



200910010087

Skagit County Auditor

10/1/2009 Page 1 of 26 4:01PM

When recorded return to:  
**The San Juan Preservation Trust**  
Box 327  
Lopez Island WA 98261

DOCUMENT TITLE: **GRANT DEED OF CONSERVATION EASEMENT**

GRANTOR: **SKAGIT LAND TRUST**

GRANTEE: **THE SAN JUAN PRESERVATION TRUST**

ABBREVIATED LEGAL DESCRIPTION: ptn. NW¼ SW¼, 5-35-2 E W.M. and ptn.  
NE¼ SE¼, 6-35-2 E W.M.

FULL LEGAL DESCRIPTION: **EXHIBIT A**

ASSESSOR'S TAX PARCEL NUMBERS: 350206-4-001-0002/P32753;

LAND TITLE OF SKAGIT COUNTY 124613-PP	350205-3-001-0005/P32709 350205-3-001-0104/P32710
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### GRANT DEED OF CONSERVATION EASEMENT

This Grant Deed of Conservation Easement (hereinafter, the "Conservation Easement"), by and between Skagit Land Trust, a Washington non-profit corporation (hereinafter referred to as "Grantor"), and **THE SAN JUAN PRESERVATION TRUST**, a Washington non-profit corporation (hereinafter referred to as "Grantee"), is made with reference to the following facts:

#### 1 RECITALS.

**1.1 Owner.** Grantor is the owner in fee of that certain real property (hereinafter the "Property") inclusive of all standing and downed timber, situated on Guemes Island in Skagit County, State of Washington, more particularly described in Exhibit "A" and shown on Exhibit "B" and Exhibit "C", all of which are attached and made a part hereof by this reference.

**1.2 Property.** The Property is part of a significant coastal ecosystem, the San Juan Islands, which is relatively intact and undeveloped. The Property consists of approximately 70 acres at the summit of Guemes Mountain, the highest point on Guemes Island. It is undeveloped and includes open grasslands woodlands and wetlands that provide wildlife habitat for native birds and mammals and possesses ecological, scenic, and open space values. Prominent attributes of the Property are spectacular wildflower

blooms and expansive views in all directions: downward to a nearby valley and outward to Mount Baker, the Cascade and Olympic Mountains, the other San Juan Islands and the ports of Anacortes and Bellingham. Guemes Mountain is a significant source of fresh water runoff and provides clean water to important stream and wetland habitats. With this Conservation Easement, the Property will be at the center of approximately 580 acres of contiguous permanently-protected land in public and private ownership on the east side of Guemes Island.

- 1.3 Conservation Values.** The Property's ecological, wildlife habitat, grasslands, wetlands, woodland, scenic, and open-space values (hereinafter, the "Conservation Values") are of major importance to Grantor, Grantee, and the people of Guemes Island, Skagit County, and the State of Washington. The Property enhances the open space, wildlife habitat, and rural character of Guemes Island. The Property can be viewed by the public from the waters around Guemes Island and from many locations on Guemes Island, on the other islands in San Juan and Skagit Counties and from Anacortes.
- 1.4 County Conservation Intent.** The goals and policies of the Skagit County Unified Development Code provide for the conservation of natural resources and value of property. The Skagit Countywide Comprehensive Plan encourages the retention of open space and wildlife habitat using tools such as conservation easements.
- 1.5 State Conservation Intent.** The legislatively declared policies of the State of Washington, in Chapter 84.34 Revised Code of Washington (hereinafter "RCW"), 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, and scenic beauty for the economic and social well-being of the state and its citizens. The State has also recognized the importance of private efforts to preserve the natural systems in the State by enacting RCW 64.04.130, the statute authorizing conservation easements.
- 1.6 Conservation Threat.** The Property would also be extremely desirable for substantial residential development and a communications site because of its location, views, topography, size and orientation. In the absence of this Conservation Easement, the Property could be developed in the future for residential and communication uses in a manner which would destroy its Conservation Values.
- 1.7 Community Collaboration.** Grantor and Grantee have worked collaboratively with Guemes Island community members to raise the funds to acquire and protect the Property. It is the desire of these parties



that the Property remain substantially undeveloped for the enjoyment of the community and the general public.

- 1.8 Public Access.** As appropriate, Grantor and Grantee wish to provide the public with access to the Property for scientific, educational, and passive recreational purposes. However, this Conservation Easement does not provide any rights to the general public, including without limitation, any rights of public access to, on, or across, or public use of the Property.
- 1.9 Grantor Conservation Intent.** Grantor, as the owner of the Property, possesses the affirmative right to identify, preserve, and protect in perpetuity the natural elements and processes and the Conservation Values of the Property, and desires to transfer such rights to the Grantee.
- 1.10 Qualified Conservation Organization.** Grantee is a "non-profit nature conservancy corporation" as defined by RCW 64.04.130 and RCW 84.34.250, and described in Section 170(b)(1)(A)(vi) of the Internal Revenue Code of 1986 (hereinafter "IRC"), and Grantee is authorized to accept the Conservation Easement.
- 1.11 Recitals Incorporated By Reference.** The above Recitals are incorporated into this Conservation Easement by this reference.

## 2 CONVEYANCE AND CONSIDERATION.

- 2.1 Conveyance.** For the reasons stated above, and in consideration of the mutual covenants contained herein, the Grantor does hereby grant, convey, and warrant to Grantee, and Grantee hereby accepts, a perpetual Conservation Easement, consisting of the rights in the Property hereinafter enumerated, subject only to the restrictions set forth in this Conservation Easement.
- 2.2 Conveyance of Real Property.** This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130, and is made as an absolute, unconditional, unqualified, and completed conveyance subject only to the mutual covenants and restrictions hereinafter set forth and title matters of record as of the Effective Date.
- 2.3 Water Rights.** This Conservation Easement does not transfer any water or water rights to Grantee.
- 2.4 Grantor Intent.** Grantor expressly intends that this Conservation Easement runs with the land and that this Easement shall be binding upon Grantor's personal representatives, heirs, successors, and assigns.



**PURPOSE.**

- 3.1 Conservation Purposes.** The exclusive purposes of this Conservation Easement are to preserve and protect the Conservation Values of the Property; to limit structures on the Property to those consistent with protection of the Conservation Values; and to preserve the Property in perpetuity (the "Purposes").
- 3.2 Grantor Intent.** Grantor intends that the Property shall not be converted or directed to any uses other than those provided in this Conservation Easement.
- 3.3 Baseline Data.** In furtherance of the foregoing Purposes, Grantor and Grantee agree that the baseline data consisting of maps, photographs, and other documentation on file at the offices of Grantee and provided to Grantee by Grantor (hereinafter the "Baseline Present Conditions Report") provide, collectively, an accurate representation of the Property at the time of this Grant and are hereby incorporated by this reference. Grantor and Grantee have acknowledged in a signed statement, a copy of which is attached to this Conservation Easement as Exhibit "D", that the Baseline Present Conditions Report accurately represents the currently available baseline data regarding the condition of the Property as of the Effective Date. The Baseline Present Conditions Report shall be relied upon by Grantor and Grantee as the descriptive base to establish the present condition and guide in the future uses of the Property. Grantor and Grantee further agree that within twelve (12) months of the Effective Date, a collection of additional baseline data, also subject to Grantor's approval, may be compiled by Grantee, attached to the Baseline Present Conditions Report as an exhibit and incorporated into this Conservation Easement by this reference. The existing Baseline Present Conditions Report is sufficient to accurately describe the Property as of the Effective Date and Grantee's failure to compile additional baseline data shall not affect the enforceability or validity of any provision of this Conservation Easement.
- 3.4 Public Access.** Nothing contained in this Conservation Easement shall be construed as affording to the general public access to any portion of the Property subject to this Conservation Easement; provided, however, that the Grantor may provide access as provided in Section 5.3. To the extent Grantor provides public access to the Protected Property for educational and passive recreational purposes described in this Conservation Easement, neither Grantor nor Grantee shall be deemed to be liable for unintentional injuries to users of the Property, as provided for in RCW 4.24.210 or successor provision.
- 3.5 Visual Access.** Preservation of the Property will protect the general public's visual access to open space and woodland habitat.



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**GRANTEE'S RIGHTS.** The rights conveyed to Grantee by this Conservation Easement are the following:

**4.1 Protection in Perpetuity.** Grantee shall have the right to identify, preserve, and protect, in perpetuity, the Conservation Values of the Property for public benefit and scenic enjoyment by the general public and for its open-space values.

**4.2 Property Management Plan.** Grantor, in consultation with Grantee, will prepare a Property Management Plan that shall govern all activities on the Property, including forest stewardship, ecological management and habitat restoration, archaeological and cultural resources management and public passive recreation. The purpose of the Property Management Plan is to provide for adaptive management of the Property in a manner that conserves, improves and maintains in perpetuity the Conservation Values of the Property. The Property Management Plan shall be prepared by qualified professionals experienced in the appropriate management principles and shall include the relevant information from the most current Baseline Data. The Property Management Plan will include stewardship goals, actions, and monitoring. It may include any plans that Grantee and Grantor agree are necessary or desirable to manage the Property. Grantee and Grantor shall mutually approve the Property Management Plan and such approval shall not be unreasonably withheld, conditioned, or delayed in consideration of the Purposes, terms and conditions of this Conservation Easement. The Property Management Plan will be completed and approved no later than September 30, 2010. Grantor and Grantee shall review and update the Property Management Plan in accordance with the requirements of this Section 4.2 at least every twenty (20) years.

**4.3 Grantee's Access.**

**4.3.1 Annual Inspection.** The Grantee shall have the right to enter upon the Property without prior notice to the Grantor, for the purpose of making a general inspection of the land to assure compliance with this Conservation Easement.

**4.3.2 Educational and Scientific Purposes.** The Grantee and other persons approved by the Grantor may enter upon the Property, for educational and scientific purposes to observe and study the Property, or for other purposes allowed by Grantor consistent with this Conservation Easement.

**4.3.3 Enforcement.** The Grantee shall have the right to enter upon the Property, at such other times as are necessary if there is reason to believe that a violation of this Conservation Easement is occurring,



for the purposes of enforcing the provisions of this Conservation Easement.

- 4.4 Injunction and Restoration.** The Grantee shall have: (1) the right to enjoin any activity on, or use of, the Property that is inconsistent with this Conservation Easement; and (2) the right to undertake or cause to be undertaken, the restoration of such areas or features of the Property as may be damaged by activities contrary to the provisions hereof all in accordance with Section 7 below.
- 4.5 Markers.** The Grantee shall have the right, during the annual inspection described in Section 4.3.1, to place and replace small markers to identify the boundaries and corners of the Property.
- 4.6 Habitat and Restoration Activities.** After consultation with Grantor, submission to Grantor of a written work plan, and Grantor's written approval, which shall not be unreasonably withheld, conditioned, or delayed, Grantee shall have the right to enter upon the Property to undertake habitat restoration or enhancement activities, to remove encroaching vegetation and to maintain the trail system, all at Grantee's option and expense and consistent with the most recent Property Management Plan. The failure of Grantee to exercise this right at any time shall not bar it from doing so at a later time. Grantor may, in Grantor's discretion, impose reasonable conditions on such activities, including, but not limited to, the timing thereof. It is the Parties' intent that Grantee will only exercise this right if the Grantor fails to undertake habitat restoration and enhancement activities as allowed under Section 5.2.
- 4.7 Advance Written Notice.** The Grantee shall be notified by Grantor, in accordance with the procedures of Section 17 below, before Grantor exercises any reserved right, the exercise of which is likely to have an adverse impact on the Conservation Values of the Property. This requirement shall not be interpreted to require Grantor to provide notice for uses and activities previously authorized in an approved Property Management Plan, unless said plan provides for additional notice requirements.
- 4.8 Transfer of Easement.** Grantee shall have the right to assign, convey, or transfer Grantee's interest in the Property in accordance with Section 8 below.
- 4.9 Development Rights.** The Grantor hereby grants to Grantee all development rights, except as reserved in Section 5 below, that are now or hereafter allocated to, implied, reserved, or inherent in the Property; and Grantor and Grantee agree that such rights are terminated and extinguished, and may not be used on or transferred to any portion of the



Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lot yield of the Property or any other property.

**4.10 Enforcement.** Enforcement of the terms and conditions of this Conservation Easement shall be at the discretion of the Grantee, in accordance with Section 7 below. Any forbearance on the Grantee's part to exercise its rights hereunder in the event of any breach of this Conservation Easement by Grantor, its heirs, successors, or assigns, or any other person or entity, shall not be deemed or construed to be a waiver of the Grantee's rights hereunder in the event of any subsequent breach.

**5 PERMITTED AND RESERVED USES AND ACTIVITIES.** Grantor reserves for itself and its personal representatives, heirs, successors, and assigns, all rights accruing from ownership of the Property, including the right to engage in, or permit or invite others to engage in, any use of, or activity on, the Property that is consistent with the Purposes of the Conservation Easement and that is not otherwise prohibited by this Conservation Easement. Without limiting the generality of this section, Grantor specifically reserves for itself and its personal representatives, heirs, successors, and assigns, the following uses and activities:

**5.1 Forest Stewardship.** Forest stewardship activities include tree and vegetation planting and restoration, removal and management of trees and vegetation, controlled burns, management of invasive weeds, collection of biological specimens, and other activities specified in the Property Management Plan. Forest stewardship activities shall be carried out in compliance with federal, state, and local regulations, shall be conducted in accordance with the Property Management Plan and shall be consistent with the Purposes and Conservation Values of this Conservation Easement.

**5.2 Habitat Restoration.** To undertake habitat restoration or enhancement activities on the Property to further the Purposes of this Conservation Easement, provided that such activities are conducted in accordance with sound conservation management practices, consistent with the Purposes, terms and conditions of this Conservation Easement and consistent with the Property Management Plan. Such restoration or enhancement may include alteration or disturbance of land if approved in the Property Management Plan.

**5.3 Passive Recreation and Environmental Education.**

**5.3.1 Public Uses and Activities.** To provide for passive recreational and educational uses and activities by the general public on the Property, provided that such passive recreational and educational use is consistent with the Property Management Plan and does not



interfere with the Conservation Values of the Property. "Passive recreational uses," means low-impact outdoor recreational pursuits that do not involve the use, placement, construction, or installation of any structure or any items of fixed equipment, or result in any alteration of the land, other than the Recreational Improvements (as defined below) and the supportive structures as provided for elsewhere under this Conservation Easement, which uses include, but are not limited to, hiking, bird watching and cross country skiing.

**5.3.2 Recreational Improvements.** To develop, construct, maintain, install, expand, replace, and repair the improvements designed to support the passive recreation and environmental education activities on the Property (the "Recreational Improvements"), provided that the Recreational Improvements are consistent with the Property Management Plan and do not interfere with the Conservation Values of the Property. The Recreational Improvements may include non-impervious trails and foot paths, outlooks/viewpoints that include benches, boardwalks, viewing towers and platforms, informational kiosks, educational signage, art work, restrooms, entrance parking and trailheads.

**5.3.3 Notice.** Grantor shall provide at least 30 days prior written notice to Grantee before building, reconstructing, or replacing any Recreational Improvements. Proposed Recreational Improvements that may adversely affect the Property's scenic values (a viewing tower for example) shall be subject to the Grantee's approval.

**5.4 Structure.** To construct, use, maintain, repair, expand, reconstruct, relocate, or replace one (1) equipment shed, subject to compliance with federal, state, and local regulations. Such structure shall be located so that interference with the Conservation Values of the Property is avoided. Grantor shall provide at least 30 days prior written notice to Grantee before submission of plans to Skagit County for building permits for construction, re-construction, or replacement of the structure. Grantee shall approve the design and location of the structure to ensure that the structure is consistent with the protection of the Conservation Values.

**5.5 Utilities.** To install, use, maintain, repair, reconstruct, or replace utilities that exclusively support the uses on the Property permitted by this Conservation Easement, including, but not limited to water wells, water storage tanks, propane tanks, septic facilities, electricity, electronic devices intended to transmit information from the Property for educational purposes (such as a webcam) and telephone ("Utilities"). The term "Utilities" shall also include, but not be limited to, any structure, device, installation, or piece of equipment used to generate or transmit power for



consumption on the Property. Utilities installed or built after the Effective Date of this Conservation Easement shall be located underground, unless Grantee concludes that location of the Utilities above-ground will have less impact on the Conservation Values of the Property or unless Grantee otherwise approves Utilities located above-ground, which approval shall not be unreasonably withheld. Utilities shall be located with the intent to minimize disturbance of the Conservation Values of the Property. Grantor shall provide 30 days prior written notice to Grantee before installing, reconstructing, or replacing the Utilities.

- 5.6 Fences.** To build, maintain, repair, or replace perimeter fences, cross fences, foot-traffic barriers and deer exclosures on the Property as necessary to support and protect on-site uses permitted by this Conservation Easement, or to protect the Conservation Values on the Property provided that fences built after the Effective Date of this Conservation Easement shall be of such design that the scenic views over and across the Property are obscured to the smallest possible degree.
- 5.7 Noxious Weeds/Introduced Species.** To remove noxious, invasive, and introduced weeds and introduced animal species from the Property.
- 5.8 Archaeological Investigations.** To undertake legally permitted archaeological investigations with the oversight of a professional archaeologist, provided that any such activity shall be consistent with the Property Management Plan and the Conservation Values of the Property.
- 5.9 Public Health and Safety.** To undertake other activities necessary to protect public health or safety on the Property, or which 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 Property is avoided to the greatest extent possible.

**6 PROHIBITED USES AND ACTIVITIES.** Any use of or activity on, the Property inconsistent with the Purposes of this Conservation Easement is prohibited, and the Grantor acknowledges and agrees that it will not conduct, engage in, or permit any such use or activity. The following uses and practices on the Property are inconsistent with the purposes of this Conservation Easement and shall be prohibited except to the extent a use or practice is specifically reserved in Section 4, Section 5 or this section; and provided that this is not an exhaustive recital of all of those uses and practices which are prohibited as inconsistent with the Purposes of the Conservation Easement:

- 6.1 Structures.** The construction or placement of any buildings or structures, including fences, on the Property.



- 6.2 Subdivision.** The division, subdivision, or de facto subdivision of the Property ("Segregation"), which includes, but is not limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Property is divided into lots or which title to different portions of the Property are held by different owners; *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. Any Segregation shall be subject to the approval of Grantee, which shall not be unreasonably withheld, and the continuation of the terms of this Easement. Additionally, Grantor may enter into boundary line adjustments with adjoining lands or to aggregate existing lots within the Protected Property area, subject to approval by Grantee, which shall not be unreasonably withheld. Such boundary line adjustments shall not result in any net loss of acreage to the Property or adversely impact the Conservation Values on the Property. No new parcel may be created by such boundary line adjustments.
- 6.3 Alteration of Land.** Change in the topography of the land through the excavation or placing of soil, dredging spoils, or other material or through pond construction.
- 6.4 Alteration of Wetlands/Watershed Resources.** The manipulation or alteration of any marshes, wetlands, or surface drainage patterns by filling or draining, or the pollution or degradation of surface or subsurface waters on or under the Property.
- 6.5 Roads/Trails.** Construction of any roads, trails, or paths for vehicular use.
- 6.6 Utilities.** The placement of new above-ground utility lines, pipes, or wires or new fuel tanks, whether above- or underground, on the Property.
- 6.7 Certain Electronic Equipment.** The location, construction, placement, use, or maintenance of any type of electronic amplifying, transmitting, receiving, or relay device, including, without limitation, amplified sound systems, radio, cellular telephone, microwave and other types of towers, antennae, satellite dishes and related equipment on the Property.
- 6.8 Mining.** The exploration for or extraction of minerals, hydrocarbons, soils, rock, gravel, or other materials, except water for use on the Property, on or below the surface of the Property.
- 6.9 Signs.** The construction or placement of commercial signs, billboards, or other commercial advertising material on the Property. This provision shall not be interpreted to prohibit Grantor from placing small signs on the Property to indicate the name of the Property or its occupants, to state



conditions of access (including “no trespassing” signs), to provide information to the public regarding the Property (including “interpretive” signs), or to state the conservation status of the Property, provided that such signs are designed and located so as to minimize any impact on the Conservation Values.

- 6.10 Dumping.** The dumping, storage, or disposal of used vehicles, old machinery, rubbish, garbage, debris, hazardous materials, or other unsightly or offensive material on the Property. The foregoing shall not be interpreted to prohibit the use of governmentally-approved septic systems serving the restrooms authorized by Section 5 or composting vegetation.
- 6.11 Tree Harvest or Vegetation Removal.** Removal or destruction of trees, including clear-cutting or any other form of commercial logging, or gathering of wood or other vegetation on the Property. The cutting of snags or overmature trees, unless dangerously close to permitted structures or trails on the Property. Heritage trees identified in the Baseline Present Conditions Report (trees of exceptional size, age or natural value) shall not be cut.
- 6.12 Introduced Vegetation.** The intentional introduction of invasive plant species on the Property.
- 6.13 Grazing.** The grazing, browsing, or pasturing of domestic animals on the Property.
- 6.14 Development Rights.** The use or transfer of any development rights that are now or hereafter allocated to, implied, reserved, or inherent in the Property to any other property.
- 6.15 Active Recreation.** Use or maintenance of any portion of the Property for active recreation that requires structures (such as goal posts, nets or launching platforms) or a significantly altered landscape (such as playing fields or running tracks); motorized recreation, such as motorcycle riding and the use of other recreational vehicles off-road; and recreational vehicle camping.
- 6.16 Industrial and Commercial Uses.** The use of the Property for any industrial or commercial purposes, except commercial uses that are not extractive, and have no impact on the conservation values of the Property may be allowed on a case by case basis, subject to approval by Grantee.
- 6.17 Off-Road Vehicles and Excessive Noise.** The operation of motorcycles, ATVs, dune buggies, snowmobiles, or any other type of motorized recreational vehicles, or the operation of other sources of compaction or erosion that could adversely and materially impact the Conservation



Values of the Property. This provision shall not prohibit the use of vehicles required to support stewardship activities, emergency operations, or other activities allowed by the Property Management Plan.

**6.18 Camping.** Public or commercial camping on the Property or development of permanent campsites.

**6.19 Night Lighting.** The location, construction, placement, or use of artificial exterior lighting, including without limitation photocell-activated lights, mercury-vapor lights and other bright lights and "security lights," except as necessary to support uses permitted by Section 5. The purpose of this Section 6.19 is to maintain the natural effect of normal night and minimize the impact of unnatural lighting, and Grantor and Grantee shall consider this purpose in the design and installation of all lighting located on the Property.

## 7 REMEDIES.

**7.1 Dispute Resolution.** If a dispute arises between the Grantor and the Grantee concerning the consistency of any proposed action, activity, or use with the Purposes of this Conservation Easement, the parties shall meet together to discuss the dispute and attempt resolution. Thereafter, either party may refer the dispute to arbitration by request made in writing upon the other. Within thirty (30) days of receipt of such a request, the parties shall select a single arbitrator to hear the matter. If the parties are unable to agree on the selection of the arbitrator, then the presiding judge of Skagit County Superior Court shall appoint one. The matter shall be settled in accordance with RCW 7.04 or the state arbitration statute then in effect, and a judgment on the arbitration award may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for all its costs and expenses, not including attorney's fees, related to such arbitration which shall be determined by the arbitrator and any court of competent jurisdiction that may be called upon to enforce or review the award. The parties agree not to proceed with the proposed action, activity, or use pending resolution of the dispute.

### 7.2 Grantee's Action.

**7.2.1 Injunctive Relief.** Irrespective of any other remedies provided for Grantee, Grantee may, subject to Section 7.3 below, following reasonable written notice to Grantor, institute suits or actions to enjoin any violation by Grantor of this Conservation Easement by injunction, including prohibitory and/or mandatory injunctive relief, and to require the restoration of the premises to the



condition and appearance required under this Conservation Easement.

**7.2.2 Restoration.** Should any person or entity, including Grantor, its heirs, successors, or assigns, undertake any activity in violation of the terms of this Conservation Easement, Grantee shall have the right to force the restoration of that portion of the Property affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the costs of such restoration and the Grantee's expenses shall be borne by Grantor or those of its heirs, successors, or assigns against whom a judgment is entered, or, in the event that the Grantee secures redress without initiating or completing a judicial proceeding, by Grantor or those of its heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized activity.

**7.2.3 Damages.** Grantee shall be entitled to recover damages for violation of the terms of this Conservation Easement or injury to the Conservation Values, including, without limitation, damages for the loss of environmental, aesthetic, or scenic values. Without limiting Grantor's liability in any way, Grantee, in its sole discretion, may apply any damages it recovers to the cost of undertaking corrective or restorative action on the Property.

**7.2.4 Immediate Action Required.** If Grantee, in its sole and absolute discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, Grantee may pursue its remedies under this Section 7 without prior notice to Grantor.

**7.3 Acts Beyond Grantor's Control.** Notwithstanding any other provisions in this Conservation Easement, nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Property or to recover damages for any injury to or change in the Property resulting from causes beyond Grantor's control, including, but not limited to, fire, flood, storm, insect infestation, or earth movement; or actions taken by third parties who are not under the control of, or acting as an agent of, Grantor; or from prudent actions taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

**8 SUCCESSION.** The benefits of this Conservation Easement shall be assignable but only to a qualified organization within the meaning of Section 170(h)(3) of the IRC which is organized or operated primarily or substantially for one of the



UNIVERSITY MICROFILMS  
conservation purposes specified in Section 170(h)(4)(A) of the IRC, and shall be subject to Grantor's approval, which shall not be unreasonably withheld. Any assignment of benefits by the Grantee (or successors) must require the transferee to carry out the Purpose of this Conservation Easement. If at any time it becomes impossible for the Grantee to ensure compliance with the covenants contained in this Conservation Easement and the Grantee has not named a successor or successor organization, or the Grantee shall cease to exist, then its rights and duties hereunder shall become vested in and fall upon the following-named entities, provided that such entities accept this Conservation Easement and are then organizations meeting the requirements of Section 170(h)(3) of the IRC (or its successor statute), in the following order:

- (1) The Nature Conservancy, a District of Columbia non-profit corporation, having its principal office at 4245 North Fairfax Drive, Suite 100, Arlington, VA 22203;
- (2) Such other entity as may have been formed for purposes similar to The San Juan Preservation Trust, constituting a "qualified organization" within the meaning of the Internal Revenue Code of 1986 (or its successor provision).

Provided that if such vesting in the entities named above is deemed to be void under the Rule against Perpetuities, then the rights and obligations under this Conservation Easement shall vest in such organization as a court of competent jurisdiction shall direct, pursuant to the applicable Washington law and the IRC (or corresponding provision of any future statute) and with due regard to the Purposes of this Conservation Easement, including, but not limited to, the Conservation Values of the Property.

## 9 TAXES AND EXPENSES.

- 9.1 **Property Taxes.** Grantor agrees to pay any and all real property taxes and/or assessments levied by competent authority on the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor shall reimburse Grantee for the same.
- 9.2 **Cost of Maintenance.** Grantor shall bear all the costs of maintenance of the Property, and does hereby indemnify the Grantee therefrom.

## 10 PROPORTIONATE VALUE; EMINENT DOMAIN.

- 10.1 **Valuation.** The Grantor and the Grantee agree that Grantee's contribution to the purchase price of the Property and subsequent exchange of its purchaser's rights under the purchase and sale agreement to acquire the Property for this Easement gives rise, for purposes of this Section 10, to a property right immediately vested in the Grantee, with a value that is equal to sixty-five percent (65%) of the fair market value of the Property determined as of the Effective Date ("Proportionate Value"). The Grantor

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and the Grantee agree that this Proportionate Value shall remain constant (excluding the value of buildings and other improvements). If a change in conditions surrounding the Property makes impossible or impracticable the continued use of the Property for conservation purposes, and gives rise to extinguishment of this Conservation Easement by judicial proceedings or otherwise, the Grantee, on a subsequent sale, exchange, or involuntary conversion of the Property, shall be entitled to a portion of the proceeds equal to the Proportionate Value of the Property as of the date of extinguishment. The Grantee shall use its share of the proceeds in a manner consistent with the Purposes set forth in this Conservation Easement or for the "protection of a relatively natural habitat of fish, wildlife, or plants or similar ecosystem," or the "preservation of open space" as those phrases are used in IRC Section 170(g)(4)(a), as amended, and in regulations promulgated thereunder.

**10.2 Eminent Domain.** If ever all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. All expenses reasonably incurred by the Grantor and the Grantee in this action shall be paid out of the recovered proceeds and the proceeds remaining after the payment of such expenses shall be allocated in accordance with section 10.1 above.

**11 HOLD HARMLESS.** 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, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or 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 Property, regardless of cause, except to the extent caused by the willful or negligent acts or omissions of any of the Indemnified Parties; (2) the obligations specified in paragraphs 9.1 and 9.2; (3) the violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulation or requirement, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USCA §§9601 *et seq.*) ("CERCLA"), the Washington State Model Toxics Control Act, chapter 70.105D RCW ("MTCA") or any successor or related law, by any person other than any of the Indemnified Parties; and (4) the presence or release in, on, or from the Property, at any time, 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 polluting to the air,



water or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties.

**12 ENVIRONMENTAL LIABILITY.** Grantor is solely responsible and Grantee has no responsibility whatsoever for the operation of the Property or the monitoring of hazardous and other conditions thereon. Notwithstanding any other provision of this Conservation Easement to the contrary, the parties do not intend, and this Conservation Easement shall not be construed, such that: (1) it creates in the Grantee the obligations or liabilities of an "owner" or "operator" as those words are defined and used in the environmental laws, including without limitations the CERCLA, MTCA, or any successor or related law; or (2) it creates in the Grantee obligations or liabilities of a person described in 42 U.S. Code §9607(a)(3), 70.105D.040 RCW or any successor or related law. The term "environmental laws" includes, without limitation, any federal, state, local, or administrative agency statute, regulation, rule, ordinance, order, or requirement relating to environmental conditions or hazardous substances.

**13 COVENANTS.** It is the express intent of the Grantor and Grantee that the provisions of this Conservation Easement shall run with the land and burden title to the Property in perpetuity, and shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the parties hereto.

**14 "GRANTOR" - "GRANTEE".** The terms "Grantor" and "Grantee", wherever used in this Conservation Easement, and any pronouns used in place thereof, shall be held to mean and to include, respectively the above-named Grantor, and heirs, successors, personal representatives, and assignees of said Grantor, and each of them, and the above-named Grantee, its successors and assigns.

**15 SEVERABILITY.** In the event that any provision of this grant or the application thereof to any person or circumstance shall be determined to be invalid or unenforceable, the remainder of the provisions hereof, and the application of such provisions to persons or circumstances other than those as to which it is determined to be invalid, shall not be affected thereby.

**16 SUBSEQUENT TRANSFERS; NO MERGER.**

**16.1 Binding Effect.** Grantor and Grantee intend for the Property to remain in ownership by a "qualified conservation organization" as described in 1.10 above, or an appropriate public agency. In the event that Grantor desires to divest itself of any interest in all or a portion of the Property, Grantor agrees to consult with Grantee, and to seek mutual agreement on the appropriate disposition of the Property, and to reference the existence of this Conservation Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including without limitation, a leasehold interest, and shall notify Grantee in writing of any transfer within five business days after closing. Grantor



agrees to pay a transfer fee of one-tenth (1/10) of 1% of the purchase price to Grantee to be used for purposes consistent with Grantee's mission. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

**16.2 Merger of Title.** In the event that Grantee acquires the fee title to the real estate covered by this Conservation Easement, it is the intent of the parties, both Grantor and Grantee, that no merger of title shall take place which would merge the restrictions of the Conservation Easement with fee title to the Property and thereby eliminate them, as the parties intend that no such merger take place and that the restrictions on the use of the real estate, as embodied in this Conservation Easement shall, in the event title becomes vested in Grantee, become and remain permanent and perpetual restrictions on the use of the Property and that merger, which would eliminate such restrictions, shall not take place.

## 17 NOTICES.

**17.1 Means of Notice.** All notices required or permitted to be given under the terms of this Conservation Easement shall be in writing, sent as registered or certified mail or other courier providing reliable proof of delivery, and addressed as set forth below:

To Grantor:

Skagit Land Trust  
P.O. Box 1017  
Mount Vernon, WA 98273

To Grantee:

The San Juan Preservation Trust  
Box 327  
Lopez Island, WA 98261

Either Grantor or Grantee may, by proper notice to the other, designate another address for the giving of notices. All notices shall be deemed given on the third day following the day the notice is mailed in accordance with this Section 17.

**17.2 Prior Notice and Approval.** The purpose of notice and approval is to afford Grantee an opportunity to ensure that the activities or uses in question are designed and carried out in a manner consistent with the Purposes and terms of this Conservation Easement. Where notice to Grantee is required, Grantor shall describe in such notice the nature, scope, design, location, timetable, and any other material aspect of the



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proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the terms of this Conservation Easement and the Purpose thereof. Where Grantee's approval is required as provided in Section 5 above, Grantee shall have twenty (20) days from receipt of the notice to request additional information to evaluate the proposed activity. Where no additional information is requested, Grantee shall grant or withhold its approval in writing within forty-five (45) days of receipt of Grantor's written request for approval. Where additional information is requested, Grantee shall grant or withhold its approval in writing within thirty (30) days from receipt of the additional information. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the Purposes and terms of this Conservation Easement. If Grantee determines that the activity or use as contemplated by Grantor in its notice is not consistent with the Purposes and/or terms of the Conservation Easement, Grantee shall inform Grantor in writing of its determination and of any reasonable conditions that would make the activity or use in question consistent with the Purposes and terms of this Conservation Easement. When Grantee's approval is required, and when Grantee does not grant or withhold its approval in the time period and manner set forth herein, Grantor may conclusively assume Grantee's approval of the permitted use or activity in question, as described in Grantor's notice thereof.

**17.3 Optional Notice and Consultation.** If Grantor is unsure whether a proposed use or activity is prohibited by this Conservation 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 its consistency with the Purposes and to provide comments thereon to Grantor. 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 forty-five (45) days after receipt of Grantor's notice, Grantee will be deemed to have approved of the proposed use or activity.

**18 LIBERAL CONSTRUCTION.** Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to effect the Purposes of this Conservation 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 Purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

**19 AMENDMENTS.** Grantor and Grantee recognize that circumstances could arise that would justify amendment of certain of the terms, covenants, or restrictions



contained in this Conservation Easement, and that some activities may require the discretionary consent of the Grantee. To this end, the Grantor and Grantee have the right to agree to amendments and discretionary consents to this Conservation Easement without prior notice to any other party, provided that in the sole and exclusive judgment of the Grantee, such amendment or discretionary consent furthers or is not inconsistent with the Purposes of this Conservation Easement. This Conservation Easement shall not be amended, modified, or terminated except in writing in a document signed by the Grantor and Grantee. Should the Property be owned by separate parties, the conservation easement as it pertains to one of the legal parcels may be amended without the consent of the owner of the other legal parcel. No amendment shall be allowed that would adversely affect the status of the Grantee under any applicable laws. Any amendment shall be consistent with the Purposes of this Conservation Easement, shall not affect its perpetual duration, shall not permit additional development other than development permitted by this Conservation Easement on its Effective Date, and shall not permit any impairment of the significant Conservation Values of the Property. Any amendment shall be consistent with the Grantee's Conservation Easement Amendment Policy. Any such amendment shall be recorded in the land records of Skagit County of Washington. Nothing in this section shall require Grantor or Grantee to agree to any amendment.

- 20 **RECORDATION.** Grantee shall record this instrument in a timely fashion, in the Official Records of Skagit County, Washington, and other appropriate jurisdictions, and Grantee may re-record it at any time as may be required to preserve its rights in this Conservation Easement.
- 21 **GOVERNING LAW.** The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Washington.
- 22 **NO FORFEITURE.** Nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.
- 23 **ENTIRE AGREEMENT.** This instrument sets forth the entire agreement of the parties with respect to the Property and supersedes all prior discussions, negotiations, understandings or agreements relating to the Property, all of which are merged into this Conservation Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 19 above.
- 24 **TERMINATION OF RIGHTS AND OBLIGATIONS.** Notwithstanding anything contained in this Conservation Easement to the contrary, upon transfer of a party's interest in all or a portion of the Property, that party's rights and obligations under this Conservation Easement terminate to the portion transferred, except that liability for acts or omissions occurring prior to transfer shall survive transfer.



- 25 COUNTERPARTS.** This instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same document, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- 26 CAPTIONS.** The captions in this instrument have been inserted solely for convenience of reference and are not part of this instrument and shall have no effect upon construction or interpretation.
- 27 EFFECTIVE DATE.** This Conservation Easement shall be effective as of the date of recording.

[THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY.  
SIGNATURES FOLLOW.]







**EXHIBIT "A"**

**Legal Description of the Property**

PARCEL NUMBERS: 350206-4-001-0002/P32753; 350205-3-001-0005/P32709

The East 60 rods of the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$ , Section 6, Township 35 North, Range 2 East, W.M.;

**TOGETHER WITH:** The Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 5, Township 35 North, Range 2 East, W.M.; EXCEPT the North 100 feet of the South 740 feet of the East 100 feet of the West 590 feet, thereof.;

**TOGETHER WITH:** A non-exclusive easement for ingress and egress and for the placement, repair and maintenance of utilities, including water, telephone, Puget Sound Power and Light Company drainage and underground or otherwise attached as described in that certain Declaration of Easement recorded June 2, 1976, under Auditor's File No. 836154;

**SUBJECT TO:** easements and restrictions of record.

PARCEL NUMBER: 350205-3-001-0104/P32710

**TOGETHER WITH:** The North 100 feet of the South 740 feet of the East 100 feet of the West 590 feet of the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 5, Township 35 North, Range 2 East, W.M.;

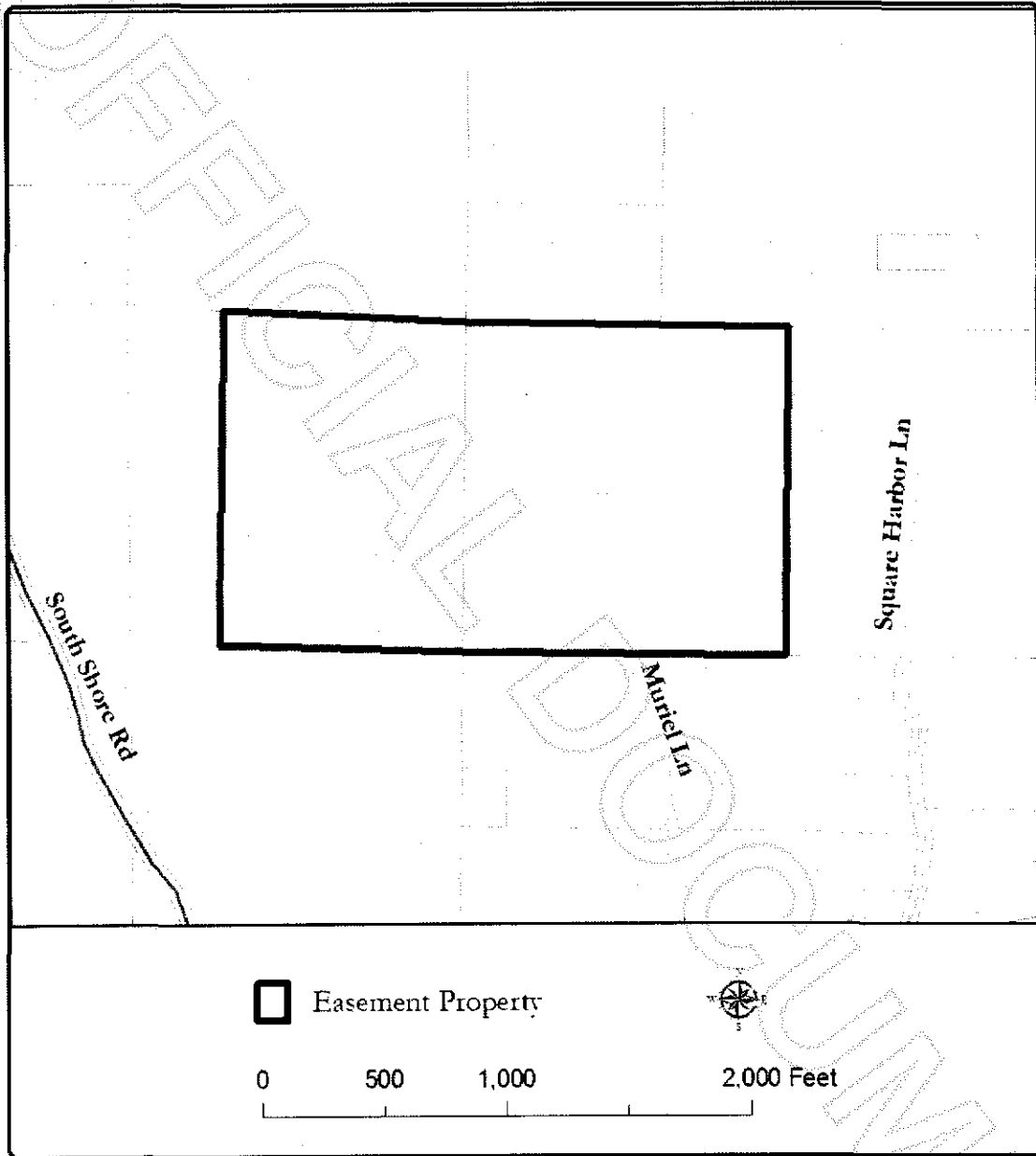
**SUBJECT TO:** easements and restrictions of record.

All situate in the county of Skagit, state of Washington.



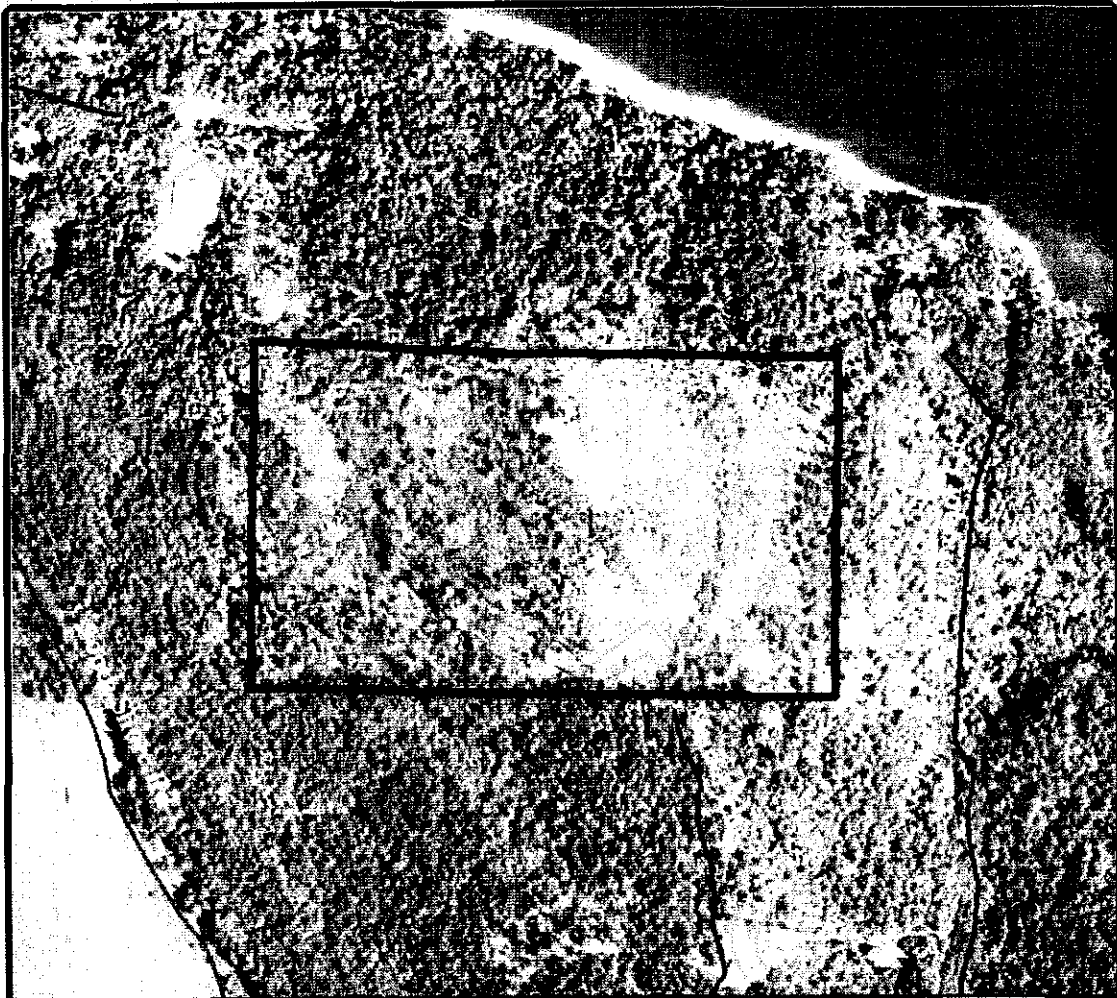
**EXHIBIT "B"**

**Map of Property Protected by the Conservation Easement**



**EXHIBIT "C"**

**Aerial Photo of the Property Protected by the Conservation Easement**



2006 USDA Aerial Data

Easement Property



0      500      1,000      2,000 Feet



**EXHIBIT "D"**

**Acknowledgement of Baseline Present Conditions Report**

The Grantor and Grantee acknowledge that each has read the Baseline Present Conditions Report, dated September 22<sup>nd</sup> 2009, and that the report accurately reflects the currently available baseline data regarding the condition of the Property subject to the Conservation Easement as of the Effective Date of the Conservation Easement.

<b>SKAGIT LAND TRUST</b>	<b>THE SAN JUAN PRESERVATION TRUST</b>
By: <u>Molly D</u>	By: <u>JR Jensen</u>
Its: <u>Executive Director</u>	Its: <u>Executive Director</u>
Date: <u>September 24, 2009</u>	Date: <u>Sept. 24, 2009</u>



200910010087

Skagit County Auditor