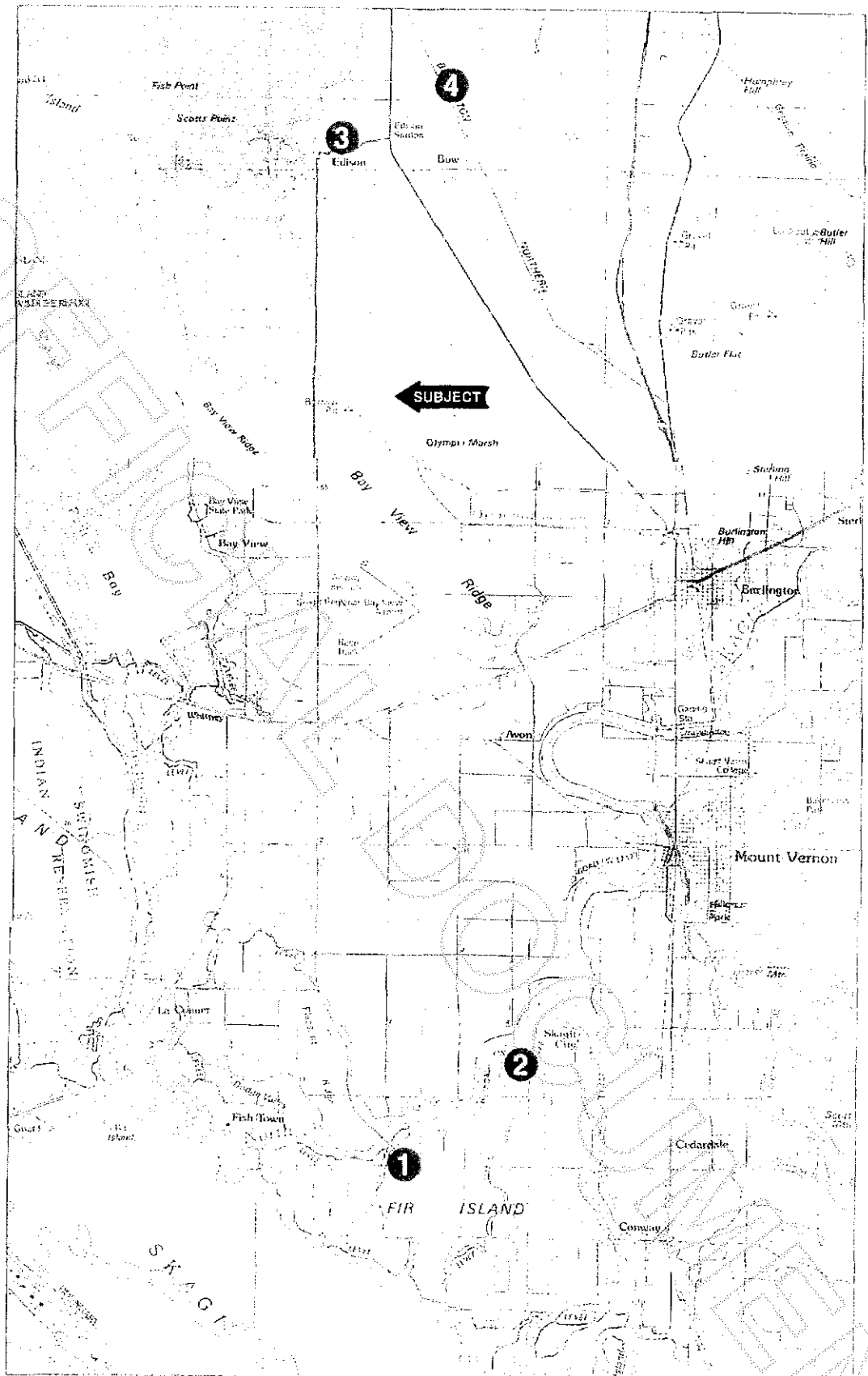


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SKAGIT COUNTY

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NORTHWEST REAL ESTATE V  
Robert W. Suttles, M



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# **Aerial Photograph of Subject Property<sup>1</sup>**

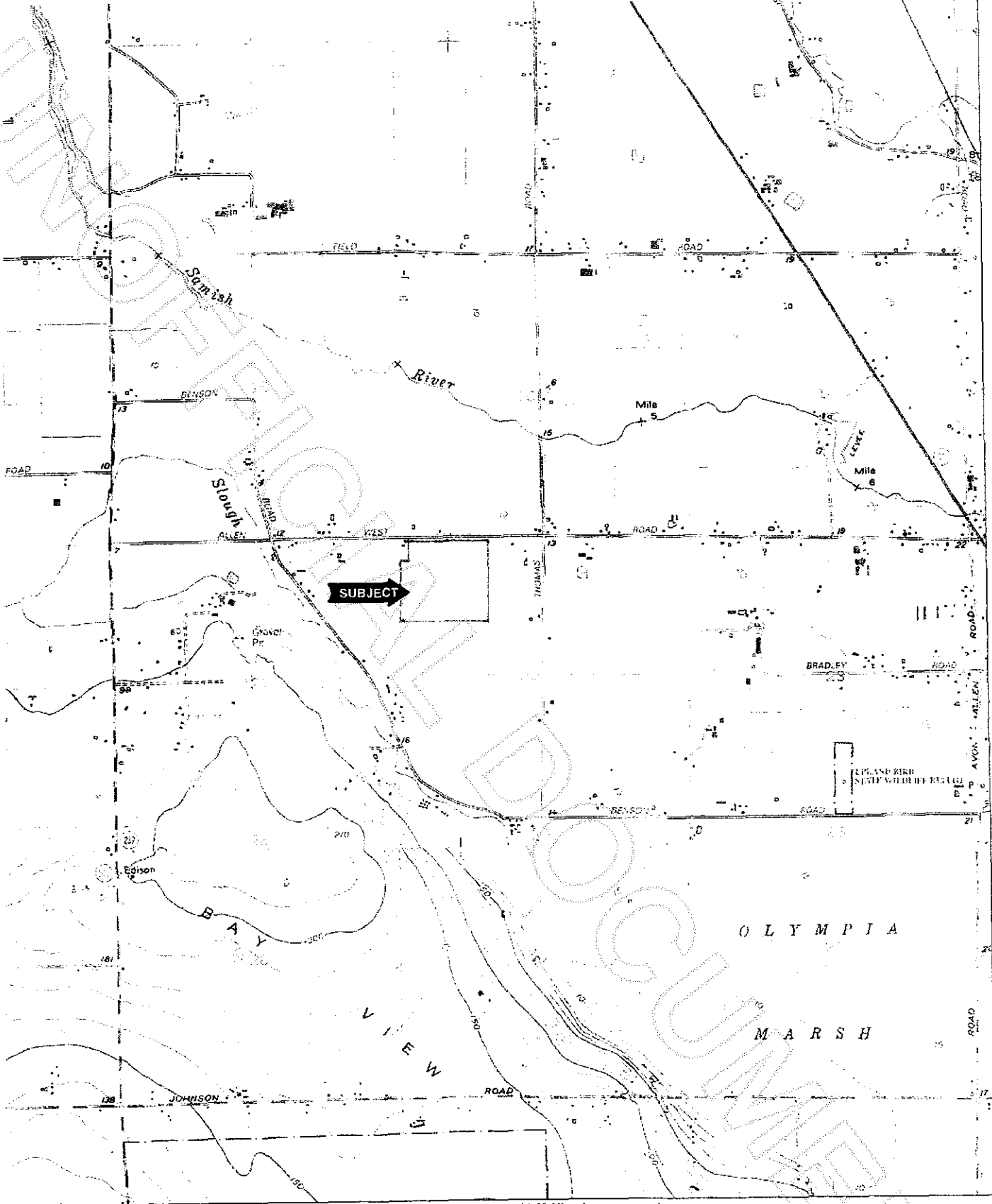
SKAGIT COUNTY  
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<sup>1</sup> Source: Skagit County web site, <http://skagitcounty.net> Assessor's

NORTHWEST REAL ESTATE VAL  
Robert W. Suttles, MA



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## USGS Topographical Map

NORTHWEST REAL ESTATE VALU.  
Robert W. Suttles, MAI

SKAGIT COUNTY

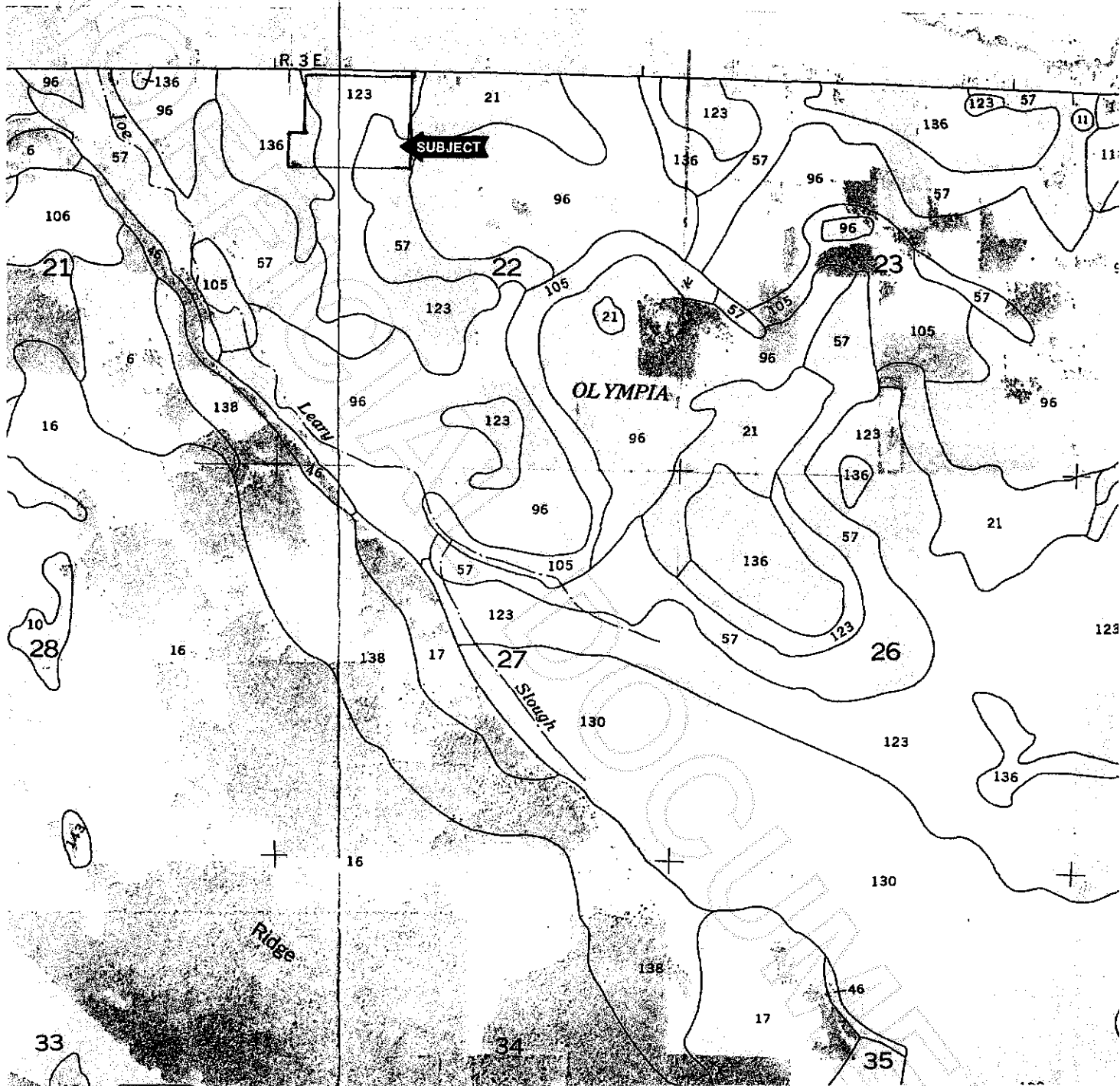
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## Subject Soil Map

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Robert W. Suttle

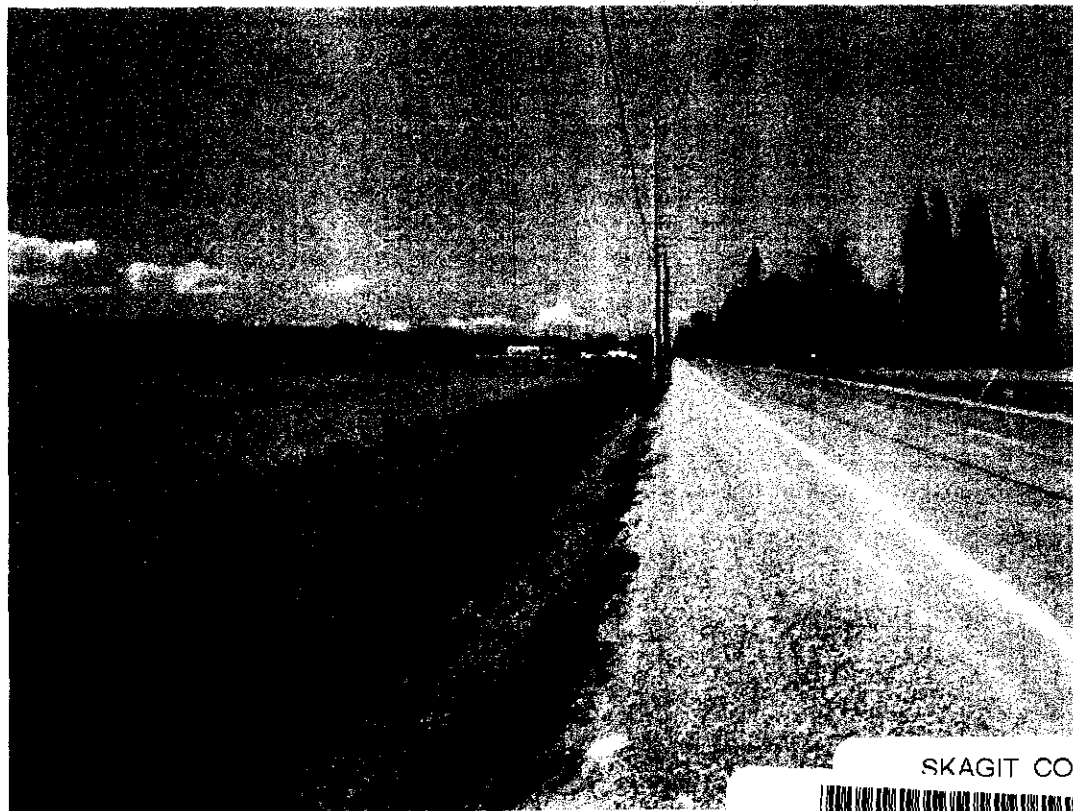
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Skagit County Auditor

**SUBJECT PHOTOGRAPH**



Photograph #1

Approximate  
eastern boundary  
of the subject land  
looking south from  
Allen West Road



Photograph #2

View of the  
subject's road  
frontage from the  
northeast corner  
looking west along  
Allen West Road

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NORTHWEST REAL ESTATE VALU

Robert W. Suttles, MAI 12/5/2007 Page

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**SUBJECT PHOTOGRAPH**



Photograph #3

Approximate  
western boundary  
of the subject land  
looking south from  
Allen West Road



Photograph #4

View of the  
subject's road  
frontage from the  
northwest corner  
looking east along  
Allen West Road

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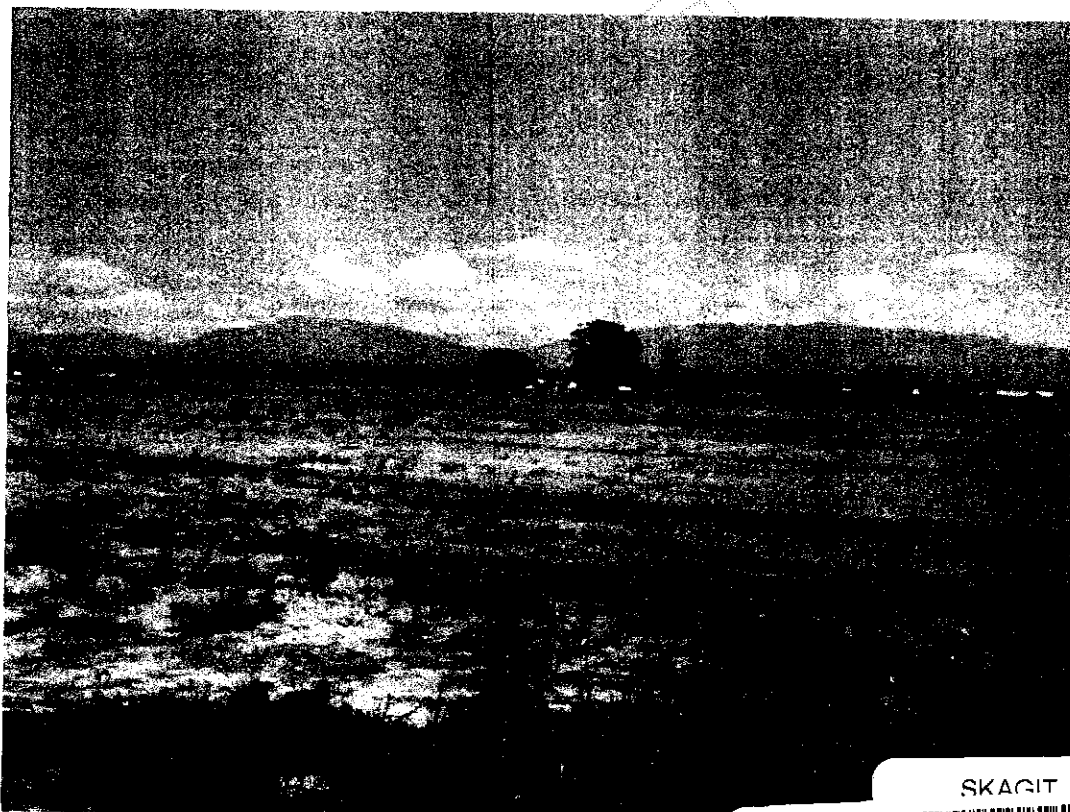
**SUBJECT PHOTOGRAPH**



Photograph #5

View of the land from the south boundary looking north toward Allen West Road

This is the dirt access road that leads from Allen West Road to the well site



Photograph #6

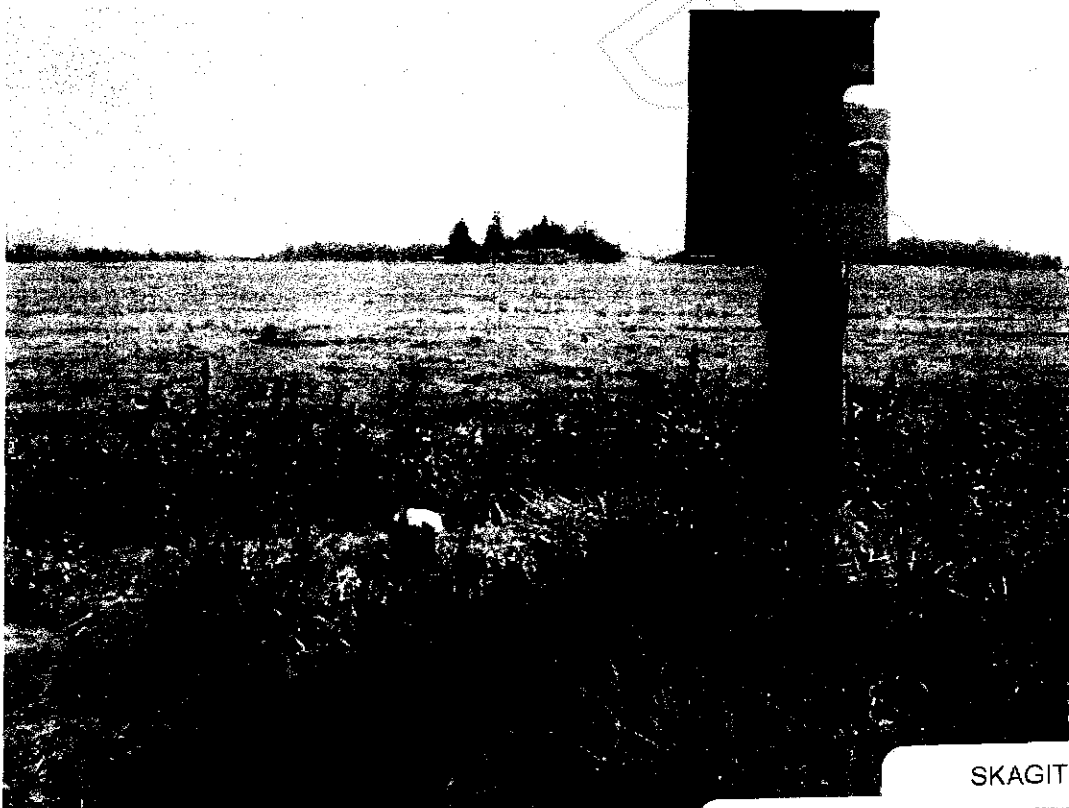
View of the land from the south boundary looking northeast toward Allen West Road

**SUBJECT PHOTOGRAPH**



Photograph #7

View of the land  
from the south  
boundary looking  
northwest toward  
Allen West Road



Photograph #8

Well site location  
on the subject land

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NORTHWEST REAL ESTATE VAL  
Robert W. Suttles, MA