



200903040097
Skagit County Auditor

3/4/2009 Page 1 of 15 4:16PM

Please Return To:

City of Sedro-Woolley
325 Metcalf St

Sedro Woolley, WA 98284

Attention: Mark A. Freiburger, PE, Director of Public Works/City Engineer

Document Title: Wetland Conservation Easement
Grantor: Granite Holdings, LLC
Grantee: City of Sedro-Woolley
Legal Description: Ptn NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 18, Township 35 North, Range 5 East, W.M., lying Northerly of McGarigle Road, ALSO the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 18, Township 35 North, range 5 East, W.M., lying Northerly of the McGarigle Road, ALSO AND TOGETHER WITH that portion of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 18, Township 35 North, Range 5 East W.M.
<input checked="" type="checkbox"/> Additional legal is included as "Exhibit A and B."
Assessor's Property Tax Parcel Account Number(s): P39391, P39361, P39370
Reference: Project: Fruitdale Road and McGarigle Road Improvements Project Project Parcel P39391, P39361, P39370

WETLAND CONSERVATION EASEMENT

Grantor, Granite Holdings, L.L.C., a Washington limited liability company, for valuable consideration received, and no monetary consideration, does hereby convey and quitclaim to Grantee, the City of Sedro-Woolley a Municipal Corporation in Skagit County, Washington, its successors and assigns, a wetland conservation easement, over, in, along, across and upon the following described property:

GRANTOR'S PROPERTY DESCRIBED IN EXHIBIT "A" attached hereto and incorporated herein by this reference (the "Property");

EASEMENT AREA DESCRIBED IN EXHIBIT "B" attached hereto and incorporated herein by this reference and depicted in EXHIBITS "C" and "D" attached hereto and incorporated herein by this reference (the "Protected Property").

For perpetual wetland conservation easement and associated purposes together with the right of ingress, egress and access from the public right of way thereto without prior institution of any suit or proceedings of law and without incurring any legal obligation or liability therefore (collectively, the "Wetland Conservation Easement"). This easement is granted subject to the following terms and conditions:

1. Conservation Values.

- A. Grantor, owner in fee simple of the Protected Property (legally described in Exhibit B and depicted in Exhibits C and D), has the right to identify, protect, and preserve in perpetuity the conservation values of the Protected Property, and desires to transfer such rights to Grantee because Grantor may develop its Property (described in Exhibit A) at some point in the future and is doing this specifically to mitigate and reduce buffer widths in such development.
- B. Grantor agrees to honor the conditions 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.
- C. Grantor expressly intends that this Wetland Conservation Easement run with the land and that this Wetland Conservation Easement shall be binding upon Grantor's personal representatives, heirs, successors, and assigns.

2. Rights Conveyed. It is the purpose of this Wetland Conservation Easement to assure that the Protected Property will be retained forever predominantly as a wetland conservation area, and to prevent any use of the Protected Property that will impair or interfere with the conservation values of the Protected Property. Grantor intends that this Wetland Conservation Easement will confine the use of the Protected Property to such activities that are consistent with this purpose. To accomplish the purpose of this Wetland



200903040097

Skagit County Auditor

Conservation Easement the following rights are conveyed to Grantee by this Wetland Conservation Easement across the Protected Property:

- A. Identification and Protection. To identify, preserve, and protect in perpetuity and to enhance the conservation values of the Protected Property pursuant to a wetland mitigation plan that is reasonably approved by the parties hereto (the "Mitigation Plan"). The Mitigation Plan may be amended from time to time as agreed to by the parties hereto.
- B. Access. Anytime as reasonably necessary to preserve, protect and maintain the Protected Property pursuant to the Mitigation Plan.
- C. Injunction and Restoration. To enjoin any activity on, or use of, the Protected Property which is inconsistent with this Wetland Conservation 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.

3. Construction Requirements.

- A. Restoration. Grantee shall restore, at its sole cost and expense, any damage to the Protected Property or the Property, or landscaping thereon, resulting from work conducted by Grantee during any construction, enhancement or maintenance activities pursuant to this Wetland Conservation Easement.
- B. Insurance. During any construction or enhancement activities, the City shall carry, or cause its contractors and/or subcontractors to carry, reasonable and customary liability insurance for personal injury, death, and property damage arising out of, or having to do with Grantee's (or by its employees, agents, contractors, or subcontractors) use, occupancy, and possession of, or acts or omission on or about, the Protected Property, at a minimum of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Such insurance policy or policies shall contain an additional insured endorsement, in such form as reasonably acceptable to Grantor, naming Grantor as additional insured. The limits of liability insurance required by this paragraph shall not, however, limit the liability of Grantee hereunder.
- C. Compliance with Laws. Grantee shall at all times exercise its rights herein in accordance with the requirements (as from time to time amended) of any public authority having jurisdiction and all applicable statutes, orders, rules and regulations.
- D. No Liens. Grantee shall pay as due all claims for work done on the Protected Property or for services rendered or materials furnished to the Protected Property, shall keep the Protected Property free from any liens other than liens created by Grantor, and shall defend and hold Grantor



200903040097
Skagit County Auditor

harmless against attorney's fees and other costs and expenses arising out of or incurred as a result of such liens, claims or other encumbrances.

4. General. Any use of, or activity on, the Protected Property inconsistent with the purposes of the Wetland Conservation Easement is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in or permit any such use or activity. Without limiting the generality of the foregoing, the following uses of, or activities on, the Protected Property, though not an exhaustive list of inconsistent uses or activities, are inconsistent with the purposes of this Wetland Conservation Easement and shall be prohibited on the Protected Property:

- A. Construction. The placement or construction of any buildings, structures, or other improvements of any kind (including, without limitation, fences, roads, docks, floats and parking lots) on the Protected Property except as deemed necessary by Grantee to preserve, protect or effectuate the intent of this Wetland Conservation Easement.
- B. 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, except as deemed necessary by Grantee to preserve, protect or effectuate the Intent of this Wetland Conservation Easement.
- C. 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 of the Protected Property.
- D. Alteration of Water Courses. The draining, filling, dredging, ditching, or diking of wetland areas, the alteration or manipulation of ponds and water courses, or the creation of new wetlands, water impoundments, or water courses, except as deemed necessary by Grantee to preserve or protect the conservation values of the Protected Property.
- E. Removal of Trees and Other Vegetation. The pruning, cutting down, or other destruction or removal of live and dead trees and other vegetation located in the Protected Property, except as deemed necessary by Grantee to preserve or protect the conservation values of the Protected Property, such as the removal of invasive exotic (non-native) plant species, or to conduct educational or research activities consistent with the purpose of the Wetland Conservation Easement.
- F. Signs. The placement of commercial signs, billboards, or other advertising material on the Protected Property.
- G. Wildlife Disruption. The disruption of wildlife breeding and nesting activities on the Protected Property.



200903040097

Skagit County Auditor

H. Introduced Vegetation. The introduction of nonnative wetland plants and nonnative invasive species on the Protected Property, or the planting or introduction of any species of vegetation, except as deemed necessary by the Grantee to enhance the conservation values of the Protected Property.

I. Harvesting of Native Plants. The gathering, picking, taking, or harvesting of native plants on the Protected Property.

J. Motorized Vehicles and Excessive Noise. The operation of motorcycles, dune buggies, snowmobiles, or other type of off-road motorized recreational vehicles, the launching or beaching of motorized watercraft, or the operation of other sources of excessive noise pollution on the Protected Property.

5. Grantor's Reserved Rights. Notwithstanding any other provisions contained herein, Grantor specifically reserves the right to construct an access point and establish a public road, up to sixty (60) feet in width, providing access from Grantor's Property to McGarigle Road at its intersection with Calkin Place, as shown on Exhibits C and D, such area lying between the two portions of the Protected Property (the "Road Crossing"). Grantee acknowledges that the Road Crossing will utilize a culvert that will be constructed above the ordinary high water mark of the stream, but will impact stream buffers.

6. City's Representations and Warranties. The City represents and warrants to Grantor the following:

A. No Adverse Effect on the Property. No mitigation or enhancement activities in the Protected Property pursuant to this Wetland Conservation Easement will adversely affect Grantor's remaining Property.

B. Mitigation for Road Crossing. The mitigation and enhancement activities in the Protected Property shall serve as full mitigation for Grantor's Road Crossing, and that no other mitigation for the Road Crossing will be required.

7. Action to Enforce Easement. Either party may bring action at law or in equity in a court of competent jurisdiction to enforce the terms of this Wetland Conservation Easement, to enjoin the violation by temporary or permanent injunction, to recover damages to which it may be entitled for violation of the terms of this Wetland Conservation Easement or injury to any conservation values protected by this Wetland Conservation 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. In the event of a breach by Grantor, and 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. In the event of any litigation regarding the rights and obligations of the parties under this agreement, the prevailing party shall recover its costs and attorneys' fees, including such costs and attorneys' fees for appeals.



200903040097

Skagit County Auditor

8. No Waiver. Any forbearance by a party to enforce the terms hereunder shall not be deemed or construed to be a waiver of such term under this Wetland Conservation Easement. No delay or omission by a party in the exercise of any right or remedy upon any breach by the other party shall impair such right or remedy or be construed as a waiver.

9. Indemnification. Grantee shall indemnify and hold Grantor harmless from all claims, demands, damages and causes of action of any nature whatsoever, with costs and expenses, including attorney's fees for the defense thereof, arising out of the use of the Protected Property by itself or its agents, contractors, employees, tenants or invitees. Solely to give full force and effect to the indemnities contained herein and not for the benefit of any third party, Grantee specifically and expressly waives any immunity it may have under Washington State Industrial Insurance Act, Title 51 RCW, and acknowledges that this waiver was mutually negotiated by the parties herein.

10. Amendment. If circumstances arise under which an amendment to or modification of this Wetland Conservation Easement would be appropriate, Grantor and Grantee are free to jointly amend this Wetland Conservation Easement; provided that no amendment shall 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.

11. Assignment. This Wetland Conservation Easement is transferable to any governmental entity or nonprofit organization charged with the oversight of conservation easement areas. As a condition of such transfer, Grantee shall require that the Conservation Purposes that this Wetland Conservation Easement is intended to advance continue to be carried out by the transferee. Grantee shall notify the Grantor in writing, at Grantor's last known address, in advance of such assignment.

12. Recordation. Grantee shall record this instrument in a timely fashion in the official records of Skagit County, Washington, and in any other appropriate jurisdictions.

13. Controlling Law. The laws of the State of Washington shall govern the interpretation and performance of this Wetland Conservation Easement.

14. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Wetland Conservation Easement shall be liberally construed in favor of the grant to affect the purpose of this Wetland Conservation Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Wetland Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

15. Severability. If any provision of this Wetland Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Wetland Conservation 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.



200903040097
Skagit County Auditor

16. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Wetland Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Wetland Conservation 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 Paragraph 10 herein.

17. Successors. The covenants, terms, conditions, obligations and restrictions of this Wetland Conservation 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.

18. Reversionary Clause. The Grantee has applied for the applicable permits and other development authorizations in conjunction with this Wetland Conservation Easement. If for any reason, such permits and/or authorizations are not granted, the Protected Property and all of its rights shall revert back to Grantor. In such event, Grantee shall execute and record such documentation as is necessary to terminate this Wetland Conservation Easement and release its rights hereunder.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

MAR 04 2009

Amount Paid \$
Skagit Co. Treasurer
By Deputy
WF



200903040097

Skagit County Auditor

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

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 4th day of March, 2009.

Granite Holdings, LLC, Grantor

Signature: _____

By: Robert H. Ruby

Its: Manager

STATE OF WASHINGTON

}

}

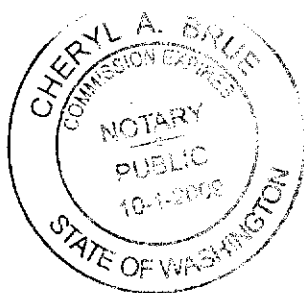
SS.

County of Skagit

}

I certify that I know or have satisfactory evidence that ROBERT RUBY is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the member of Granite Holdings, L.L.C. to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

DATED: 3/4/09



Cheryl A. Brue
Name (typed or printed): Cheryl A. Brue
NOTARY PUBLIC in and for the State of Washington
Residing at Sedro Woolley
My appointment expires: 10/1/2009



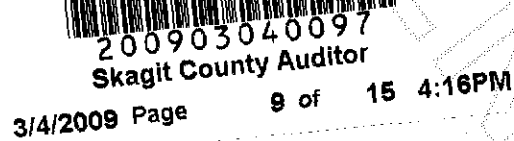
200903040097

Skagit County Auditor

3/4/2009 Page

8 of

15 4:16PM



**EXHIBIT
"A"**

**LEGAL DESCRIPTION OF THE GRANITE HOLDINGS LLC PARCEL
GRANITE HOLDINGS LLC - P39391, P39361, P39370**

That portion of the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 18, Township 35 North, Range 5 East, W.M., lying Northerly of McGarigle Road, ALSO the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 18, Township 35 North, range 5 East, W.M., lying Northerly of the McGarigle Road, ALSO AND TOGETHER WITH that portion of the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 18, Township 35 North, Range 5 East W.M., lying Northeasterly of the Westerly line of the Westerly Bonneville Power Easement and lying Southeasterly of the Northerly line of the abandoned Great Northern Railway right of way and lying Southwesterly of the following described line:

Beginning at a point of the East line of said Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$, said point being 439.24 feet North of the Southeast corner of said Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$; thence North $59^{\circ}10'41''$ West, 233.0 feet, more or less, to a point on the Northwesterly line of the abandoned Great Northern Railway right of way and the termination point of said line, EXCEPT therefrom that portion platted as Sauk Mountain View Estates-South, a Planned Residential Development, as recorded under Auditor's File No. 200306090032, records of Skagit County Auditor's Office, AND EXCEPT that portion platted as Sauk Mountain View Estates- South -APRD- Phase 3 as recorded under Auditors File No. 200505260107, AND EXCEPT that portion of the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ lying Northerly of the Southerly line of Portobello Avenue, AND ALSO EXCEPT the following described tracts:

Tract A:

That portion of the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 18, Township 35 North, Range 5 East, W.M., described as follows:

Beginning at a point on the West 20 foot right of way of Fruitdale Road, 521.62 feet North of the Southeast corner of said Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$, said point also being the Northeast corner of a tract of land conveyed to Cascade Natural Gas Corporation by Correction Deed dated August 3, 1957, and recorded in Volume 289, page 677, records of Skagit County, Washington; thence South along said West right of way line of Fruitdale Road 120 feet, more or less, to the Southeast corner of that parcel conveyed by instrument recorded under Auditor's File No. 200212050129, records of Skagit County, Washington; thence West 70.0 feet; thence North 220.00 feet; thence East 70 feet to the Northeast corner of a parcel of land conveyed to El Paso National Gas Company by Correction Statutory Warranty Deed recorded August 26, 1965, under Skagit County Auditor's File No. 670920; thence South along the East line of said parcel 100.0 feet to the true point of beginning.



200903040097
Skagit County Auditor

Tract B:

That portion of the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 18, Township 35 North, Range 5 east, W.M., lying Northwesterly of the following described line:

Beginning at the Southwest corner of Lot 21 within the Plat of Sauk Mountain View Estates-South, a Planned Residential Development, as recorded under Auditor's File No. 200306090032, records of Skagit County Auditor's Office;

thence South $19^{\circ}36'17''$ West, 40.93 feet;

thence South $38^{\circ}43'16''$ East 58.56 feet;

thence South $21^{\circ}02'28''$ West, 60.58 feet;

thence South $50^{\circ}02'25''$ West, 86.57 feet;

thence South $31^{\circ}52'47''$ West, 31.08 feet;

thence South $48^{\circ}07'50''$ West, 97.92 feet;

thence South $31^{\circ}49'29''$ West, 113.71 feet, more or less, to a point on the West line of said Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ and the termination point of said line.

Situate in the County of Skagit, State of Washington.



200903040097

Skagit County Auditor

3/4/2009 Page 11 of 15 4:16PM

**EXHIBIT
"B"**

WETLAND CONSERVATION EASEMENT ("PROTECTED PROPERTY")

That portion of the above described parcel (Exhibit A), for a wetland conservation easement being more particularly described as follows:

Commencing at the monument at the intersection of Calkin Place and McGarigle Road; thence North 45°03'55" West along the projection of the centerline of Calkin Place a distance of 25.00 feet to the Northerly right of way of McGarigle Road; thence South 44°54'38" West along said right of way a distance of 30.00 feet to the **TRUE POINT OF BEGINNING**; thence continuing South 44°54'38" West along said right of way a distance of 152.89 feet; thence South 44°58'34" West a distance of 92.73 feet; thence North 45°01'26" West a distance of 57.00 feet; thence North 44°00'56" East a distance of 124.58 feet to a point that is 59.00 feet distant and perpendicular to said right of way of McGarigle Road; thence North 51°32'07" East a distance of 121.81 feet to a point that is 30.00 feet distant and parallel to said projection of the centerline of Calkin Place; thence South 45°03'55" West a distance of 45.00 feet to the Northerly right of way of McGarigle Road and the **TRUE POINT OF BEGINNING**;

ALSO That portion of the Northwest ¼ of the Southeast ¼ of Section 18, Township 35 North, Range 5 East, W.M., described as follows:

Commencing at the monument at the intersection of Calkin Place and McGarigle Road; thence North 45°03'55" West along the projection of the centerline of Calkin Place a distance of 25.00 feet to the Northerly right of way of McGarigle Road; thence North 44°56'03" East along said right of way a distance of 30.00 feet to the **TRUE POINT OF BEGINNING**; thence continuing North 44°56'03" East a distance of 717.26 feet; thence North 15°53'13" East a distance of 28.55 feet to a point that is 7.00 feet distant and perpendicular to the right of way of Fruitdale Road; thence North 00°04'49" West a distance of 87.40 feet to a point that is 7.00 distant and parallel with the right of way of Fruitdale Road; thence South 37°04'38" West a distance of 57.30 feet; thence South 35°17'42" West a distance of 43.86 feet to a point that is 60.50 feet distant and perpendicular to the right of way of McGarigle Road; thence South 60°18'37" West a distance of 62.23 feet to a point that is 77.00 feet distant and perpendicular to the right of way of McGarigle Road; thence South 40°58'06" West a distance of 128.31 feet to a point that is 68.00 feet distant and perpendicular to the right of way of McGarigle Road; thence South 23°40'33" West a distance of 105.16 feet to a point that is 30.00 feet distant and perpendicular to the right of way of McGarigle Road; thence South 46°45'43" West a distance of 94.05 feet to a point that is 33.00 feet distant and perpendicular to the right of way McGarigle Road; thence South 84°31'47" West a distance of 105.12 feet to a point that is 100.00 feet distant and perpendicular to the right of way line of McGarigle Road; thence South 33°37'28" West a distance of 101.98 feet to a point that is 80.00 feet distant and perpendicular to the right of way of McGarigle Road; thence South



200903040097

Skagit County Auditor

47°47'41" West a distance of 61.08 feet to a point that is 83.00 feet distant and perpendicular to the right of way of McGarigle Road; thence South 24°11'45" West a distance of 87.68 feet to a point that is 30.00 distant and parallel to the projection of Calkin Street; thence South 45°03'55" east a distance of 52.00 feet to the Northerly right of way of McGarigle Road and the **TRUE POINT OF BEGINNING**.

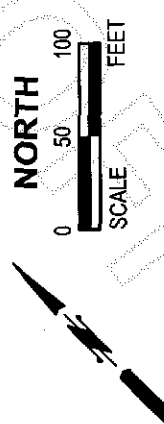
Situate in the County of Skagit, State of Washington.



200903040097
Skagit County Auditor

3/4/2009 Page 13 of 15 4:16PM

NORTH



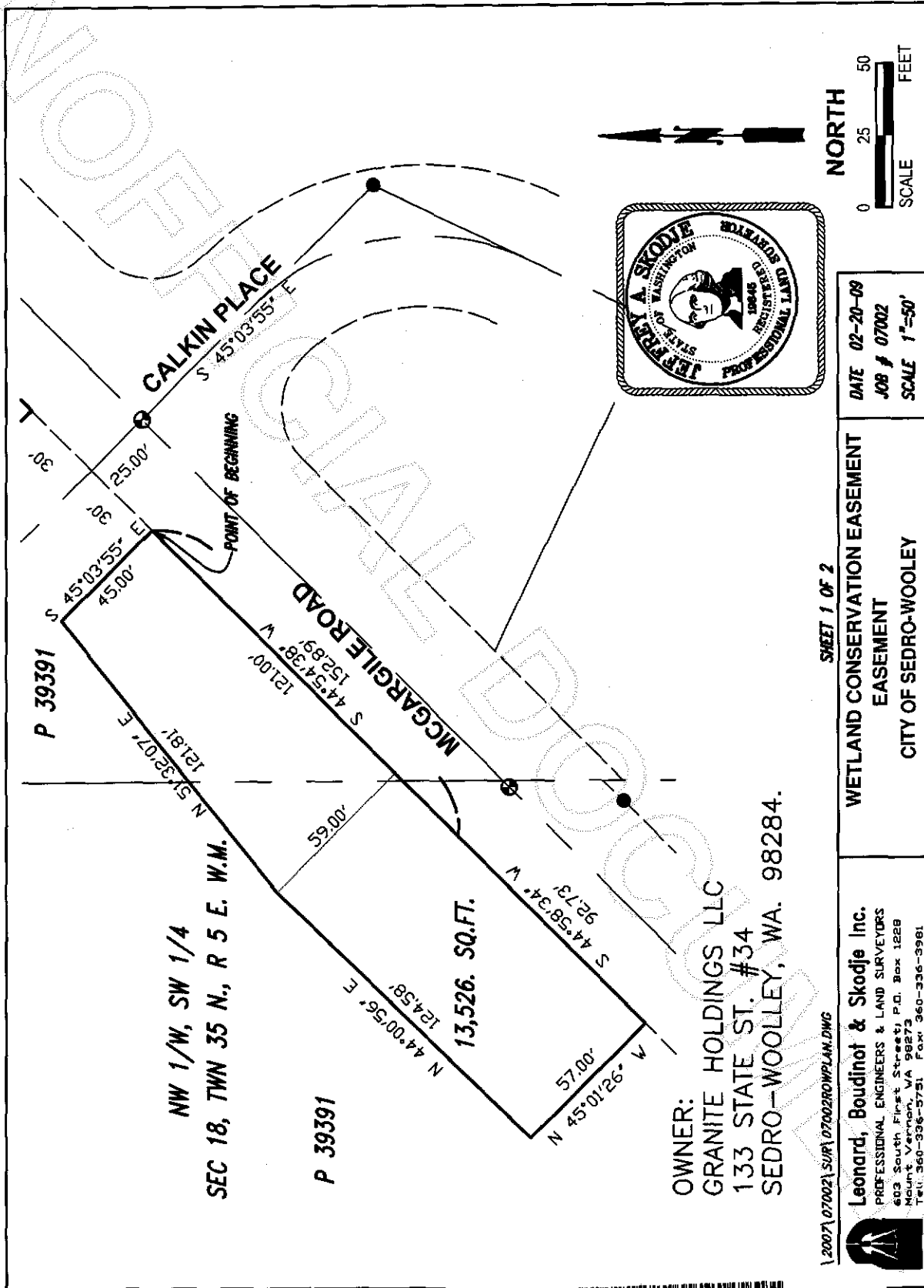
DATE 02-20-09
JOB # 07002
SCALE 1"=100'

**WETLAND CONSERVATION
EASEMENT
CITY OF SEDRO-WOOLEY**



300803040087

EXHIBIT
"D"



SHEET 1 OF 2

DATE 02-20-09
JOB # 07002
SCALE 1"=50'

WETLAND CONSERVATION EASEMENT
EASEMENT
CITY OF SEDRO-WOOLLEY

Leonard, Boudinot & Skodje Inc.
PROFESSIONAL ENGINEERS & LAND SURVEYORS
603 South First Street, P.O. Box 1288
Mount Vernon, WA 98273
Tel: 360-336-5751 Fax: 360-336-3961



12007\07002\SUR\07002ROWPLAN.DWG



200903040097

Skagit County Auditor