

After Recording Return To:
Washington Department of Fish and Wildlife
Real Estate Services
600 Capitol Way North
Olympia, WA 98501-1091
Attn: Thom Woodruff



201106280012
Skagit County Auditor

6/28/2011 Page 1 of 8 9:24AM

Document Title: Assignment of Rights
Reference No. Of Related Document:
Assignor: Skagit Conservation District
Assignee: The State of Washington, the Department of Fish and Wildlife
Legal Description: Exhibit A
Assessor's Parcel No.: P49935
County: Skagit

GUARDIAN NORTHWEST TITLE CO.

90803

200807310098

CORRECTED
ASSIGNMENT OF RIGHTS

This CORRECTED ASSIGNMENT OF RIGHTS (this "Assignment") is executed as of the 23 day of JUNE, 2011, by Skagit Conservation District ("Assignor"), to and in favor of The State of Washington, the Department of Fish and Wildlife ("WDFW").

RECITALS

- A. Assignor has entered into a conservation easement (the "Conservation Easement") with a certain property owner ("Owner") in Skagit County, Washington. The name and address of the Owner, and the legal description (the "Property") and recording number of the Conservation Easement are set forth in the attached Exhibit A which is made a part hereto and incorporated herein.
- B. The conservation purpose of the Conservation Easement is described in the Conservation Easement. The purpose is also described in the Project Agreement entered into between Assignor and WDFW titled SCD Maksin/Samish Conservation Easement, Project Number CAPS 06-1852 effective November 1, 2006, and the application and supporting materials that are on file with WDFW in connection with the Project Agreement, which Project Agreement is incorporated herein by this reference. That purpose includes protection of the ecological functions and processes, environmental attributes, and wildlife habitat of the Property, restoration and enhancement of habitat, as defined in the Conservation Easement.

- C. Assignee has received a grant under the U.S. Fish and Wildlife Service (USFWS) Landowner Incentive Program (LIP grant) for the purpose of acquiring this Conservation Easement, Grant Number WA I-17. The LIP grant is to be administered by the Washington Department of Fish and Wildlife (WDFW). The purposes of the LIP grant are to assist States by providing grants to establish or supplement landowner incentive programs that protect and restore habitats on private lands, to benefit federally listed, proposed, or candidate species or other species determined to be at-risk, and provide technical and financial assistance to private landowners for habitat protection and restoration.
- D. Owner has authorized Assignor to assign to WDFW certain rights for access to and stewardship of the Property covered by the Conservation Easement. Assignment of such rights is a necessary condition to receipt of grant funding under the Project Agreement and the policies of WDFW. Such rights are valuable to WDFW in connection with ensuring protection of habitat under the terms of the Conservation Easement, and are particularly valuable because Assignor and Owner have agreed that Assignor will retain all responsibility for obligations of Assignor under the Conservation Easement.
- E. These recitals are incorporated herein by this reference.

PURPOSE

This Conservation Easement includes, but is not necessarily limited to, habitats essential to maintaining various natural communities of sensitive, rare, and/or endangered species, and many other non-listed native species that are dependent on the water sources, nesting habitat, and food sources found on the Property; will enhance connectivity between other nearby protected areas, parks, and/or watershed areas for wildlife; and will help to ensure that this area and its existing features will continue to be available for its natural habitat values. The purpose of this Conservation Easement is to assure that the Property will be retained forever in its natural, scenic, and agricultural condition, and to prevent any use of the Property that will impair or interfere with the conservation values of the Property.

Now, therefore, Assignor and WDFW agree as follows:

AGREEMENT

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



201106280012
Skagit County Auditor

- UNWORTHY
- a. Access. To enter the Property subject to the Conservation Easement at a reasonable time and upon prior arrangement with Assignor and Owner, in order to monitor and evaluate performance, compliance, and/or quality assurance under the Project Agreement.
 - b. Injunction and Restoration. In the event of the failure of Assignor to undertake such injunction and restoration, to enjoin any use of, or activity on, the Property which is inconsistent with the terms of the Conservation Easement, including trespass by members of the public, and undertake or cause to be undertaken the restoration of such areas or features of the Property as may be damaged by uses or activities contrary to the provisions of the Conservation Easement.
 - c. Enforcement. In the event of the failure of Assignor to undertake such enforcement, to enforce the terms of the Conservation Easement, and thereby assume Assignor's remedies under the Conservation Easement.
 - d. Amendments. To review and approve any proposed amendments to the Conservation Easement. Review and approval by WDFW's Lands Division Manager will be for compliance with the terms of the Project Agreement.
 - e. Termination For Reasons of Impracticability. To review and approve any proposed agreements to terminate the Conservation Easement, or release a portion of the Property from the terms of the Conservation Easement, before expiration of the term of the Conservation Easement (if any) for the reason that circumstances have rendered the conservation purpose of the Conservation Easement impractical to achieve.

This Conservation Easement is acquired, in part, with funding received by the Assignee from Grant Number I-17 dated 8/4/2006 between the USFWS and the WDFW as part of the USFWS's LIP Program. The purpose of this grant is to ensure the perpetual protection of the Conservation Values of the Property with this Conservation Easement. The burden of this restriction shall run with the Premises in perpetuity, and shall be enforceable against the Assignor and the Assignor's successors, and assigns holding interest in the Premises. This restriction may only be released, in whole or in part, by the Assignors pursuant to the procedures established by Washington General Laws, and the provisions contained in the Uniform Administrative Requirements for Grants and Cooperative Agreements to the State and Local Governments (43 CFR Part 12, Subpart C, 12.71 – Real Property) which requires the WDFW to request disposition instructions from the USFWS. Disposition may include the Assignor either acquiring title to (or an easement upon) another parcel of real property of equal value that serves the same primary purpose as this subject Property, and by managing the new acquired real property for the same purposes as this Property, hereunder; or by repaying



the Assignee and/or USFWS, any such requirements being up to the discretion of the USFWS.

- f. **Baseline Documentation Report.** Assignor will provide a copy of the Baseline Documentation Report to the Assignee before this Assignment of Rights is signed.
- g. **Stewardship Plans.** To review any stewardship plans, including habitat restoration and enhancement plans, as defined in the Conservation Easement. Review by WDFW's Lands Division Manager will be for compliance with the terms of the Project Agreement. Assignor will provide to the Assignee a copy of a stewardship plan, subject to approval, no later than 12 months after this Assignment of Rights is signed. Assignor will notify the Assignee of any future changes to the stewardship plan.
- h. In the event that this Easement is transferred to another landowner, the Assignor will notify the Assignee at least forty-five (45) days in advance of its occurrence; and provide a true and complete copy of this Easement, as recorded, to each transferee of any interest in the Property.

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

- 2. **WDFW's Exercise of Rights.** WDFW hereby represents and warrants that its exercise of rights under this Assignment will be consistent with the conservation purpose defined in the Conservation Easement and the Project Agreement.
- 3. **Representations and Warranties of Assignor.** Assignor hereby represents and warrants to WDFW that:
 - a. Owner, identified in the attached Exhibit A, has authorized and approved this Assignment.
 - b. Assignor shall enforce the terms of the Conservation Easement as provided in the Conservation Easement.
 - c. Assignor shall comply with, and WDFW shall not be responsible for determining compliance with, all applicable federal, state, and local laws, regulations, and policies in its administration of the Conservation Easement or the undertaking of any of its rights under the Conservation Easement.
 - d. Neither Assignor nor Owner has any claims or causes of action, at law or in equity, with respect to any Conservation Easement as of the date provided above.



201106280012

Skagit County Auditor

4. **Obligations.** It is expressly understood and agreed that, by the acceptance of this Assignment, WDFW has not assumed, and shall not become obligated to keep, fulfill, observe, perform or discharge, any duty or obligation of Assignor under the Conservation Easement.
5. **Indemnity.** Assignor shall defend, protect and hold harmless WDFW, or any employees thereof, from and against any and all costs, claims, fees and expenses arising out of or in any way relating to Assignor's representations and warranties under this Assignment, Assignor's obligations under the Conservation Easement, or the acts by or omissions of Assignor or Owner.
6. **Replacement Property.** The Conservation Easement may be extinguished in whole or in part before expiration of its term (if any) under certain circumstances identified in the Conservation Easement. If Assignee and/or the USFWS deem the Assignor to be in violation of any terms or conditions of this Grant Agreement or the Conservation Easement, and does not cease the violation after due notice, consistent with 43 CFR Section 12.71(c), Assignee and/or USFWS, at its option, may require Assignor either:
- (a) to retain title to the Conservation Easement but to compensate Assignee and/or USFWS for the proportionate Federal share of the current fair market value of the Conservation Easement, or to dispose of the Conservation Easement property held by the Assignor, and, with proceeds from such disposition, to acquire replacement real property under the LIP program using the net proceeds from the disposition as an offset to the cost of the replacement property; or
 - (b) to sell the Conservation Easement and to compensate Assignee and/or USFWS with the proceeds, and the amount due to Assignee and/or USFWS will be calculated by applying the USFWS's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from the sale may be offset against the original cost of the Conservation Easement. If Assignor is directed to sell the Conservation Easement, sales procedures will be followed that provide for competition to the extent practicable and result in the highest possible return; or
 - (c) to transfer title to the Conservation Easement to Assignee or USFWS, or to a third party designated or approved by Assignee and/or USFWS in which case, the Assignor will be paid an amount calculated by applying the Assignor's percentage of participation in the purchase or acquisition of the Conservation Easement to the current fair market value of the Property.
7. **Restriction on Assignment.** Assignor shall not assign the Conservation Easement, or the performance of any obligations to WDFW under the Conservation Easement, without the express written consent of the WDFW Lands Division Manager.



8. **Assignment Term.** The term of this Assignment shall be the same as the term of the Conservation Easement, and shall expire upon the expiration date of the Conservation Easement (if any).
9. **Disputes.** Any disputes between Assignor and WDFW under this Assignment shall be governed by the terms of the Project Agreement.
10. **Governing Law/Venue.** This Assignment shall be governed by the laws of the State of Washington. In the event of a lawsuit between Assignor and WDFW involving this Assignment, venue shall be proper only in Thurston County. Assignor, by executing this Assignment, acknowledges the jurisdiction of the courts of the State of Washington in this matter.
11. **Severability.** If any provision of this Assignment or any provision of any document incorporated by reference herein shall be held invalid, such invalidity shall not affect the other provisions of this Assignment which can be given effect without the invalid provision and to this end the provisions of this Assignment are declared to be severable.

12. **Third party.**

Assignee: Washington Department of Fish and Wildlife
 Wildlife Program, Lands Division
 600 Capitol Way North
 Olympia, WA 98501-1091
 360-902-2478

ASSIGNOR:

Skagit Conservation District

WDFW:

The State of Washington,
 The Department of Fish and Wildlife

By: Janet E. MacRae

By: Jennifer Quan

Title: Chair Skagit Conservation Dist

Jennifer Quan, Lands Division Manager

Date: June 13 - 11

Date: 6/21/2011

STATE OF WASHINGTON)

County of Skagit^{SS}



EXHIBIT A

Name, address and telephone number of Owner:

Lawrence & Jeannette Maksin
4348 Blank Road
Sedro-Woolley, WA 98284

Conservation Easement is dated ___ July 30, 2008 and was recorded on July 31, 2008,
under Skagit County Auditor's File No. _200807310098.

Legal Description:

That portion lying west of the Samish River as it lies July 12, 2007 of Track 5 of survey number 111-76 recorded under auditor's file number 840287 which is a portion of the East half of the Southeast quarter of the Northwest quarter and of the West half of the Southwest quarter of the Northwest quarter.



201106280012

Skagit County Auditor

6/28/2011 Page 8 of 8 9:24AM