

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



201208030148

Skagit County Auditor

8/3/2012 Page

1 of 45 4:09PM

Grantor: Ward L. Weidenbach and Weidenbach Family Limited Partnership

Grantee: SKAGIT COUNTY

Legal Description

Abbreviated form: N 1/2 of SW 1/4, 17-34-3 e; Ptn NE 1/4 of SE 1/4, 18-34-3 E WM

Additional legal at Exhibit A.

Assessor's Tax Parcel Number: 22095, 22096, 22131, and 22132

SKAGIT COUNTY  
Contract # C20120334  
Page 1 of 43

LAND TITLE OF SKAGIT COUNTY

138834-01e

### CONSERVATION EASEMENT DEED

THIS CONSERVATION EASEMENT DEED is made this 30 day of July, 2012, by Ward Weidenbach and Weidenbach Family Limited Partnership, having an address at: 13821 McLean Road, Mount Vernon, Washington 98273 "Grantor" in favor of Skagit County, a political subdivision of the State of Washington, having an address at Skagit County Farmland Legacy Program, County Administration Building, 1800 Continental Place, Mount Vernon, WA "Grantee" and the United States of America ("United States") acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service ("NRCS") acting on behalf of the Commodity Credit Corporation as its interest appears herein, for the purpose of forever conserving the agricultural productivity of the Protected Property and its value for resource preservation and as open space.

#### I. RECITALS

- A. Grantor is the sole owner in fee simple of that certain real property (the "Protected Property") in Skagit County, Washington, more particularly described in Exhibit A (Legal Description) and shown on Exhibit B (Baseline Documentation), which exhibits are attached to and incorporated into this Conservation Easement Deed by this reference. The Protected Property is approximately 112.93 acres in size and is predominately open farmland.
- B. The Protected Property is of significant agricultural value to Grantor, the people of Skagit County and the people of the State of Washington (collectively, "Conservation Values"). The Conservation Values include protection of agricultural productivity and protection of prime and important agricultural soils.

SKAGIT COUNTY WASHINGTON

STATE EXCISE TAX

201223101

AUG 03 2012

Amount Paid \$ 4010.00

By MG Deputy

- C. The Protected Property is zoned Agricultural Natural Resource Land under the Skagit County Zoning Ordinance. Skagit County Zoning Ordinance 14.16.400 states that the goal of the Agricultural Natural Resource Land zone is to "provide land for continued farming activities, conserve agricultural land, and reaffirm Agricultural use, activities and operations as the primary use of the district."
- D. The Protected Property is primarily open farmland that has been classified as "prime farmland" of local importance by the Natural Resources Conservation Service, U.S. Department of Agriculture, because they are:

According to the Skagit County Soil Survey, there are 3 soil types located in this parcel. They consist of Skagit silt loam, Sumas silt loam and Field silt loam.

**Skagit silt loam:** The Skagit component makes up 100 percent of the map unit. Slopes are 0 to 1 percent. This component is on flood plains, delta plains, deltas. The parent material consists of alluvium and volcanic ash. Depth to a root restrictive layer is greater than 60 inches. The natural drainage class is poorly drained. Water movement in the most restrictive layer is moderately high. Available water to a depth of 60 inches is very high. Shrink-swell potential is low. This soil is not flooded. It is not ponded. A seasonal zone of water saturation is at 15 inches during January, February, March, November, and December. Organic matter content in the surface horizon is about 4 percent.

Non-irrigated land capability classification is 5w. This soil meets hydric criteria.

**Sumas silt loam:** The Sumas component makes up 100 percent of the map unit. Slopes are 0 to 2 percent. This component is on deltas, flood plains, delta plains. The parent material consists of alluvium. Depth to a root restrictive layer, strongly contrasting textural stratification, is 12 to 20 inches. The natural drainage class is poorly drained. Water movement in the most restrictive layer is moderately high. Available water to a depth of 60 inches is moderate. Shrink-swell potential is low. This soil is not flooded. It is not ponded. A seasonal zone of water saturation is at 24 inches during January, February, March, April, November, December. Organic matter content in the surface horizon is about 6 percent. Nonirrigated land capability classification is 4w. Irrigated land capability classification is 4w. This soil meets hydric criteria.

**Field silt loam:** The Field component makes up 100 percent of the map unit. Slopes are 0 to 3 percent. This component is on flood plains, river valleys. The parent material consists of alluvium and volcanic ash. Depth to a root restrictive layer is greater than 60 inches. The natural drainage class is moderately well drained. Water movement in the most restrictive layer is moderately high. Available water to a depth of 60 inches is high. Shrink-swell potential is low. This soil is not flooded. It is not ponded. A seasonal zone of water saturation is at 42 inches during January, February, March, April, May, November, December. Organic matter content in the surface horizon is about 8 percent. Nonirrigated land capability classification is 2w. This soil does not meet hydric criteria.

- E. The specific Conservation Values, property characteristics, percentage of impervious surfaces, and any Building Envelope (s)/Farmstead Complex(es) of the Protected Property are further documented in an inventory of relevant features of the Protected Property; attached hereto as Exhibit B and incorporated into this Conservation Easement Deed by this reference ("Baseline Documentation"). The Grantor and Grantee agree that the natural characteristics, ecological



features, and physical and man-made conditions of the Protected Property on the date of this Conservation Easement Deed including reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this grant is intended to serve as an objective information baseline for monitoring compliance with the terms of this Conservation Easement Deed.

- F. Grantor, as owner of the Protected Property, has the right to protect and preserve the Conservation Values of the Protected Property, and desires to transfer such rights to the Grantee in perpetuity.
- G. The purpose of the Farm and Ranch Lands Protection Program's (16 U.S.C. 3838h and 3838i) is to purchase conservation easements to protect prime, unique, and other productive soils from conversion to nonagricultural uses. Grantor and Grantee acknowledge that, under the authority of the Farm and Ranch Lands Protection Program, the Natural Resources Conservation Service acting on behalf of the Commodity Credit Corporation has contributed \$112,500 to purchase this Conservation Easement and thus entitles the United States to the rights identified herein.
- H. The foregoing recitals are incorporated into this Conservation Easement Deed by this reference.

## II. CONVEYANCE AND CONSIDERATION

- A. For the reasons stated above, in consideration of the mutual covenants, terms, conditions, and restrictions contained in this Conservation Easement Deed, and in consideration of payment of \$225,000 by Grantee to Grantor, the receipt of which is acknowledged, Grantor hereby grants, conveys and warrants to Grantee a Conservation Easement in perpetuity over the Protected Property, consisting of certain rights in the Protected Property, as defined in this Conservation Easement Deed, subject only to the restrictions contained in this Conservation Easement Deed.
- B. This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130, subject only to the mutual covenants, terms, conditions and restrictions set forth in this Conservation Easement Deed and to title matters of record as of the date of this Conservation Easement Deed.
- C. Grantor expressly intends that this Conservation Easement run with the land and that this Conservation Easement shall be binding upon Grantor's personal representatives, heirs, successors, and assigns in perpetuity.

## III. PURPOSE

It is the purpose of this Conservation Easement to assure that the Protected Property will be retained forever for agricultural productivity and use, to ensure no net loss of agricultural lands and to protect prime and important agricultural soils, and to prevent any use of, or activity on, the Protected Property that will significantly impair or interfere with its agricultural values, character, use or utility. To the extent that the preservation and protection of the additional Conservation Values of the Protected Property referenced in the above Recitals is consistent with the primary purpose of protecting the agricultural soils, agricultural viability and agricultural productivity of the Protected Property in perpetuity, it is also the purpose of this Conservation Easement to assure protection of Critical Areas, wetlands and Fish and



Wildlife Protection Areas on the Protected Property, and to prevent any use of, or activity on, the Protected Property that will significantly impair or interfere with these natural values. Grantor intends that this Conservation Easement will confine the use of, or activity on, the Protected Property to such uses and activities that are consistent with the purpose described above (the "Purpose").

#### IV. RIGHTS CONVEYED TO GRANTEE

To accomplish the Purpose of this Conservation Easement, the following rights are conveyed to Grantee by this Conservation Easement Deed.

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

#### V. PERMITTED USES AND ACTIVITIES

- A. **General:** Grantor reserves for themselves and their personal representatives, heirs, successors and assigns, all rights accruing from ownership of the Protected Property, including the right to engage in, or permit or invite others to engage in, any use of, or activity on, the Protected Property that is not inconsistent with the Purpose of the Conservation Easement and that is not specifically prohibited or otherwise limited by this Conservation Easement. Without limiting the





generality of this subsection, Grantor specifically reserves for themselves and their personal representatives, heirs, successors, and assigns, the following uses and activities, which shall be limited in the manner provided below.

**B. Retained Uses:**

1. **Agricultural:** Grantor retains the right to use the Protected Property for agricultural production, or to permit others to use the Protected Property for agricultural production, in accordance with applicable law. As used herein, "agricultural production" shall mean the production, processing, storage or retail marketing of crops, livestock, and livestock products. For purposes hereof, crops, livestock and livestock products include, but are not limited to, crops commonly found in the community surrounding the Protected Property; field crops; fruits; vegetables; horticultural specialties; livestock and livestock products; timber, wood and other wood products derived from trees; and aquatic plants and animals and their byproducts.
2. **Recreational:** Grantor retains the right to use the Protected Property for otherwise lawful recreational uses, including, but not limited to, hunting and fishing to the extent that it does not interfere with the general purpose of this easement to protect the conservation values of the property. Undeveloped recreational uses, and the leasing of such uses for economic gain, may be permitted insofar as they are consistent with the Purpose and terms of this Conservation Easement. This section shall be consistent with Section VI..

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

1. **Fences:** Existing fences may be repaired and replaced, and new fences may be built on the Protected Property, for purposes of reasonable and customary management and protection of crops, livestock and wildlife.
2. **Ancillary Improvements:** Other improvements, including, but not limited to, small-scale facilities, including solar and wind generators, for the generation and transmission of electrical power to support the agricultural uses on the Protected Property, may be built on the Protected Property, within the Building Envelope/Farmstead Complex, only with the permission of Grantee as provided for in Section VIII and subject to the impervious surface limitation in Section VI.D.
3. **Utility Services and Septic Systems:** Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services to the improvements permitted under this Conservation Easement Deed may be installed, maintained, repaired, removed, relocated and replaced, and Grantor may grant easements over and under the Protected Property for such purposes. Septic or other underground sanitary systems serving the improvements permitted under this Conservation Easement Deed may be installed, maintained, repaired or improved.



4. **Existing Agricultural Structures and Improvements (site specific):** Agricultural structures and improvements existing as of the date of this Conservation Easement Deed may be repaired, reasonably enlarged and replaced at their current locations, which are shown on Exhibit B. All agricultural structures and improvements are subject to the impervious surface limitation in Section VI.D.
5. **New Agricultural Structure:** Agricultural structure, which will be an integral part of the farm operation, may be constructed within the established Building Envelope(s)/Farmstead Complex(es) and are subject to the impervious surface limitations in Section VI D and as provided for in Section VIII of this easement.
6. **Forest Management Plan** Farm Plan not applicable.
- D. **Roads and Paving.** Grantor may maintain, renovate, expand or replace roads or construct new roads that may be reasonably necessary and incidental to carrying out permitted uses and activities on the Protected Property; provided that any roads paved or otherwise covered with concrete, asphalt, or any other impervious paving material shall be subject to the surface coverage limitations set forth in Subsection VI.D.
- E. **Composting, Use and Storage of Agricultural Wastes or other Waste Materials:** Grantor may compost, use and store agricultural waste and by products on the Protected Property, consistent with the Purpose of this Conservation Easement, provided that any such wastes are stored temporarily in appropriate containment for removal at reasonable intervals and in compliance with applicable federal, state, and local laws.
- F. **Drainage Structures:** Grantor may construct and maintain drainage structures, including ditches, tubes, pipes, pumps, gates or other facilities and appurtenances for enhancement of drainage systems in support of uses and activities permitted under this Conservation Easement; provided that Grantor does not materially impair the natural course of the surface water drainage or runoff flowing over the Protected Property and that existing natural water courses are preserved in their natural state.
- G. **Wetland or Pond Restoration and Creation.** Ponds must support agricultural operations such as irrigation, livestock water supplies, or fire control. Wetlands must be used to treat agricultural waste or support critical habitat needs for wildlife species. The size of the ponds and wetlands must be supported by appropriate documentation in the NRCS Conservation Plan case file in accordance to NRCS standards and specifications and are subject to all local and state controls and regulations.
- H. **Boundary Line Adjustment.** Boundary line adjustments are permitted in the case of technical errors made in the survey or legal description. In such cases boundary line adjustments cannot exceed two (2) acres for the entire Protected Property.
- I. **Creation of Mortgage Liens:** Grantor may create consensual liens, whether by mortgage, deed of trust, or otherwise, for the purpose of indebtedness of Grantor, so long as such liens remain subordinate to the Conservation Easement.
- J. **Emergencies:** Grantor may undertake other activities necessary to protect public health or safety on the Protected Property, or that are actively required by and subject to compulsion of any



governmental agency with authority to require such activity; provided that any such activity shall be conducted so that interference with the Conservation Values of the Protected Property is avoided, or, if avoidance is not possible, minimized to the extent possible.

## VI. PROHIBITED USES AND ACTIVITIES

- A. **General:** Any use of, or activity on, the Protected Property inconsistent with the Purpose of this 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 this subsection, the following uses of, or activities on, the Protected Property, though not an exhaustive list, are inconsistent with the Purpose of this Conservation Easement and shall be prohibited; except as permitted in Section V.
- B. **Subdivision and Development Rights:** The legal or *de facto* division, subdivision, platting, partitioning or planned unit development of the Protected Property is prohibited. This restriction does not prohibit boundary line adjustments with adjoining agricultural land, provided that such boundary line adjustments do not result in any loss of acreage to the Protected Property, that no new parcel may be created by such boundary line adjustments and that it meets the requirements of subsection VF. Grantor shall not exercise its development rights in the Protected Property, transfer such development rights to any other portion of the Protected Property as it is now or hereafter may be bounded or described or to any other property adjacent to the Protected Property or otherwise, nor use such development rights or the area of the Protected Property for the purpose of calculating permissible lot yield of the Protected Property or any other property. Any such boundary line adjustment shall include this subsection (VIB.) in the new Deed.
- C. **Construction:** The placement or construction of any buildings, structures, or other improvements of any kind is prohibited, except as permitted in Subsection V.C.
- D. **Impervious Surface:** The total area covered by structures of any kind and impervious surfaces, such as rooftops, asphalt, or concrete shall be limited to no more than two percent (2%) of the area of the Protected Property, inclusive of any and all impervious surfaces prior to the established Conservation Easement and the addition of any and all future creations of impervious surfaces on any portion of the original Protected Property. The total area covered by gravel shall be subject to this 2% limitation. Grantor shall obtain prior approval from Grantee as provided in Section VIII to increase the impervious surfaces at anytime. Only upon an agreeable amendment (see Section XIV) may the 2% limitation be increased, provided that the total amount of gravel and other impervious surfaces shall never exceed five percent (5%) of the total area of the Protected Property.
- E. **Recreation:** The following forms of recreation are prohibited on the Protected Property: golf courses; commercial use of motorized or mechanized recreational vehicles such as motorcycles, snowmobiles, and dune buggies; commercial overnight camping; athletic fields; use of the property for any commercial public recreation; and other developed recreational uses of the property which require special buildings, structures, or facilities.
- F. **Erosion or Water Pollution:** Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters is prohibited, including the use of manure lagoons or disposal of wastewater in manners inconsistent with the



terms of this Conservation Easement Deed.

- G. Waste Disposal:** Except as expressly permitted in Section V, the disposal or storage of rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or hazardous waste or material on the Protected Property is prohibited.
- H. Commercial Signs:** The placement of commercial signs, billboards, or other advertising material on the Protected Property is prohibited; except in connection with the on-site sale of agricultural products, sale or lease of the Protected Property, or to state the conditions of access to the Protected Property.
- I. Mining:** The exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Protected Property is prohibited. The extraction of rock, dirt, sand, and gravel shall be permitted only if removal of such material is necessary to carry out other permitted activities on the Protected Property, and is limited to no more than one acre total of the Protected Property, and will not interfere with the Conservation Values of the Protected Property. Grantor shall use all practical means to mitigate any adverse effect on the Conservation Values of the Protected Property in carrying out any permitted extraction activities, and upon completion of said permitted extractive activities, Grantor shall promptly restore any portion of the Protected Property affected thereby as nearly as possible to its condition existing prior to commencement thereof.
- J. Motorized vehicles:** Grantor may not use motor vehicles on the Protected Property or grant permission for such use except as necessary in the accomplishment of the agricultural, forestry, habitat management, law enforcement and public safety, or other permitted uses of the Protected Property, provided that no use of motorized vehicles may create impacts that are detrimental to the productivity of the soils on the Protected Property and the purposes of this Conservation Easement; however, notwithstanding the foregoing, use of snowmobiles on snow is allowed on the Protected Property.
- K. Alteration of Wetlands and Watercourses:** The draining, filling, dredging, ditching or diking of wetland areas or any other action that would reduce the wetland area is prohibited, except as necessary to maintain existing drains consistent with the Purpose of this Conservation Easement and permitted by applicable law.
- L. Water Rights:** Grantor shall not transfer, encumber, sell, lease or otherwise separate any water rights historically used on or otherwise appurtenant to the Protected Property or change the historic use of such water rights without the permission of Grantee as provided for in Section VIII. Grantor shall not abandon or allow the abandonment of, by action or inaction, any of the water rights without the permission of Grantee.
- M. Industrial or Commercial Uses:** The establishment of any commercial or industrial facilities (other than those necessary in the operation or uses of the Protected Property expressly permitted by this Conservation Easement Deed) including, but not limited to, commercial feed lot, any retail sales or service business, restaurant, night club, campground, trailer park, motel, hotel, commercial recreation facility, gas station, retail outlet, or facility for the manufacture or distribution of any product (other than products to be grown or produced on the Protected Property in connection with the purposes expressly permitted in this Conservation Easement Deed)."



**VII. CONSERVATION PLAN**  
*required only if there are highly erodible soils*

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

Conservation Plan not required.

**VIII. NOTICE**

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

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

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

B. **Approval:** Where approval by one of the parties to this Conservation Easement Deed is required, such approval shall be granted or denied in writing within thirty (30) days of receipt of a written notice of the proposed use or activity, and such approval shall not be unreasonably withheld. Grantee's approval may include reasonable conditions which, if satisfied, would be the minimum necessary to assure that the proposed use or activity would not be inconsistent with the Purpose of this Conservation Easement.

C. **Optional Consultation:** If Grantor is unsure whether a proposed use or activity is prohibited by this Conservation Easement Deed, Grantor may consult Grantee by providing Grantee a written notice describing the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment



as to the consistency with the Purpose of this Conservation Easement and to provide comments thereon to Grantor for the purposes of this Conservation Easement only. This Subsection does not itself impose a requirement of prior approval of the activity described in any such notice; however, if Grantee does not provide written objections within thirty (30) days after Grantee's receipt of Grantor's notice, Grantee shall be deemed to have approved the proposed use or activity.

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

To Grantor: Ward L. Weidenbach and Ward Family Limited Partnership  
13821 McLean Road  
Mount Vernon, WA 98273

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

To United States State Conservationist  
USDA - Natural Resources Conservation Service  
316 W. Boon Ave., Suite 450  
Spokane, WA 99201-2248

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

## IX. DISPUTE RESOLUTION: GRANTEE'S REMEDIES

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



## X. ENFORCEMENT; GRANTEE'S REMEDIES

- A. **Notice of Violation, Corrective Action:** If Grantee determines that Grantor is in violation of the terms of this Conservation Easement Deed or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose of this Conservation Easement, to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee.
- B. **Grantor's Failure to Respond:** Grantee may bring an action as provided in Subsection X.C if Grantor:
1. Fails to cure the violation within thirty (30) days after receipt of a notice of violation from Grantee; or
  2. Under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.
- C. **Grantee's Action:**
1. **Injunctive Relief:** Grantee may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Conservation Easement Deed:
    - a. To enjoin the violation, ex parte as necessary, by temporary or permanent injunction; and
    - b. To require the restoration of the Protected Property to the condition that existed prior to any such injury.
  2. **Damages:** Grantee shall be entitled to recover damages for violation of the terms of this Conservation Easement Deed or injury to any Conservation Values protected by this Conservation Easement, including, without limitation, damages for the loss of Conservation Values. Without limiting Grantor's liability in any way, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking corrective or restoration action on the Protected Property.
- D. **Emergency Enforcement:** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire.
- E. **Scope of Relief:** Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement Deed. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement Deed are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies.



Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

- F. Costs of Enforcement:** In the event Grantee must enforce the terms of this Conservation Easement Deed, the costs of restoration necessitated by acts or omissions of Grantor, its agents, employees, contractors, family members, invitees or licensees in violation of the terms of this Conservation Easement Deed and Grantee's reasonable enforcement expenses, including attorneys' and consultants' fees, shall be borne by Grantor or those of its personal representatives, heirs, successors, or assigns, against whom a judgment is entered. In the event that Grantee secures redress for a Conservation Easement violation without initiating or completing a judicial proceeding, the costs of such restoration and Grantee's reasonable expenses shall be borne by Grantor and those of its personal representatives, heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized use or activity.
- G. Grantee's Discretion:** Grantee acknowledges its commitment to protect the Purpose of the Conservation Easement. Enforcement of the terms of the Conservation Easement Deed shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement Deed in the event of any breach of any terms of this Conservation Easement Deed by Grantor, their agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Grantee of such term or any of Local Grantee's rights under this Conservation Easement Deed. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver of such term or any of Grantee's rights under this Conservation Easement Deed. No grant by Grantee in its governmental or regulatory capacity of any building permit, grading permit, land use approval or other development approval shall be deemed or construed to be a waiver of any term or any of Grantee's rights under this Conservation Easement Deed.
- H. Waiver of Certain Defenses:** Grantor acknowledges that it has carefully reviewed this Conservation Easement Deed and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Conservation Easement Deed, Grantor hereby waives any claim or defense it may have against Grantee or its successors or assigns under or pertaining to this Conservation Easement Deed based upon waiver, laches, estoppel, or prescription; except to the extent the defense is based upon an approval or deemed approval by Grantee pursuant to Section VIII of this Conservation Easement Deed. Except for the foregoing, Grantor specifically retains any and all rights it has under the law as owner of the Protected Property, including but not limited to the right to make claims against Grantee for any breach by Grantee of the terms of this Conservation Easement Deed.
- I. Acts Beyond Grantor's Control:** Nothing contained in this Conservation Easement Deed shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including, without limitation, natural changes, fire, flood, storm, earth movement or climate change, or from acts of trespassers, that Grantor could not reasonably have anticipated or prevented or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. In the event the terms of this Conservation Easement Deed are violated by acts of trespassers that Grantors could not reasonably have anticipated or prevented, Grantor agrees, at Grantee's option, to join in any suit, to assign its right





of action to Grantee, or to appoint Grantee its attorney in fact, for the purpose of pursuing enforcement action against the responsible parties.

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

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

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

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

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



1. Grantor and the Protected Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Protected Property and its use;
  2. There has been no release, dumping, burying, abandonment or migration from off-site on the Protected Property of any substances, materials, or wastes that are hazardous, toxic, dangerous, or harmful or are designated as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful in violation of any federal, state or local law, regulation, statute, or ordinance;
  3. Neither Grantor nor Grantor's predecessors in interest have disposed of any hazardous substances off-site, nor have they disposed of substances at sites designated or proposed to be designated as Federal Superfund (42 U.S.C. § 9601 et seq.) or state Model Toxics Control Act (RCW 70.105D.010 et seq.) ("MTCA") sites; and
  4. There is no pending or threatened litigation affecting the Protected Property or any portion of the Protected Property that will materially impair the Conservation Values of any portion of the Protected Property. No civil or criminal proceedings have been instigated or are pending against Grantor or its predecessors by government agencies or third parties arising out of alleged violations of environmental laws, and Grantor has not received any notices of violation, penalties, claims, demand letters, or other notifications relating to a breach of environmental laws.
- D. **Remediation:** If, at any time, there occurs, or has occurred, a release in, on, or about the Protected Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic or dangerous to the air, water or soil, or in any way harmful or threatening to human health or environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee should be responsible for remediation.
- E. **Control:** Nothing in this Conservation Easement Deed shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of Grantor's activities on the Protected Property, or otherwise to become an operation with respect to the Protected Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"), and MTCA.
- F. **Indemnification:** Grantor hereby agrees to release and hold harmless, indemnify, and defend Grantee and their members, directors, officers, employees, agents, and contractors and the successors, and assigns of each of them from all costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with Grantor's negligent acts or omissions or breach of this Conservation Easement, or violations of any Federal, State, or local laws, including Environmental Laws.

Grantor shall indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including



without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Property, which may arise from, but are not limited to, Grantor's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws.

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

- A. **Extinguishment:** If circumstances arise in the future that render the Purpose of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction and only upon a finding and declaration to that effect and with the permission of the United States. The amount of the proceeds to which Grantee and the United States shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at the time, in accordance with Subsection XIII.B, Valuation, of this Conservation Easement Deed.

The United States shall receive, at the time the Conservation Easement is extinguished or terminated, its share of the Conservation Easement based on the appraised fair market value of the Conservation Easement at the time the Conservation Easement is extinguished or terminated. The United States' share shall be proportionate to its percentage of its original investment.

- B. **Valuation:** In the event of an extinguishment pursuant to Subsection A, or the taking of all or part of the Protected Property by the exercise of the power of eminent domain, then Grantee and the United States, through the Department of Agriculture, are entitled to their proportional share each of gross sale proceeds or condemnation award representing an amount equal to the ratio of the appraised value of this Conservation Easement to the unrestricted fair market value of the Protected Property as these values are determined on the date of this Conservation Easement Deed. The proportional shares of the Grantee and the United States, through the Department of Agriculture, are 50% and 50% respectively, representing the proportion each party contributed to the purchase price of the Conservation Easement.

- C. **Condemnation:** If all or any of the Protected Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to extinguish this Conservation Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interest in the Protected Property subject to the taking or in lieu purchase and all direct or incidental damages resulting from the taking or in lieu purchase. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Except as provided by applicable law, Grantor and Grantee agree that Grantee's share of the balance of the amount recovered shall be determined by the method described in Subsection B, with the remainder due to the Grantor. Due to its interest in this Conservation Easement, the United States must consent prior to the commencement of any condemnation action.



Grantor, upon receipt of notification of any pending condemnation action brought by any government entity affecting and/or relating to the Property, shall notify the Grantee and the United States, in writing, within fifteen (15) days of receipt of said notification.

The United States shall receive, at the time the any portion of this Conservation Easement is condemned, its share of the Conservation Easement based on the appraised fair market value of the Conservation Easement at the time the Conservation Easement is extinguished or terminated. The United States' share shall be proportionate to its percentage of its original investment.

**D. Application of Proceeds:** Grantee shall return any proceeds received under the circumstances described in this Section XIII to Skagit County's Conservation Futures Fund (or successor fund) for use in purchasing conservation Easements or development rights on other eligible sites under the program (or successor program).

**E. Subsequent Transfers:** Grantor agrees to:

1. Incorporate the terms of this Conservation Easement Deed by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest; and
2. Describe this Conservation Easement Deed in and append it to any executory contract for the transfer of any interest in the Protected Property; and
3. Obtain a certificate from the purchaser, leaseholder or other party gaining an interest in all or part of the Protected Property and any financier, acknowledging their awareness of this Conservation Easement and their intent to comply with it. Such certificate shall be appended to and recorded with any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Protected Property; and
4. Give written notice to Grantee of the transfer of any interest in all or a portion of the Protected Property no later than forty-five (45) days prior to the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

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

**F. Right of Enforcement:** Under this Conservation Easement Deed, the United States is granted the right of enforcement in order to protect the public investment. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if Grantee ~~Skagit County~~, or its successors or assigns, fails to enforce any of the terms of this Conservation Easement Deed, as determined in the sole discretion of the Secretary.

In the event NRCS determines it must exercise its Right of Enforcement, NRCS will provide written notice, by certified mail, return receipt requested, to Grantee or Grantee's successors and/or assigns last known address. The notice will set forth the nature of the noncompliance by the Grantee and a 60-day period to cure. If Grantee fails to cure within the 60-day period, NRCS will take the action specified under the notice. NRCS reserves the right to decline to provide a



period to cure if NRCS determines that imminent harm may result to the conservation values or other interest in the land it seeks to protect.

**G. Right of Entry:** The United States, acting by and through the Natural Resources Conservation Service its successors or assigns, shall have the right to enter the Protected Property after notifying Grantor for the purposes of ensuring that the Conservation Plan is being implemented appropriately. All notices to the Grantor under this Section may be made either in writing or verbally, at the discretion of the party providing the notice.

#### **XIV. AMENDMENT**

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

#### **XV. ASSIGNMENT**

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

#### **XVI. RECORDING**

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

## XVII. SUBORDINATION

1. At the time of conveyance of this Easement, the Protected Property is subject to that certain mortgage or deed of trust dated June 1, 2010, which was recorded under Auditor's File No. 201006020077 recorded on June 2, 2010. The beneficiary of the Mortgage or Deed of Trust has agreed by separate instrument at Exhibit C hereto, which will be recorded concurrently with this Easement, to subordinate its rights in the Protected Property to this Easement to the extent necessary to permit Grantee to enforce the Purpose of the Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the beneficiary under the Mortgage or Deed of Trust.
2. At the time of conveyance of this Easement, the Protected Property is subject to that certain Right of First Refusal and the terms and conditions set forth within the memorandum, which was recorded April 13, 2010 under Auditor's File No 201004130036. Exhibit D contains an agreement to subordinate the beneficiary's Right of First Refusal to the extent necessary to permit Grantee to enforce the Purpose of the Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the beneficiary under the Right of Refusal. If the Beneficiary does not execute the agreement contained within Exhibit D, this easement and contract to purchase development rights is not effective, and Grantee is not obligated to make any payment under this Easement.

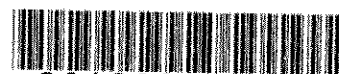
## XVIII. GENERAL PROVISIONS

- A. **Controlling Law:** The interpretation and performance of this Conservation Easement Deed shall be governed by the laws of the State of Washington, except with respect to the requirements of the United States Farm and Ranch Lands Protection Program which shall be governed by the laws of the United States.
- B. **Liberal Construction:** Any general rule of construction to the contrary notwithstanding, this Conservation Easement Deed shall be liberally construed in favor of the grant to affect the Purpose 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 Purpose of this Conservation Easement Deed that would render the provision valid shall be favored over any interpretation that would render it invalid.
- C. **Severability:** If any provision of this Conservation Easement Deed, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation Easement Deed, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.
- D. **Entire Agreement:** This Conservation Easement Deed sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Protected Property, all of which are merged into this Conservation Easement Deed. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section XIV.



- E. No Forfeiture:** Nothing contained in this Conservation Easement Deed will result in a forfeiture or reversion of Grantor's title in any respect.
- F. "Grantor" - "Grantee":** The terms "Grantor" and "Grantee," wherever used in this Conservation Easement Deed, and any pronouns used in their place, shall be held to mean and include, respectively the above-named Grantor, and his personal representatives, heirs, successors, and assigns, and the above-named Grantee, its, successors and assigns.
- G. Successors and Assigns.** The covenants, terms, conditions, and restrictions of this Conservation Easement Deed shall be binding upon, and inure to the benefit of, the parties to this Conservation Easement Deed and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.
- H. Termination of Rights and Obligations:** A party's rights and obligations under this Conservation Easement Deed terminate upon transfer of the party's interest in the Conservation Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- I. Joint and Several:** The obligations imposed by this Conservation Easement Deed upon Grantor shall be joint and several.
- J. Counterparts:** The parties may execute this instrument in two or more counterparts, which shall be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- K. Effective Date:** The effective date of this Conservation Easement Deed is the date of the last signature thereto.
- L. Environmental Warranty:** Grantor warrants that he is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that he has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law.

Moreover, Grantor hereby promises to hold harmless and indemnify the Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by Grantee, or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee at the Protected Property; provided,



however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee..

"Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

#### **XIX. CERTIFICATION and DEBARMENT**

The Grantor certifies by signing this Agreement that the Grantor is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from the participating in this contract by any federal department or agency. Further, the Grantor agrees not to enter into any arrangements or contracts related to this grant with any party that is on the "General Service Administration List of parties Excluded from Federal Procurement or Non-procurement Programs" at <http://epls.arnet.gov/>.





XX. SCHEDULE OF EXHIBITS

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

TO HAVE AND TO HOLD unto Skagit County, and the United States of America, their successors, and assigns forever.

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 30<sup>th</sup> day of

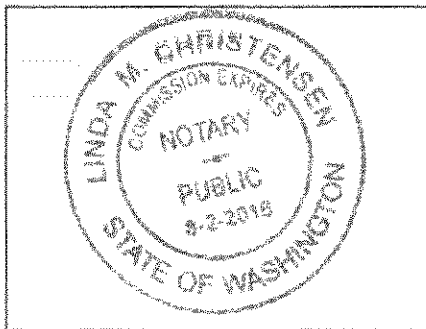
July 2012

Ward Weidenbach  
Ward Weidenbach

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAGIT )

I certify that I know or have satisfactory evidence that Ward L. Weidenbach is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he signed this instrument as his free act and deed for the uses and purposes set forth in the instrument.

Dated: July 30, 2012



(Use this space for notarial stamp/seal)

Linda M. Christensen  
Notary Public  
Print Name Linda M. Christensen  
My commission expires 8-2-2016



IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 30<sup>th</sup> day of July 2012

Ward L. Weidenbach  
Ward L. Weidenbach\*for Weidenbach Family Limited Partnership,\*\*

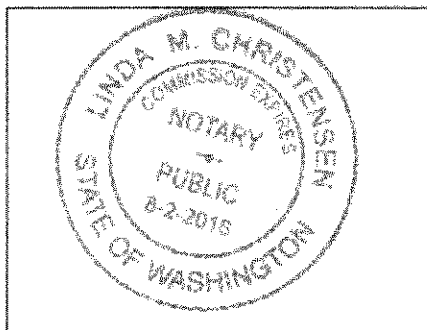
\* AS GENERAL PARTNER

\*\*a Washington Limited Partnership

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAGIT )

I certify that I know, or have satisfactory evidence that Ward L. Weidenbach\* is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he signed this instrument as his free act and deed for the uses and purposes set forth in the instrument.

Dated: July 30, 2012



(Use this space for notarial stamp/seal)

Linda M. Christensen  
Notary Public

Print Name Linda M. Christensen

My commission expires 8-2-2016

\*to me known to be the individual described in and who executed the forgoing instrument, as General Partner of the Weidenbach Family Limited Partnership, a Washington Limited Partnership and acknowledged to me that he signed and sealed this said instrument as his free and voluntary act and deed for the use and purposes therein mentioned, and on oath stated he is authorized to execute the said instrument.



The BOARD OF COUNTY COMMISSIONERS does hereby accept the above Deed of Conservation Easement.

Dated: July 30, 2012

SKAGIT COUNTY, WASHINGTON

Approved as to Form:

Ryan Waller  
Civil Attorney

Kenneth A. Dahlstedt  
Kenneth D. Dahlstedt, Chairman

Sharon D. Dillon  
Sharon D. Dillon, Commissioner

Finance Director:

Ron Wesen

ABSENT

Ron Wesen, Commissioner

Risk Management:

Sharon D. Dillon

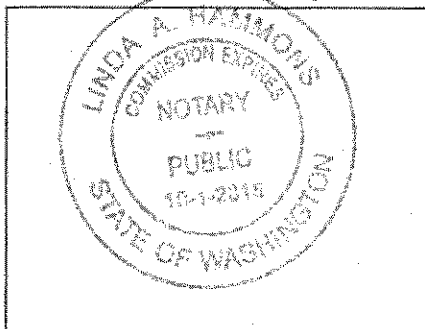
County Administrator:

Sharon D. Dillon

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAGIT )

I certify that I know or have satisfactory evidence that Kenneth A. Dahlstedt, Sharon D. Dillon and Ron Wesen are the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the County Commissioners of Skagit County, Washington to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: July 30, 2012



(Use this space for notarial stamp/seal)

Linda Hammons  
Notary Public  
Print Name Linda Hammons  
My commission expires 10-1-2015



201208030148  
Skagit County Auditor

**ACCEPTANCE OF PROPERTY INTEREST BY THE NATURAL RESOURCES  
CONSERVATION SERVICE ON BEHALF OF THE UNITED STATES OF AMERICA**

The Natural Resources Conservation Service, an agency of the United States Government, hereby accepts and approves the foregoing Conservation Easement Deed (on property of Ward L. Weidenbach and Weidenbach Family Limited Partnership), and the rights conveyed therein, on behalf of the United States of America.

Roylene Rides At The Door

Authorized Signatory for the NRCS

State of WASHINGTON

County of SPOKANE

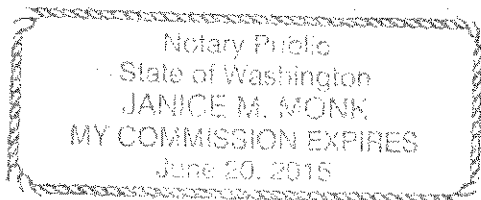
On this 31st day of JULY, 2012, before me, the undersigned, a Notary Public in and for the State, personally appeared ROYLENE RIDES AT THE DOOR known or proved to me to be the person whose signature appears above, and who being duly sworn by me, did say that she/he is the State Conservationist of the Natural Resources Conservation Service, United States Department of Agriculture, is authorized to sign on behalf of the United States of America, and acknowledged and accepted the rights conveyed by the within Conservation Easement Deed.

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

Janice M. Monk  
Notary Public for the State of WASHINGTON

Residing at SPOKANE, WASHINGTON

My Commissions Expires JUNE 20, 2015



## EXHIBIT A

### Legal Description

#### Schedule "A-1"

#### DESCRIPTION:

##### PARCEL "A":

The North  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$  in Section 17, Township 34 North, Range 3 East, W.M.,

EXCEPT road and ditch rights-of-way.

Situate in the County of Skagit, State of Washington.

##### PARCEL "B":

The Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 18, Township 34 North, Range 3 East, W.M., lying Southerly and Easterly of McCormick Slough,

EXCEPT the County right-of-way, commonly known as LaConner-Whitney Road, along the West line thereof:

AND EXCEPT that portion of the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of said Section 18, lying within the following described tract:

Beginning at a point on the East line of the County road running along the West line of said subdivision which is 310 feet South of the North line thereof;  
thence East 170 feet;  
thence South 148 feet;  
thence West 170 feet to the East line of the County road;  
thence North along said road 148 feet to the point of beginning.

AND ALSO EXCEPT that portion of the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of said Section 18, lying within the following described tract:

Beginning at a point on the East line of the County road running along the West line of said subdivision which is 458 feet South of the North line thereof;  
thence South, along said East line of the County road, a distance of 328 feet;  
thence East, parallel to the North line of said subdivision, a distance of 326 feet;  
thence North, parallel to the West line of said subdivision, a distance of 178 feet;  
thence West, parallel to the North line of said subdivision, a distance of 186 feet;  
thence North, parallel to the West line of said subdivision, a distance of 150 feet;  
thence West, parallel to the North line of said subdivision, a distance of 140 feet to the point of beginning.

Situate in the County of Skagit, State of Washington.

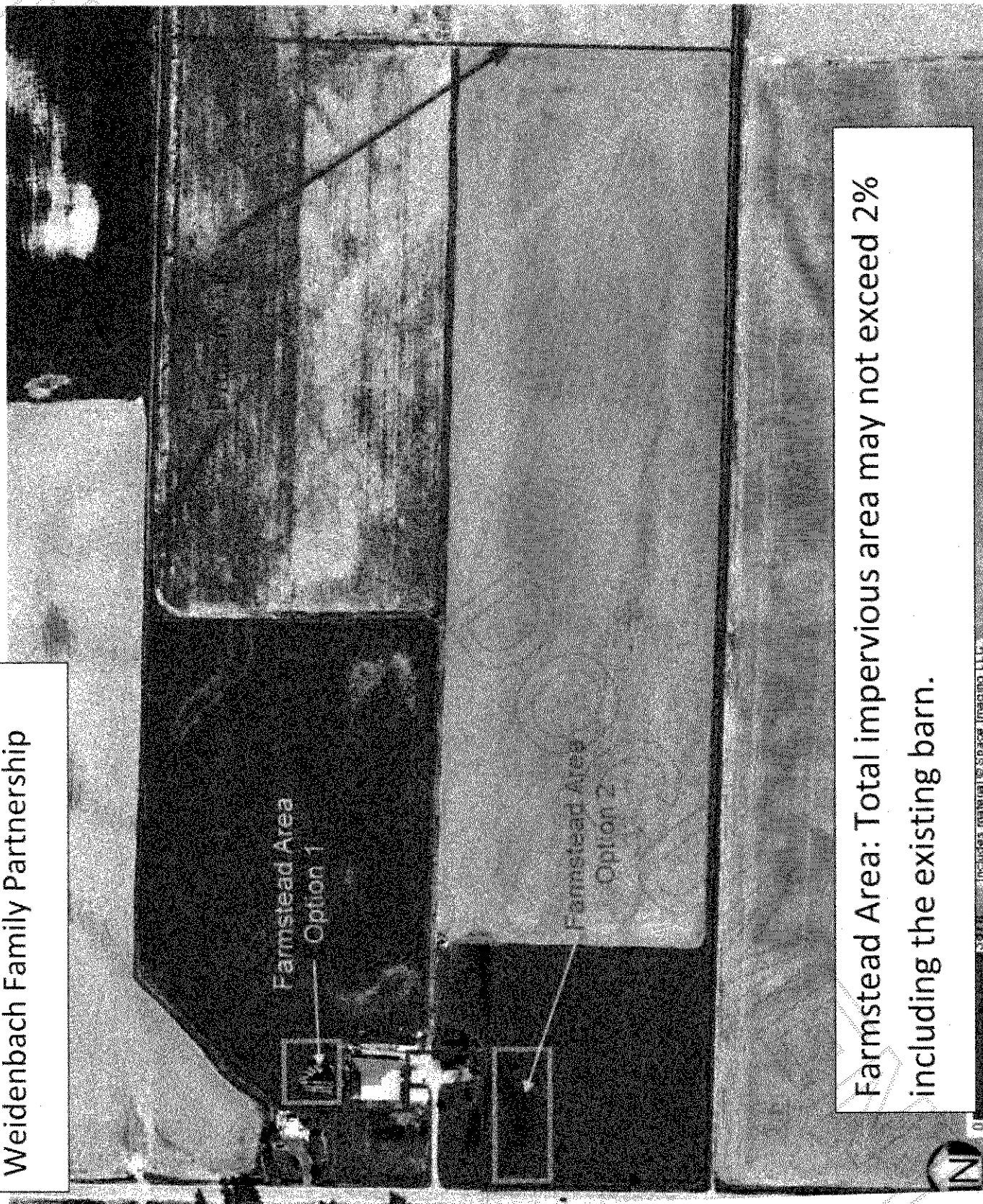


**EXHIBIT B**

**Site Plan & Baseline Documentation**



# Weidenbach Family Partnership

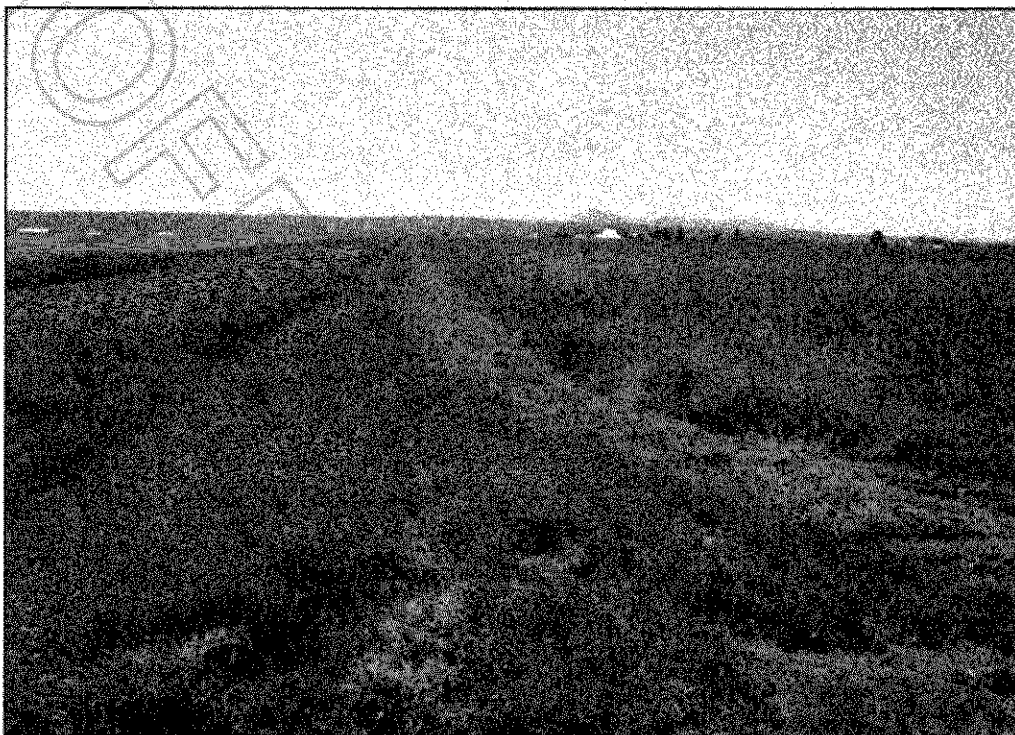








## SUBJECT PHOTOGRAPHS

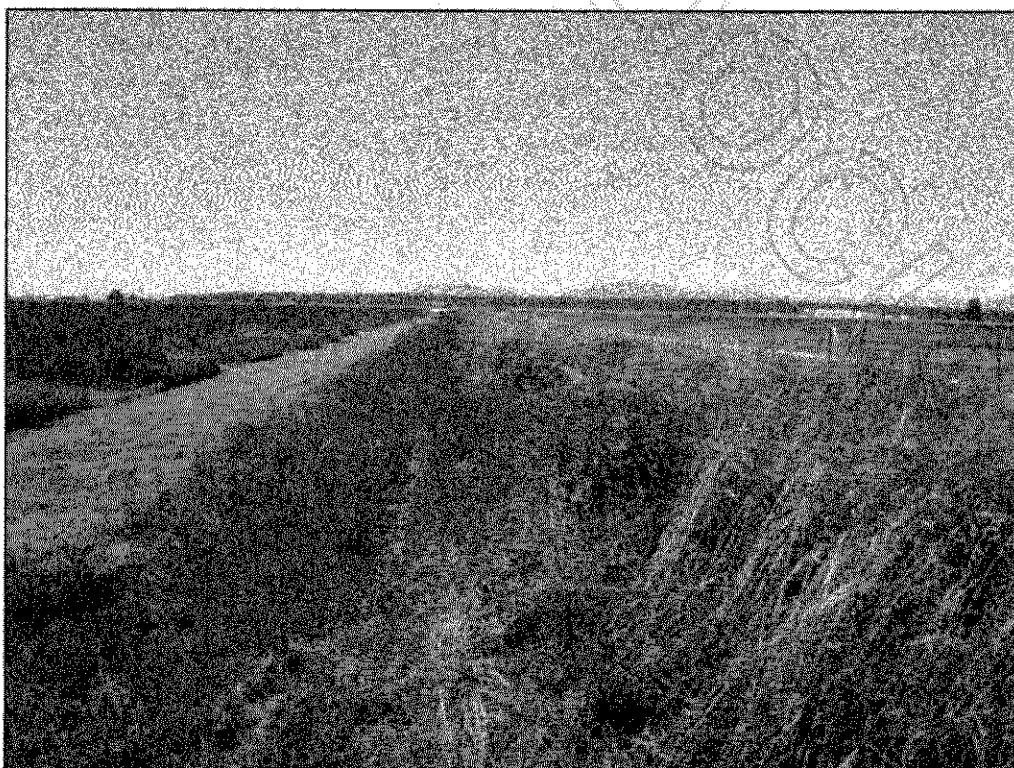


Photograph #1

View looking west along the south property line from near the southeast corner of P22095.

The subject is on the right side of the photograph.

A drainage ditch runs along the southern boundary line of the subject.

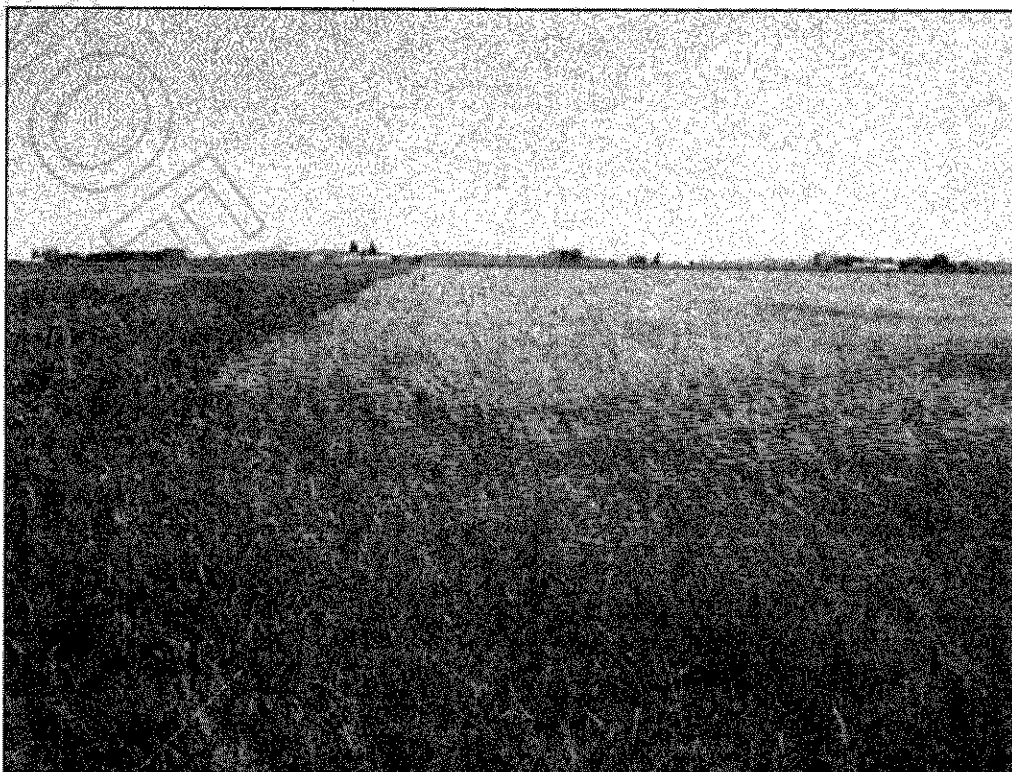


Photograph #2

View looking north along the eastern boundary from the southeast corner of P22095.

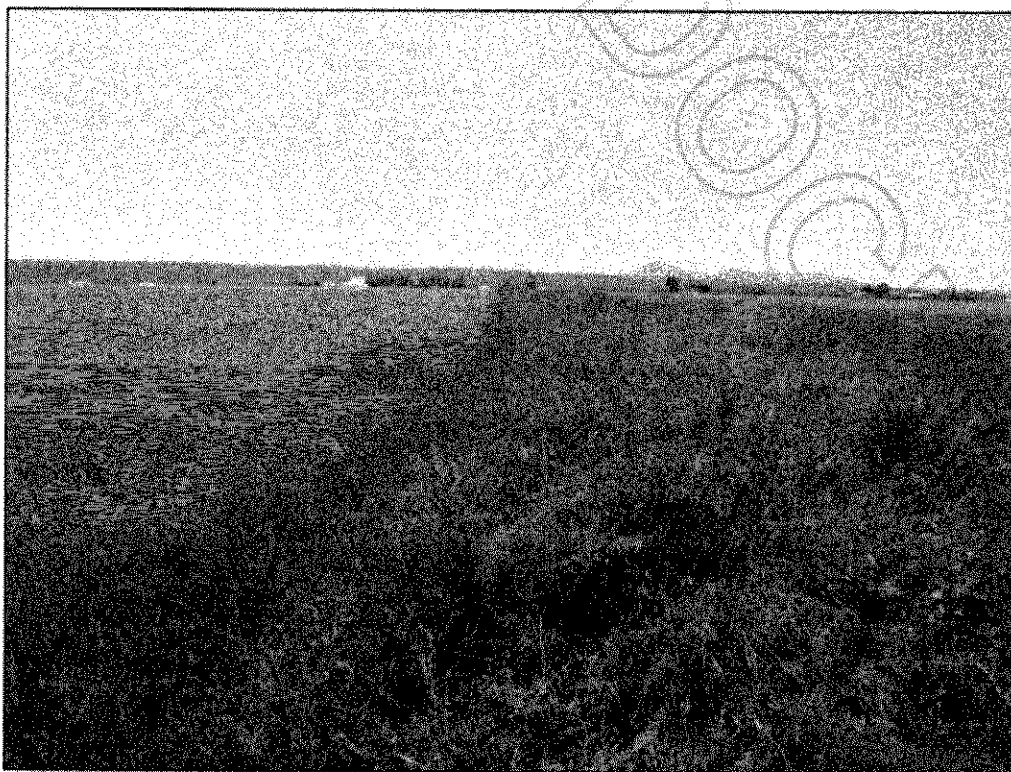


### SUBJECT PHOTOGRAPHS



Photograph #3

View looking south along the east property line from near the northeast corner of P22095. The subject land is on the right.



Photograph #4

View looking west from near the northeast corner of P22095.



**SUBJECT PHOTOGRAPHS**



Photograph #5

View looking south from the northern boundary line along the approximate shared boundary line of P22095 and P22096.



Photograph #6

View looking west along the north property line near the shared boundary line of P22132 and P22096. The subject is on the left.



**SUBJECT PHOTOGRAPHS**



Photograph #7

View looking south from the northern boundary line along the shared boundary line of P22132 and P22096.



Photograph #8

View looking east along south property line from southwest corner of P22131.



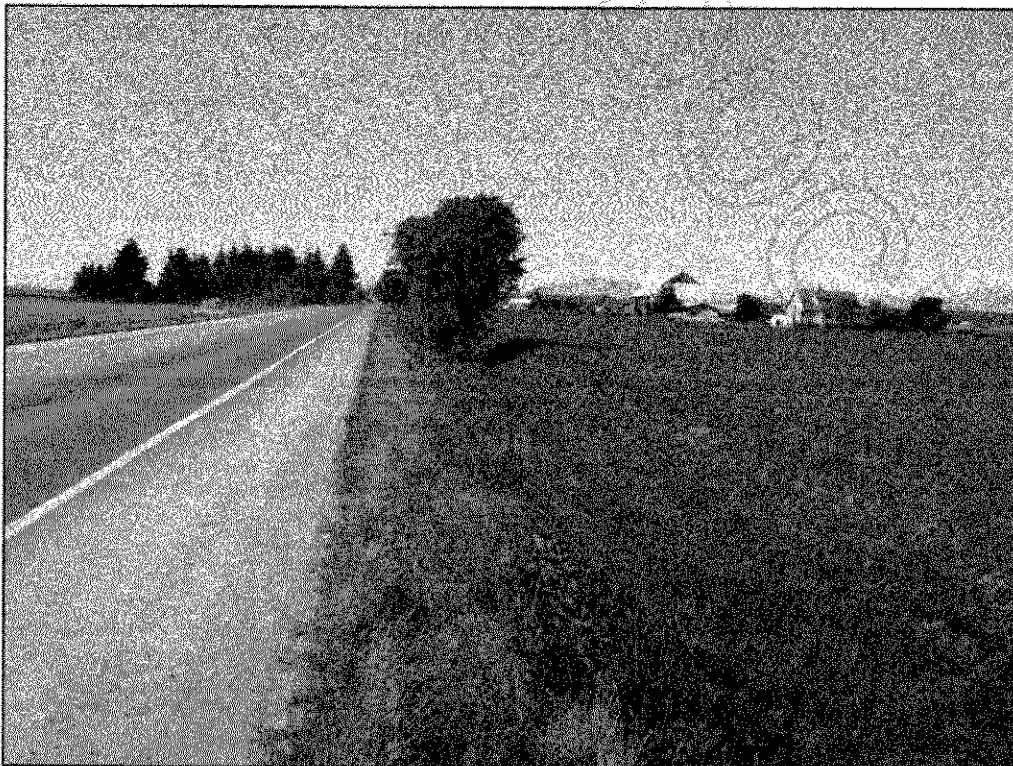
\*All photographs taken by the appraiser, Robert W. Suttles, MAI on August 3, 2011

### SUBJECT PHOTOGRAPHS



Photograph #9

View looking  
northeast across  
P22131 from the  
southwest corner.



Photograph #10

View looking  
north from the  
southwest corner  
of P22131.  
LaConner Whitney  
Road is on the left.

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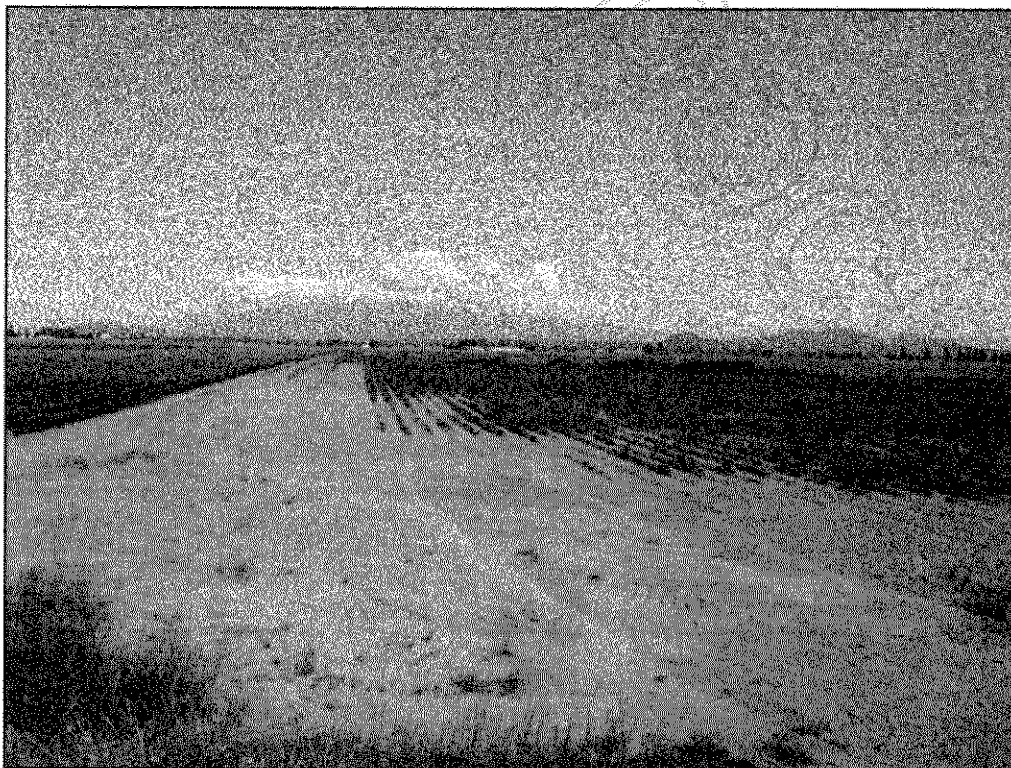
## SUBJECT PHOTOGRAPHS



Photograph #11

Access from  
LaConner Whitney  
Road through  
P22130, which is  
owned by extended  
family.

The residence and  
the detached  
garage are not  
situated on the  
subject property.  
The barn on the  
left is on the  
subject land

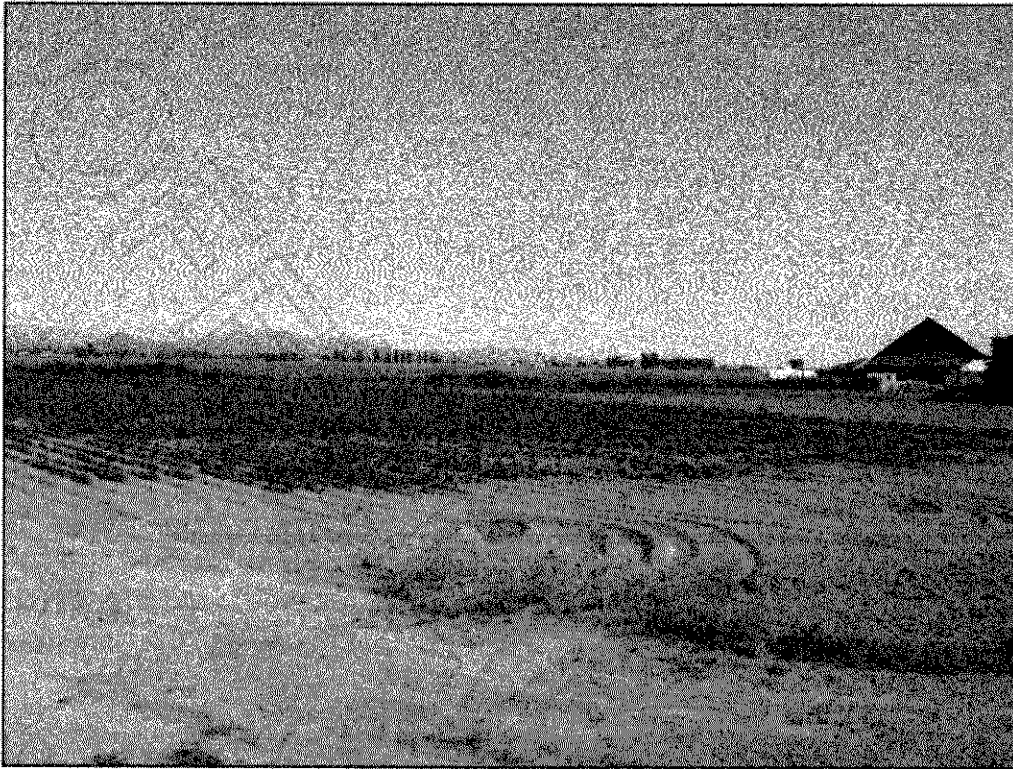


Photograph #12

View looking east  
from LaConner  
Whitney Road  
across P22129  
which is under  
different  
ownership, but  
adjacent to the  
subject P22132.  
The line of brush  
in the mid-ground  
of the picture  
marks  
McCormick's  
Slough, the  
northwest  
boundary of the  
subject.



**SUBJECT PHOTOGRAPHS**



Photograph #13

View looking southeast across the non-subject P22129. Subject property is in the background.



Photograph #14

View looking south along LaConner Whitney Road.

The trees on the left side of the road mark McCormick's Slough, and the barn on the far left is on the subject parcel P22132.





**SUBJECT PHOTOGRAPHS**



Photograph #15

View looking northeast along McCormick's Slough that runs along the northwest and a portion of the northern boundary lines of P22132.

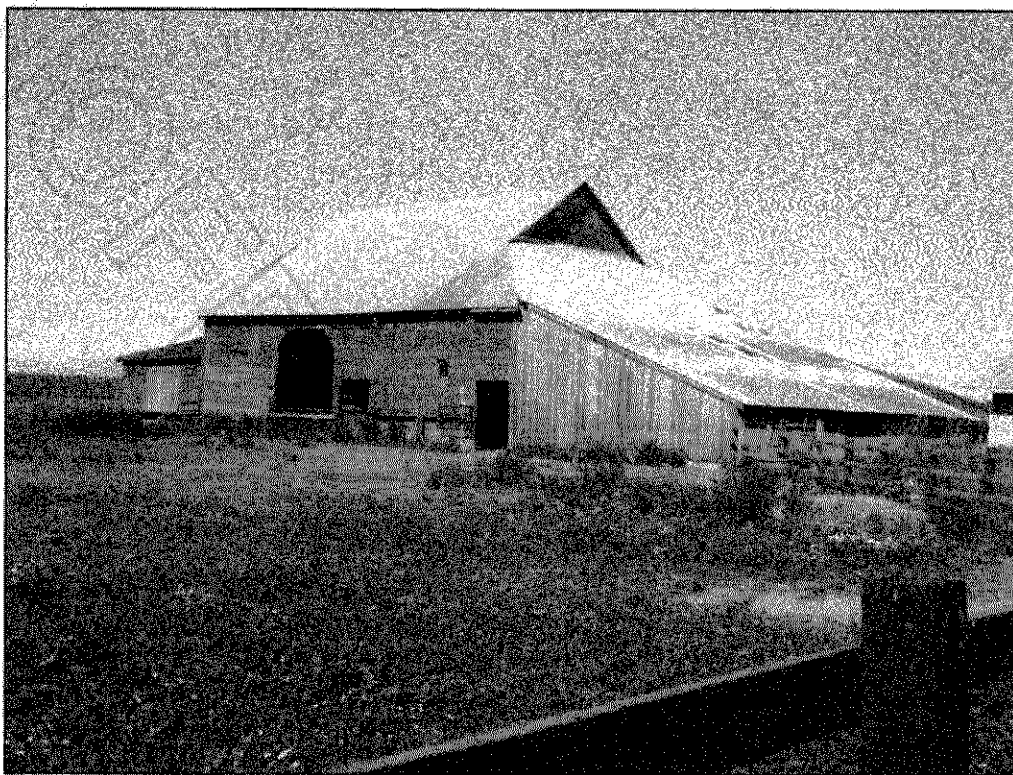


Photograph A

North side of subject loft barn from northwest corner of P22132.

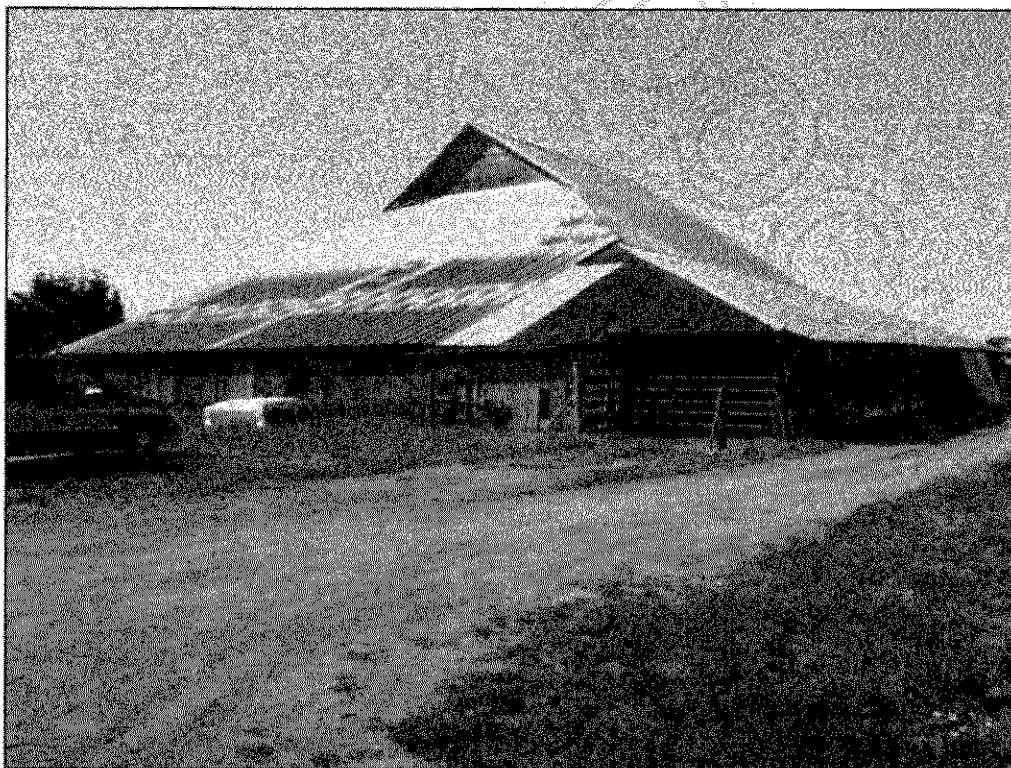


**SUBJECT PHOTOGRAPHS**



**Photograph B**

View of west side  
of subject barn  
from access off  
LaConner Whitney  
Road.



**Photograph C**

Subject loft barn  
from southeast  
corner.



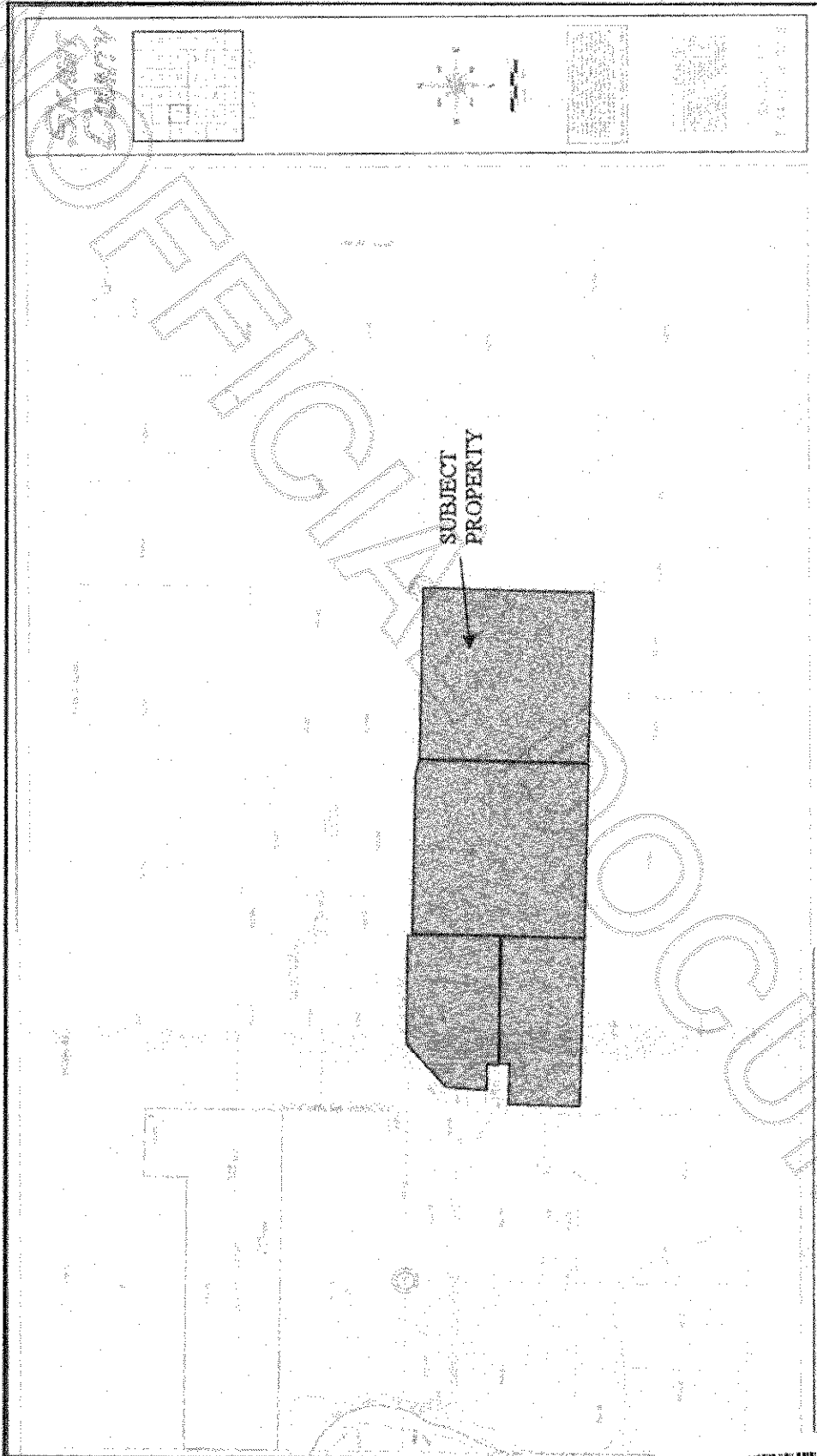


## Aerial Photograph of Subject Property<sup>1</sup>

Source: Skagit County web site, Assessor's section, <<http://skagitcounty.net>>  
**NORTHWEST REAL ESTATE VALUATION, LLC**  
 Robert W. Suttles, MAJ & Associates



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Source: Skagit County Assessor's website. Annotated by appraiser, boundaries are approximate, for visual reference only.

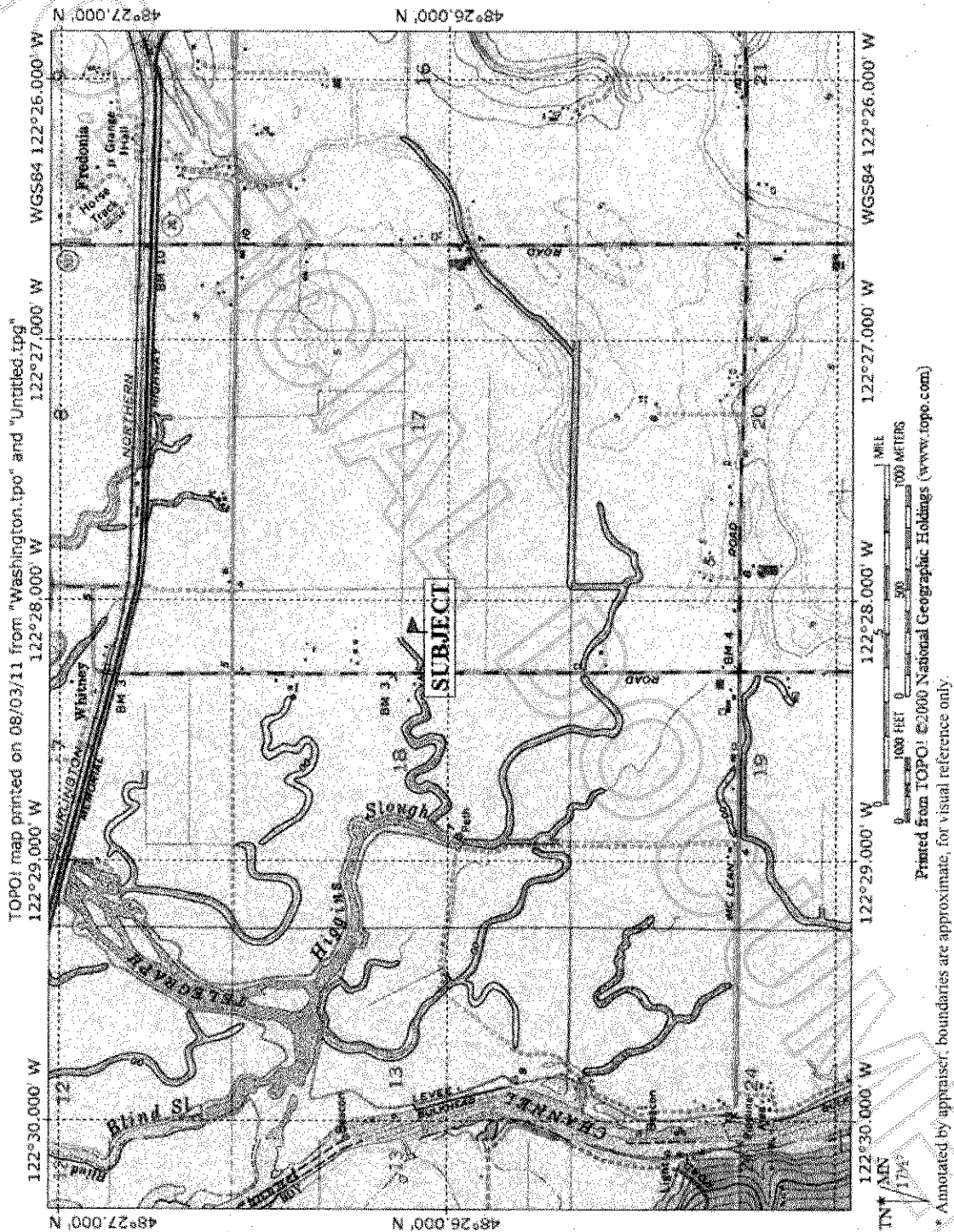
## Assessor's Section Map

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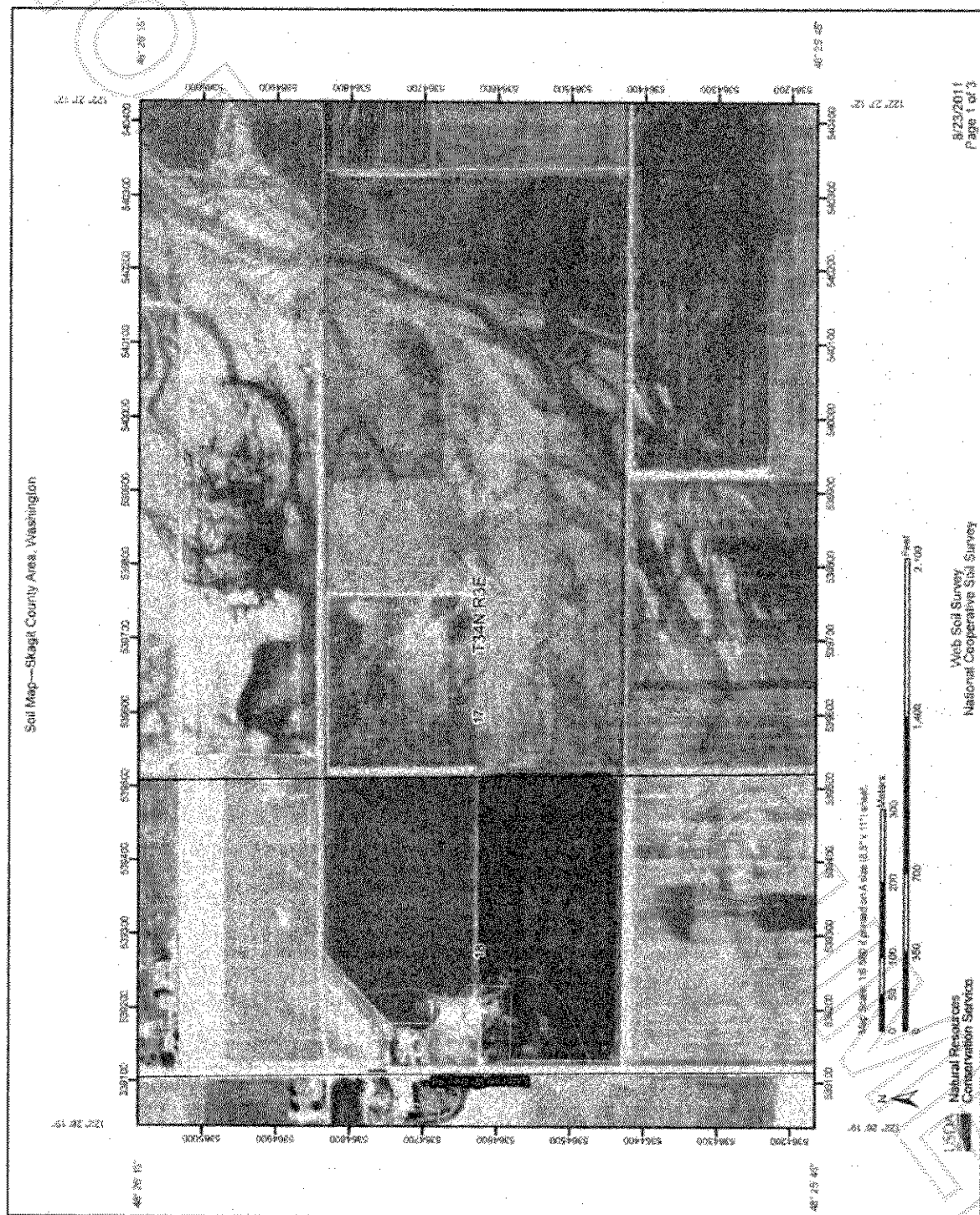


## USGS Topographical Map

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Soil Map—Skagit County Area, Washington

8/23/2011  
Page 1 of 3

\*Source: websoilsurvey.nrcs.usda.gov. Annotated by appraiser; boundaries are approximate, for visual reference only.

# **Subject Soil Map** **NORTHWEST REAL ESTATE VALUATION, LLC** **Robert W. Suttles, MAI & Associates**



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## EXHIBIT C

### SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER INSTRUMENT.

The undersigned subordinator agrees as follows:

1. Northwest Farm Credit Services, FLCA ("Subordinator") is the owner and holder of a mortgage dated June 1, 2010, which was recorded under Auditor's File No. 201006020077, records of Skagit County;
2. Skagit County ("Grantee") is the holder of a conservation easement dated \_\_\_\_\_, 2012, executed by Grantor (as hereinafter defined) which will be recorded concurrently with this Subordination Agreement;
3. Ward L. Weidenbach and Weidenbach Family Limited Partnership, ("Grantor"), are the owners of all the real property described in the conservation easement identified above in Paragraph 2.
4. In consideration of benefits to Subordinator from Owner, receipt and sufficiency of which is hereby acknowledged, the Subordinator does hereby unconditionally subordinate the lien of the mortgage identified above in Paragraph 1 to the conservation easement identified above in Paragraph 2.
5. This Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the lien or charge of the mortgage of Subordinator to the conservation easement in favor of Grantee and shall supersede and cancel any prior agreements.
6. The heirs, administrators, assigns and successors in interest of the Subordinator shall be bound by this agreement. Where the word mortgage appears herein it shall also be considered as deed of trust, and gender and number of pronouns considered to conform to undersigned.

Executed this 27 day of July, 2012.



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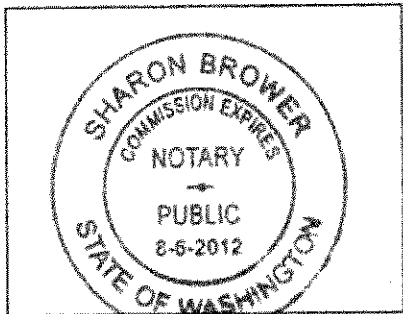
SUBORDINATOR  
Northwest Farm Credit Services, FLCA

Stephanie Rennie

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that Stephanie Rennie is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Authorized of Northwest Farm Credit Services, FLCA Agent to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 7/27/2012



(Use this space for notarial stamp/seal)

Sharon Brower  
Notary Public  
Print Name Sharon Brower  
My commission expires 8-6-2012



EXHIBIT D

SUBORDINATION AGREEMENT

The undersigned subordinator agrees as follows:

1. Lynn W. Weidenbach and Margaret A. Weidenbach, husband and wife ("Subordinator"), are the grantees under certain Right of First Refusal Agreement dated April 13, 2010, which was recorded under Auditor's File No. 201004130036, records of Skagit County, and thus the owners and holders of the rights granted under such agreement;
2. Skagit County ("Grantee") is the holder of a conservation easement dated \_\_\_\_\_, 2012, executed by Grantor (as hereinafter defined), which will be recorded concurrently with this Subordination Agreement;
3. Ward L. Weidenbach and The Weidenbach Family Limited Partnership (referred to herein variously as "Grantor" and "Owner") are the owners of all the real property described in the conservation easement identified above in Paragraph 2. In consideration of benefits conferred on Subordinator from Owner by that certain Termination of Rights of First Refusal to be recorded concurrently with this Subordination Agreement, the receipt and sufficiency of which is hereby acknowledged, the Subordinator does hereby unconditionally subordinate any rights they may have under the Right of First Refusal Agreement identified above in Paragraph 1 to the conservation easement identified above in Paragraph 2.
4. This Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the Right of First Refusal Agreement first above mentioned to the conservation easement in favor of Grantee (the easement holder above identified in Paragraph 2) and shall supersede and cancel any prior agreements as to such.
5. The heirs, administrators, assigns, and successors in interest of the Subordinator shall be bound by this agreement.

Executed this 1st day of August, 2012.

SUBORDINATOR

Lynn W. Weidenbach  
Lynn W. Weidenbach

SUBORDINATOR

Margaret A. Weidenbach  
Margaret A. Weidenbach



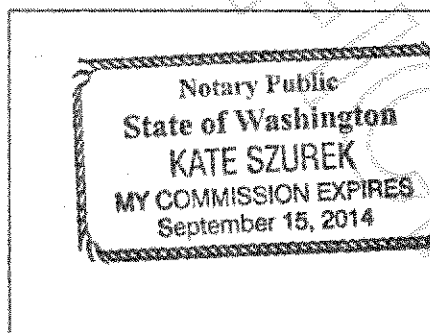
201208030148

Skagit County Auditor

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAGIT )

I certify that I know or have satisfactory evidence that Lynn W. Weidenbach and Margaret A. Weidenbach are the persons who appeared before me, and said persons acknowledged that they signed this instrument as their free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: August 1, 2012



(Use this space for notarial stamp/seal)

Kate Szurek  
Notary Public  
Print Name KATE SZUREK  
My commission expires 9/15/2014



201208030148  
Skagit County Auditor