



201212260196
Skagit County Auditor

12/26/2012 Page 1 of 44 3:36PM

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

LAND TITLE OF SKAGIT COUNTY

12/26/12

Grantor: Curtis E. and Deann L. Johnson

SKAGIT COUNTY
Contract # C20120512
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Grantee: SKAGIT COUNTY

Legal Description Abbreviated form: Being a portion of the North 1/2 of Section 34, Township 34 N, Range 3 E, W.M., 15000 block, Calhoun Road, Mount Vernon, WA 98273

Additional legal at Exhibit A

Assessor's Tax Parcel Number: P23124, P23120, P23125

GRANT DEED OF AGRICULTURAL CONSERVATION EASEMENT

THIS GRANT DEED OF AGRICULTURAL CONSERVATION EASEMENT ("Easement") is made this 10 day of December, 2012 by Curtis E and Deann L Johnson hereinafter referred to as "Grantor"), having the address of 15510 Snee-Oosh Road, La Conner, Washington, 98257, "Grantor" in favor of Skagit County, a political subdivision of the State of Washington, having an address at Skagit County Farmland Legacy Program, c/o Skagit County Administration Building, 1800 Continental Place, Mount Vernon, WA 98273 (hereinafter referred to as "Grantee") 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. The following will be a third party beneficiary having certain rights hereunder, including third party right of enforcement if a financial obligation is secured by December 31, 2013: The State of Washington, by and through the Washington State Recreation and Conservation Office ("RCO"). (Collectively herein referred to as the "Parties").

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 C (Baseline Documentation), which exhibits are attached to and incorporated into this Conservation Easement by this reference. The Protected Property is approximately 59.3 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. The Conservation Values also include crop rotations that provide for

some portion of the life functions cycle for either the raptors or migrating geese or shorebirds, however, habitat values are subordinate to agricultural values of the Protected Property.

- 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 (as defined in RCW 79A.15.010(4)) that has been classified as "prime farmland" of local importance by the Natural Resources Conservation Service, U.S. Department of Agriculture, and whose diked and drained soils along with the mild maritime climate contribute to high productivity. The soil types present are: Skagit silt loam and Sumas silk loam.
- 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 Grantee in perpetuity.
- G. Permanent Protection of the Protected Property will further the purposes of the Washington State Farmlands Preservation Account (FPA) established under RCW 79A.15.130(1), which provides that moneys appropriated to the FPA "must be distributed for the acquisition and preservation of farmlands in order to maintain the opportunity for agricultural activity upon these lands." The legislatively declared policies of the State of Washington in the Washington State Open Space Tax Act, Chapter 84.34 RCW (OSTA), provide that "it is in the best interest of the state to maintain, preserve, conserve, and otherwise continue in existence adequate open space lands for the production of food, fiber and forest crop, and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well being of the state and its citizens." This reference to OSTA does not automatically enroll the Protected Property in the Skagit County open space program.
- H. The Parties agree that, although no water rights are identified in any water rights registry of the Washington Department of Ecology or its predecessor agencies currently, should water rights attach to this property in the future, this easement will be amended to incorporate those rights and restrict transfer or relinquishment of those rights for non agricultural use per Section VI O.
- I. The Skagit County Diking District No. 1 and Drainage District No. 15 currently benefit the Property which is also in a Comprehensive Drainage and Irrigation Master Plan benefit area.



- J.** This Easement is acquired in anticipation of a grant agreement #12-1496 between *RCO and Grantee* ("RCO Grant Agreement") If the RCO Grant Agreement is executed on or before December 31, 2013, the RCO will become a third-party beneficiary of certain rights as described further in this Easement. If the RCO Grant Agreement is not executed by December 31, 2013, the RCO will not be a third-party beneficiary. In either event, the Grantee will record a statement clarifying RCO's role in this Easement with the Skagit County Assessor's Office, citing tax parcel numbers and the recording number and date associated with this Easement.
- K.** 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 **\$75,000** to purchase this Conservation Easement and thus entitles the United States to the rights identified herein.
- L.** 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 **\$150,000**, the payment schedule for which is attached as Exhibit C 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 and RCW 84.34.210, 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 upon the Protected Property, at a mutually agreeable date and time and upon prior notice to Grantor, to inspect the Protected Property after major natural events occur, such as fires, windstorms, and floods.
 3. To enter the Protected Property at such other times as are necessary if Grantee has a reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of this Conservation Easement. Such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Protected Property.
- C. **Development Rights:** Grantor hereby grants to Grantee all development rights and the Parties agree that such rights may not be used on or transferred off of the Protected Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield or density of the Protected Property or any other property except as expressly permitted in Section VI. B.
- D. **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 Easement, all in accordance with Section X.
- E. **Enforcement:** To enforce the terms of this Conservation Easement Deed, consistent with Section X.
- F. **Assignment:** To assign, convey or otherwise transfer Grantee's interest in the Protected Property in accordance with Section XV.



V. PERMITTED USES AND ACTIVITIES

- A. General:** Grantor reserves for itself and its personal representatives, heirs, successors and assigns, all rights accruing from ownership of the Protected Property, including the right to engage in, or permit or invite others to engage in, any use of, or activity on, the Protected Property that is not inconsistent with the Purpose of the 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 itself and its personal representatives, heirs, successors, and assigns, the following uses and activities, which shall be limited in the manner provided below.
- B. Retained Uses:**
- 1. Agricultural Activities:** 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; Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140; and aquatic plants and animals and their byproducts.
 - 2. Recreational:** Grantor retains the right to use the Property for otherwise lawful recreational uses, including, but not limited to, hunting and fishing, provided those uses are subordinate to the farmland character and use of the Protected Property and do not interfere with the general purpose of this Conservation 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, 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 Envelop/Farmstead complex, only with the permission of Grantee as provided for in Section IX 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 may be installed, maintained, replaced, repaired or improved.
4. **Existing Agricultural Structures and Improvements (site specific):** There are no existing structures
5. **New Structures:** New buildings shall only be agricultural structures, which will be an integral part of the farm operation (as defined above) and not to be used for any dwelling or farm support housing. New buildings, structures or improvements shall be constructed within the established Building Envelope(s)/Farmstead Complex(es) except with the permission of the grantee as provided in Section IX and are consistent with the purpose of this Easement. They are subject to the impervious surface requirements in Section VI D.
6. **Forest Management Plan:** Forest 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 or other terms 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 seek and obtain prior approval from Grantee and the Grantee shall request from the United States approval, as provided in Section IX, to increase the impervious surfaces. Only upon approval by the United States to an increase in the allowable impervious limitation shall an amended Conservation Easement (see Section XIV) increasing the 2% impervious surface limitation be recorded; and further 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, permitted accessory uses (see V.B.2.), 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. Kennels:** Kennels as defined in the Skagit County Zoning Ordinance are prohibited.
- L. 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. This easement shall not restrict the Grantor's cooperation with plans to carry out maintenance, repair, replacement, expansion of special purpose district dikes or drains on the property.
- M. Farm Worker Housing:** Construction or placement of additional farm worker housing is prohibited outside of the farmstead building envelope.



- N. No Compensatory Mitigation:** The creation, enhancement, restoration or preservation of wetlands, fish or wildlife habitat, or other natural resources for the purpose of, directly or indirectly, compensating for or mitigating resource losses or damages in any way associated with actual or potential impacts of development except for impacts caused by Grantor on the Protected Property ("Compensatory Mitigation") is prohibited on the Protected Property. Compensatory Mitigation includes, but is not limited to, mitigation banking, conservation banking, and any other sale or exchange of mitigation credits based on the creation, restoration, enhancement and/or preservation of such natural resources within the Protected Property.
- O. 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 and the United States as provided for in Section IX. Grantor shall not abandon or allow the abandonment of, by action or inaction, any of the water rights without the permission of Grantee.
- P. 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. STEWARDSHIP

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

VIII. 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.

IX. 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);
2. Grading activities requiring a permit from Skagit County (as required under Subsection VI.D);
3. Any boundary line adjustment no later than ninety (90) days prior to the date of such adjustment (as required under Subsection VI.B)
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. Upon receipt of such notice, Grantee shall immediately forward a copy to RCO if they are a third party beneficiary

Certain provisions of this Easement require Grantee to give notice to Grantor prior to undertaking certain activities (site inspection for example). Whenever such notice is required, Grantee shall provide a copy of any such notice to RCO, if they are a third party beneficiary, concurrently with notice to Grantor

- B. Approval:** Where approval by one of the parties to this Conservation Easement 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. If RCO is a third party and where consent by RCO is required under this Easement, RCO shall grant or withhold its consent within thirty (30) days of receipt of Grantee's written decision to grant or withhold consent or within ninety (90) days of receipt of Grantor's written request for consent, whichever comes later. Grantee's approval may include reasonable conditions which, if satisfied, would be the minimum necessary to assure that the proposed use or activity would not be inconsistent with the Purpose of this Easement. Failure by a party to grant or deny approval within the time provided shall create a presumption of approval with the exception of those items requiring approval of the United States.
- C. Optional Consultation:** If Grantor is unsure whether a proposed use or activity is prohibited by this Conservation Easement, Grantor may consult Grantee by providing Grantee a written notice describing the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to 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: Curtis and Deann Johnson
15510 Snee Oosh Rd.
La Conner, WA 98275

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. Boone Ave., Suite 450
Spokane, WA 99201-2348
(509) 323-2900 (telephone)

To RCO: Director, Recreation and Conservation Office
1111 Washington St SE
PO Box 40917
Olympia, WA 98504-0917
360-902-3000 (telephone)

2012 4110
SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

DEC 20 2012

Amount Paid \$ 2675.00
Skagit Co. Treasurer
By MF Deputy

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 refer the dispute to mediation by request made in writing upon the other and with notice to RCO, if they are a third party beneficiary to this Conservation Easement, who has full discretion to participate or not to participate in the mediation. Within ten (10) business days of the receipt of such a request, the parties to the mediation ("Mediation Parties") shall select a single impartial mediator. Mediation Parties agree to participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Neither party shall be obligated to continue the mediation process beyond a period of sixty (60) days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing will result in a mutually



agreeable resolution of the dispute. Cost of the mediator shall be borne equally by the Parties; the Mediation Parties shall bear their own expenses, including attorney fees, individually.

Alternately, the Parties and RCO may by mutual agreement submit damage claims not involving title to arbitration upon such rules of arbitration as Grantor, Grantee and RCO may agree within the framework of Chapter 7.04.A RCW as amended.

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 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:
 - 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 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. Inasmuch as the actual damages to the Conservation Values that could result from a breach of this Conservation Easement by Grantor would be impractical or extremely difficult to measure, the Parties agree that the money damages Grantee is entitled to recover from Grantor shall be, at Grantee's election, the higher of (i) the amount of economic gain realized by Grantor from violating the terms of the Conservation Easement or (ii) the cost of restoring any Conservation Values that have been damaged by such violation. In the event Grantee chooses the



second of these two measures, Grantor agrees to allow Grantee, its agents or contractors, to enter upon the Protected Property and conduct restoration activities.

- 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, its agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Grantee of such term or any of Grantee's rights under this 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 IX 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 GRANTED

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. Except as modified by the Easement Grantor retains all right to exclude others, recover damages for trespass or other property right violations.

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 warrants that the Grantor has good title to the Protected Property and that Grantor has the right to convey this Conservation Easement and that the Protected Property is free of encumbrances other than any listed under Section XVIII if applicable.
2. 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;
3. 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;
4. 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
5. 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, RCO, and their members, directors, officers, employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with:

1. Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property, regardless of cause unless due solely to the negligence of any of the Indemnified Parties violations of any Federal, State, or local laws, including Environmental Laws; and
2. The obligations, covenants, representations and warranties in Subsections A, B, C, and D of this section.

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.



1. The amount of the proceeds to which Grantee and any Beneficiary to this Conservation Easement 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 Section XIII.C. Grantee shall use all such proceeds for the acquisition of property interests that are substantially equivalent to those conveyed by this Conservation Easement. Grantee shall consult with and receive the approval of RCO in the selection of any replacement property interests. Upon acquisition of such replacement property interests, Grantee shall convey to RCO the same or substantially equivalent rights as provided for in this Conservation Easement.
2. In granting this Conservation Easement, Grantor has considered the fact that any use of the Property that is prohibited by this Conservation Easement, or any other use as determined to be inconsistent with the Purpose of this Conservation Easement, may become economically more valuable than permitted uses. It is the intent of both Grantor and Grantee that such circumstances shall not justify the termination or extinguishment of this Conservation Easement. Grantor's inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment.

B. 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. Grantee and RCO shall be entitled to compensation in accordance with Section XIII.C, for the value of the Conservation Easement taken; and the Grantor shall be entitled to compensation in accordance with applicable law for the value of the underlying fee title and improvements taken. In the event that Section XIII.C violates applicable law, then the proceeds to Grantor, Grantee and RCO shall be divided in accordance with applicable law. In the event that Grantee is the recipient of the proceeds from any condemnation, then Grantee shall disburse to RCO its respective share of the proceeds pursuant to Section XIII.D as soon as is practicable. 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.

C. Valuation: This Conservation Easement constitutes a real property interest immediately vested in Grantee. For purposes of this Section, the Parties stipulate that this Easement has a fair market value determined by multiplying (a) the then fair market value of the Protected Property unencumbered by the Easement (minus any increase in value attributable to improvements on the Protected Property), at the time of termination or extinguishment, as determined by an appraisal that meets RCO requirements for appraisals, by (b) the ratio of the value of the Easement at the



time of this grant to the value of the Protected Property, unencumbered by the Easement, at the time of this grant.

1. For purposes of this Section, the Parties agree that the ratio of the value of the Easement to the value of Grantor's property unencumbered by the Easement is evidenced by that certain real property appraisal prepared by Robert W. Suttles, MAI, Northwest Real Estate Valuations, LLC, effective date August 17, 2012, on file with Grantee. This ratio is .2804 and shall remain constant.

D. Distribution of Proceeds: In the event of extinguishment of this Easement pursuant to Section XIII.A.i, condemnation of this Easement pursuant to Section XIII.B, or damages received by Grantor in an amount equal to the fair market value of this Easement pursuant to Section X.D, any proceeds attributable to the value of the Easement shall be distributed as follows: RCO is entitled to 50% if they are a third party beneficiary, otherwise to the Grantee shall receive 50% and the United States, through the Department of Agriculture, shall receive 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.

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 Easement and their intent to comply with it. Such certificate shall be appended to and recorded with any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Protected Property; and
4. Give written notice to Grantee of the transfer of any interest in all or a portion of the Protected Property no later than forty-five (45) days prior to the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

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

F. 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, 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 the terms and conditions of this Conservation Easement are 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.
- H. **Rights of the United States of America:** 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"), on behalf of the United States, will exercise these rights under the following circumstances: In the event that the Grantee fails to enforce any of the terms of this Conservation Easement Deed, as determined in the sole discretion of the Secretary, the Secretary and his or her successors or assigns may exercise the United States' rights to enforce the terms of this Conservation Easement Deed through any and all authorities available under Federal or State law. The United States shall be entitled to recover any and all administrative and legal costs from the Grantee, including attorney's fees or expenses, associated with any enforcement or remedial action as it relates to the enforcement of this Conservation Easement.

XIV. AMENDMENT

This Conservation Easement Deed may be amended by the execution and delivery of an amended easement deed, but only with the written consent of Grantor, Grantee and the United States; and provided that the Parties first obtain the written consent of RCO if they are a third party beneficiary. 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 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 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 only if that organization is a qualified holder at the time of transfer under RCW 64.04.130, as amended, and a qualified recipient of



grant funds from the farmlands preservation account under RCW 79A.15.130; and must obtain prior approval of the assignment from the United States and with prior written notice and consent of RCO if they are a party beneficiary. 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 Easement or limit its enforceability in any way.

- A. **Rights and Obligations Upon Transfer:** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Protected Property or this Easement, as the case may be, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- B. **Succession (if RCO is a third Party):** If at any time it becomes impossible for Grantee to ensure compliance with the covenants contained herein and Grantee has not named a successor organization, or the Grantee shall cease to exist, then Grantee's rights and duties hereunder shall become vested and fall upon RCO, who may then assign Grantee's rights and duties hereunder to an organization with a similar mission to that of Grantee.

XVI. RCO THIRD PARTY RIGHT OF ENFORCEMENT (if they are a third Party)

- A. RCO is hereby granted third party right of enforcement of this Conservation Easement. As such, RCO may exercise all of the rights and remedies provided to Grantee herein, and is entitled to all of the indemnifications provided to Grantee in this Conservation Easement. RCO and Grantee each have independent authority to enforce the terms of this Conservation Easement; provided, however, that RCO expects that Grantee shall have primary responsibility for monitoring and enforcement of the Conservation Easement. In the event that RCO and Grantee do not agree as to whether the Grantor is complying with the terms of the easement, RCO or Grantee may proceed with enforcement actions without the consent of the other. If RCO elects to enforce the terms of this Conservation Easement, it shall first follow the dispute resolution process and remedies described in Sections 8 and 9 above; provided, however, that RCO shall not be obligated to repeat any non-judicial dispute resolution steps already taken by Grantee.
- B. This third party right of enforcement does not extend to any other third party and will automatically transfer to another State agency charged with maintaining, preserving and/or restoring agricultural lands in the event RCO is dissolved or reorganized.
- C. In the event that the Conservation Easement is transferred or assigned without the consent of RCO, which consent shall not be unreasonably withheld, RCO may require that Grantee pay to RCO, at RCO's election, the higher of (i) an amount equal to the fair market value of this Conservation Easement, which shall be determined as provided in Section XIII.C and distributed as provided in Section XIII.D; or (ii) an amount equal to the Total Project Cost as specified in the RCO Grant Agreement with interest due and payable from the date of breach at the rate provided for in RCW 43.17.240, as may be amended from time to time.
- D. In the event that the Protected Property is used by Grantor in a manner that is not consistent with the Purpose of this Conservation Easement or the terms of the RCO Grant Agreement, RCO shall have the right, in addition to any other remedies described in this Conservation Easement, to



require that Grantor pay to RCO, at RCO's election, the higher of (i) an amount equal to the fair market value of this Conservation Easement, which shall be determined as provided in Section XIII.C and distributed as provided in Section XIII.D; or (ii) an amount equal to the Total Project Cost as specified in the RCO Grant Agreement with interest due and payable from the date of breach at the rate provided for in RCW 43.17.240, as may be amended from time to time. Any costs, fees or damages paid by Grantor for enforcement of this Conservation Easement or restoration of the Conservation Values pursuant to Section X shall be deducted from this amount. RCO agrees that it will follow the dispute resolution process and remedies described in Sections IX and X before exercising this right, unless legally compelled to do otherwise. Any amounts due and owing RCO under this paragraph shall be due and owing within 120 days of receiving a written demand for repayment by RCO. Upon Grantor's repayment of such amount to RCO, Grantee and RCO agree to prepare and record, a deed amendment to release Grantor from any further obligations to RCO or Grantee under this Conservation Easement.

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. NO MERGER

In the event that Grantee acquires all or a portion of the fee title to the Protected Property, it is the intent of the Parties that no merger of title shall take place that would merge the restrictions of this Conservation Easement with fee title to the Protected Property and thereby eliminate them, and that the restrictions on the use of the Protected Property, as embodied in the Easement, shall, in the event that all or a portion of title become vested in Grantee, become and remain permanent and perpetual restrictions on the use of the Protected Property. Grantee covenants to do what is required to prevent merger of title, including, if necessary, assignment of the Easement to an appropriate third party pursuant to Section XV.

XVIII. SUBORDINATION

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

XIX. GENERAL PROVISIONS

- A. **Controlling Law and Venue:** The interpretation and performance of this Easement shall be governed by the laws of the State of Washington, except with respect to the requirements of the United States Farm and Ranch Lands Protection Program, which shall be governed by the laws of the United States. In the event of a lawsuit involving this easement, venue shall be proper only in Thurston County.
- B. **Liberal Construction:** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the Purpose of this Easement and the policy and purpose of RCW 64.04.130 and Chapter 84.34 RCW. If any provision in this



instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

- C. **Severability:** If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, or unenforceable by any court of competent jurisdiction or is superseded by state or federal legislation, rules, regulations or decision, the remainder of the provisions of this Easement, or the application of such provisions 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. If any material provision of this Easement, is found to be invalid, unenforceable or is superseded so that the intent of these provisions is frustrated, the parties agree to immediately negotiate a replacement provision to fulfill the intent of the superseded provisions consistent with the Purpose of this Easement and applicable law.
- D. **Entire Agreement:** This instrument sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Protected Property, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section XIV.
- E. **No Forfeiture:** Nothing contained in this Easement will result in a forfeiture or reversion of Grantor's title in any respect.
- F. **"Grantor" - "Grantee":** The terms "Grantor" and "Grantee," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include, respectively the above-named Grantor, and its personal representatives, heirs, successors, and assigns, and the above-named Grantee, its personal representatives, successors and assigns.
- G. **Successors and Assigns:** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.
- H. **Termination of Rights and Obligations:** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- I. **Joint and Several:** The obligations imposed by this Easement upon Grantor shall be joint and several.
- J. **Counterparts:** The parties may execute this instrument in two or more counterparts, which shall be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- K. **Effective Date:** The effective date of this Easement is the date of recording in the records of Skagit County, Washington.
- L. **Authority:** The individuals signing below, if signing on behalf of any entity, represent and warrant that they have the requisite authority to bind the entity on whose behalf they are signing.



M. Recitals: The Parties agree that the terms and recitals set forth in Section 1 (among other terms of this Easement) are material to this Easement, and that each Party has relied on the material nature of such terms and recitals in entering into this Easement. Each term and recital set forth in Section 1 is fully incorporated into this Easement.

N. 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 www.sam.gov.



XX. SCHEDULE OF EXHIBITS

- A.** Legal Description of Property Subject to Conservation Easement.
- B.** Site Plan and Baseline Documentation, including farmstead envelope.
- C.** Payment Schedule



Approved As to Form

Assistant Attorney General

Date

REMAINDER OF PAGE IS INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW



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

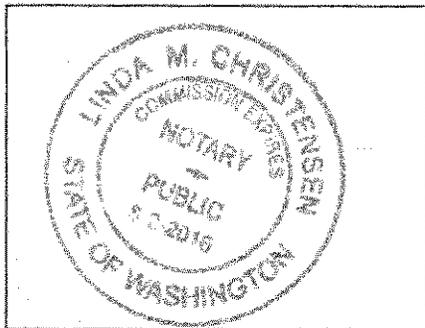
IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 5th day of Dec., 2012.

Curtis E. Johnson
Curtis E. Johnson

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that Curtis E. Johnson is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 12/5/12



(Use this space for notarial stamp/seal)

Linda M. Christensen
Notary Public
Print Name Linda M. Christensen
My commission expires 8-2-16



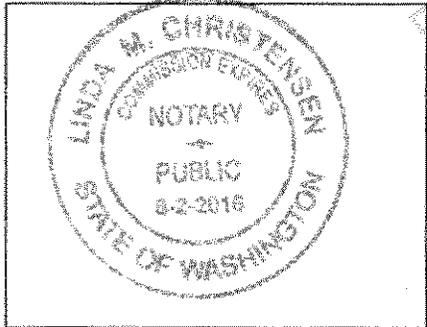
IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 5th day of Dec., 2012

Deann L. Johnson
Deann L. Johnson

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that Deann L. Johnson is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 12/5/12



(Use this space for notarial stamp/seal)

Linda M. Christensen
Notary Public
Print Name Linda M. Christensen
My commission expires 8-2-16



**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 for the Curtis E. and Deann L. Johnson property, and the rights conveyed therein, on behalf of the United States of America.



Authorized Signatory for the NRCS

State of Washington

County of Spokane

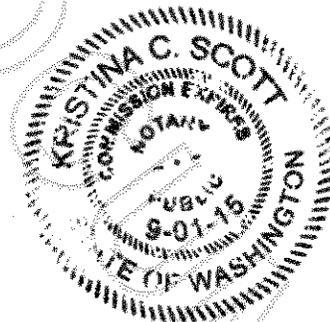
On this 20th day of December, 2012, before me, the undersigned, a Notary Public in and for the State, personally appeared A. Stefan Fechter known or proved to me to be the person whose signature appears above, and who being duly sworn by me, did say that she/he is the State Conservationist of the Natural 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.


Notary Public for the State of Washington

Residing at Spokane County

My Commissions Expires 9-1-2015



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Skagit County Auditor

EXHIBIT A

Legal Description

DESCRIPTION:

PARCEL "A"

The Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 34, Township 34 North, Range 3 East, W.M., EXCEPT roads.

Situate in the County of Skagit, State of Washington.

PARCEL "B"

The West 15 acres of the East 20 acres of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 34, Township 34 North, Range 3 East, W.M, EXCEPT roads.

Situate in the County of Skagit, State of Washington.

PARCEL "C"

The East 165 feet of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 34, Township 34 North, Range 3 East, W.M., EXCEPT roads.

Situate in the County of Skagit, State of Washington.



EXHIBIT B

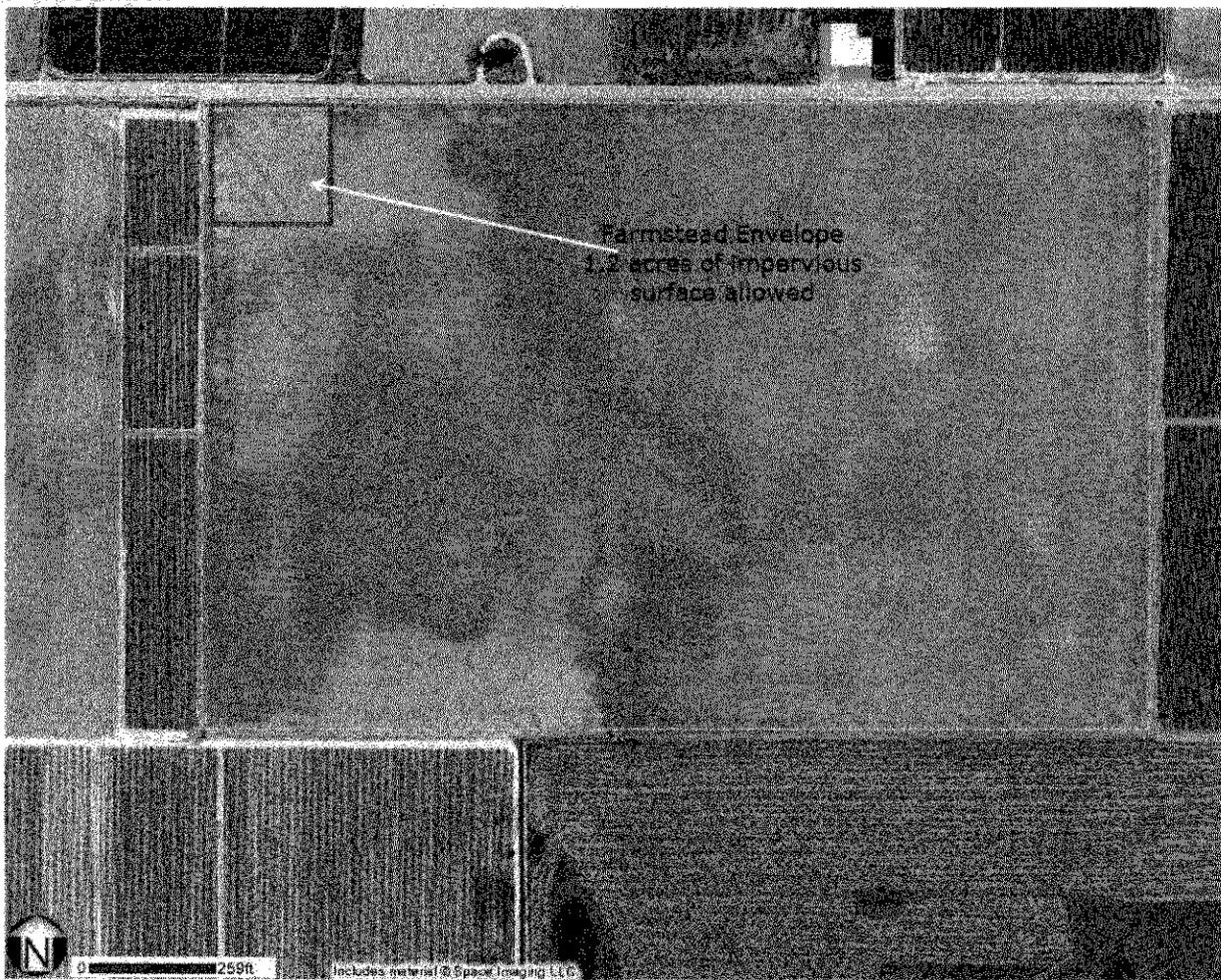
Site Plan & Baseline Documentation:

UNOFFICIAL DOCUMENT



UWA

Curtis Johnson

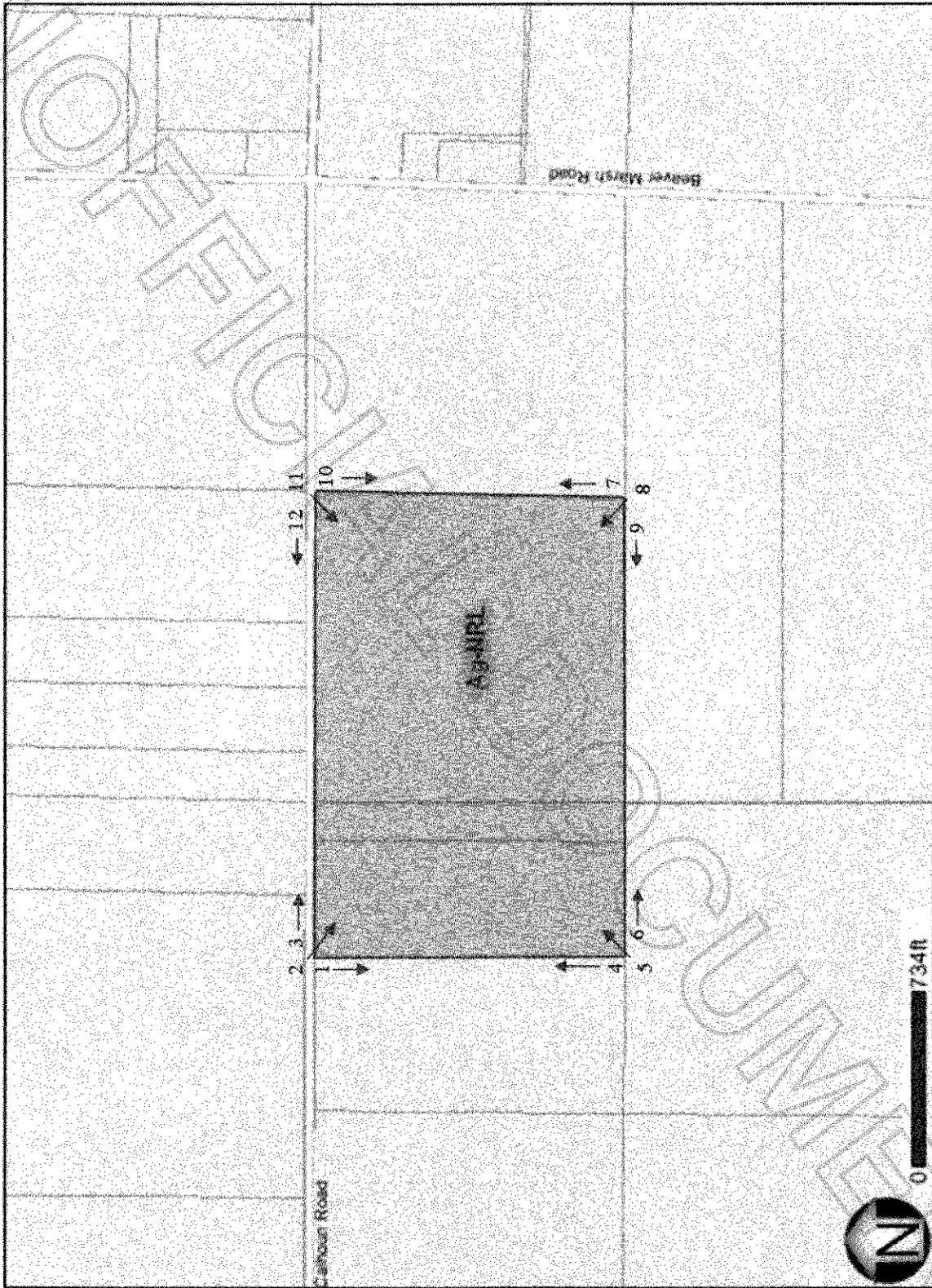


DOCUMENT



201212260196
Skagit County Auditor

UNOFFICIAL



*Source: www.skagitcounty.net Annotated by appraiser. boundaries are approximate. for visual reference only.

Photograph Location Map

NORTHWEST REAL ESTATE VALUATION, LLC
 Robert W. Suttles, MAI & Associates



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 Skagit County Auditor

Subject Property Photographs



#1- Looking south from near the NW corner of P23124.



#2- Looking SE from near the NW corner of P23124.



#3- Looking east from near the NW corner of P23124 and along Calhoun Road.



#4- Looking north from near the SW corner of P23124.



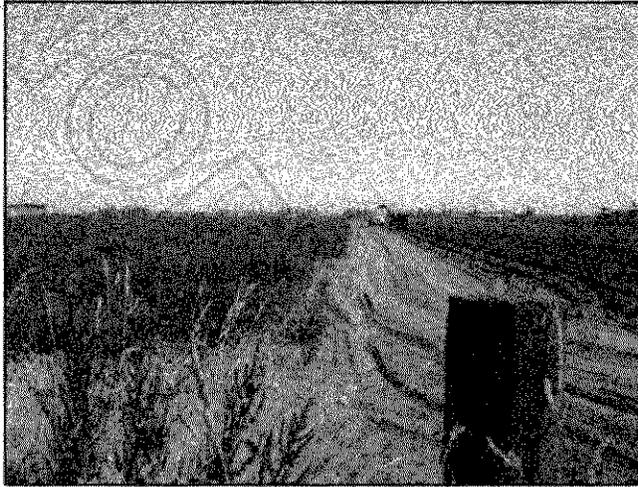
#5- Looking NE from near the SW corner of P23124.



#6- Looking east from near the SW corner of P23124, the subject is on the left.



Subject Property Photographs



#7- Looking north from near the SE corner of P23120; the subject land is on the left.



#8- Looking NW from near the SE corner of P23120.



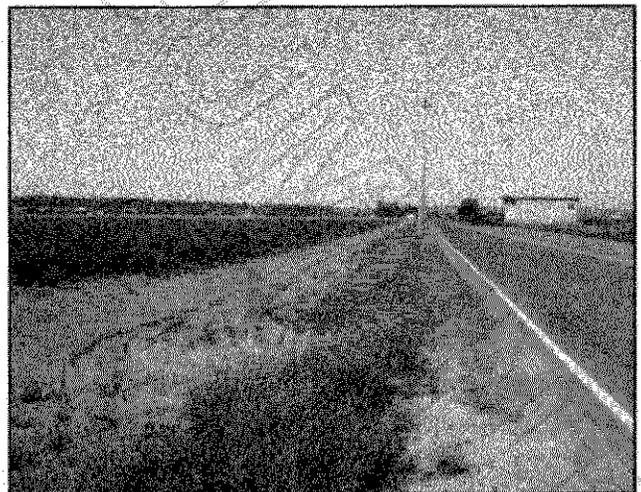
#9- Looking west from near the SE corner of P23120; the subject land is on the right.



#10- Looking south from near the SE corner of P23120; the subject is on the right.



#11- Looking SW from near the NE corner of P23120.



#12- Looking west from near the SE corner of P23120 along Calhoun Road.



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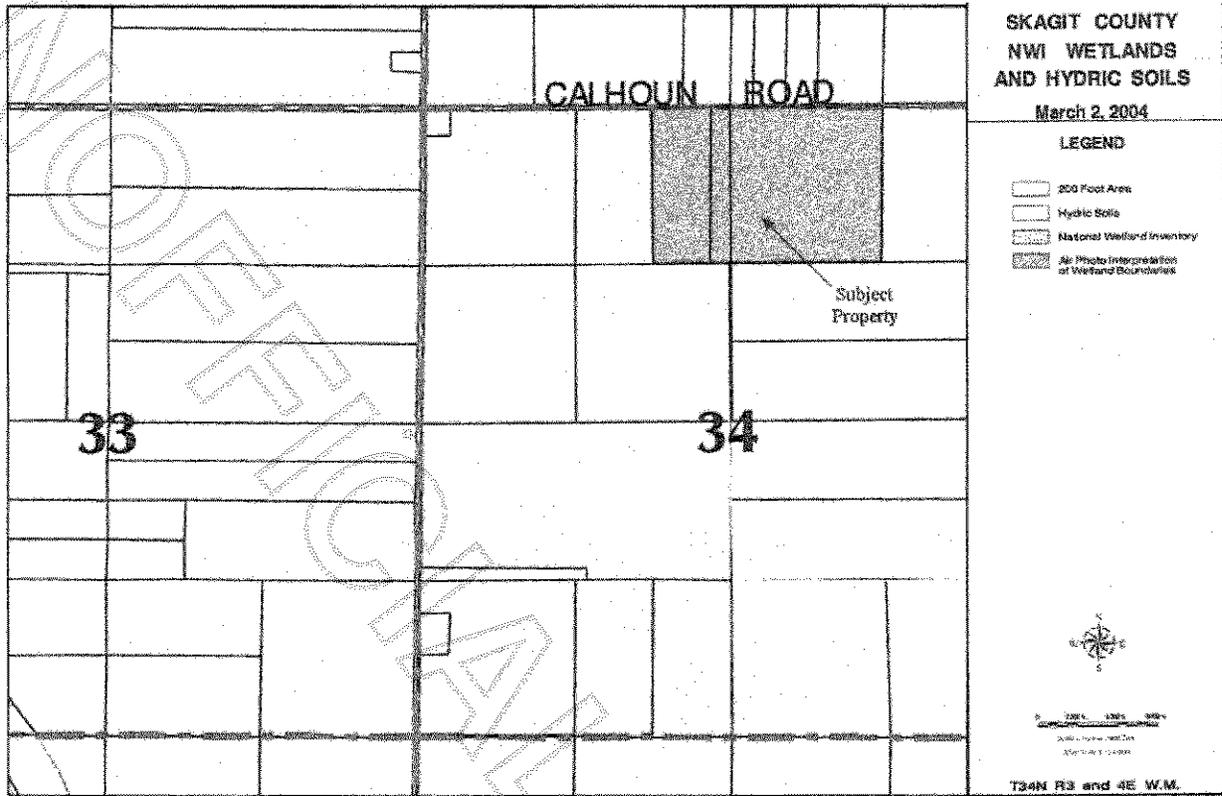
*Source: www.skagitcounty.net. Annotated by appraiser; boundaries are approximate, for visual reference only.

Aerial Photograph of Subject Property

NORTHWEST REAL ESTATE VALUATION, LLC
Robert W. Suttles, MAI & Associates



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* Source: skagitcounty.net/GIS/wetlands and hydric soils. Annotated by appraiser; boundaries are approximate, for visual reference only.

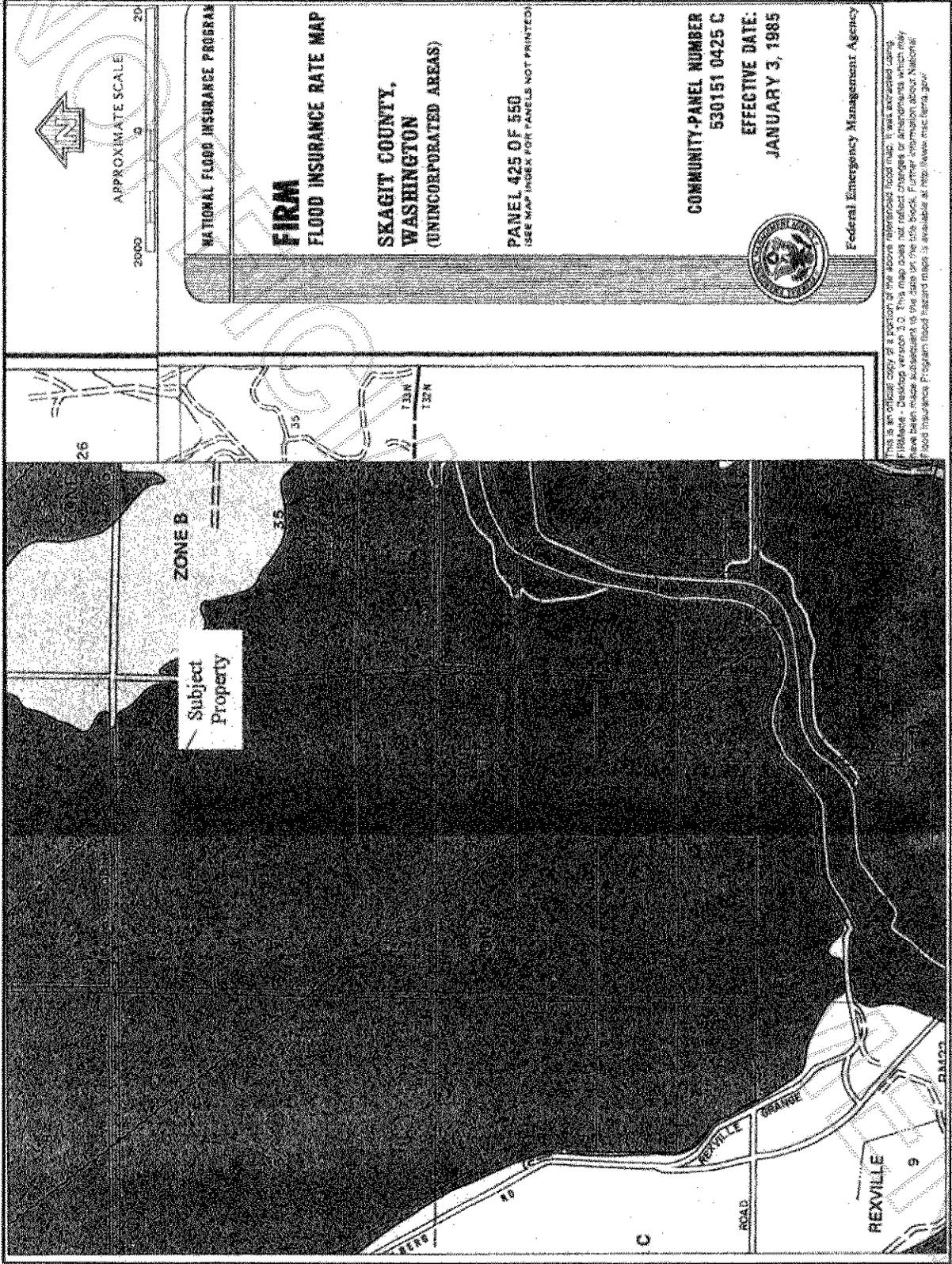
Skagit County Wetland Inventory Map

There are three primary regulatory decisions that have been made during recent years that impact agriculture land and potentially the utility and value of that land.

1) Administrative Official Interpretation completed by Gary Christensen, Director of Skagit County Planning: Mr. Christensen recently developed procedures for implementation of Skagit County Code 14.16.400(2) Permitted uses, specifically subsection (o) "Single-family detached residential dwelling unit and residential accessory uses, when accessory to an agricultural use..."⁷ In summary the impact of the interpretation on agriculture land is that a landowner must show at least three years gross income derived from commercial agricultural production averaging at least \$100 per acre in order to secure a residential building permit. Time must pass and ownership interest must be traded before the impact of this interpretation can be measured. In my experience, when parcels of agriculture land greater than 20± acres are being considered, there is little interest from purely residential users. On the other hand, there has

⁷ See Planning & Development Services decision in the addendum of t





*Source: www.fema.gov. Annotated by appraiser; boundaries are approximate, for visual reference only.

FEMA Map

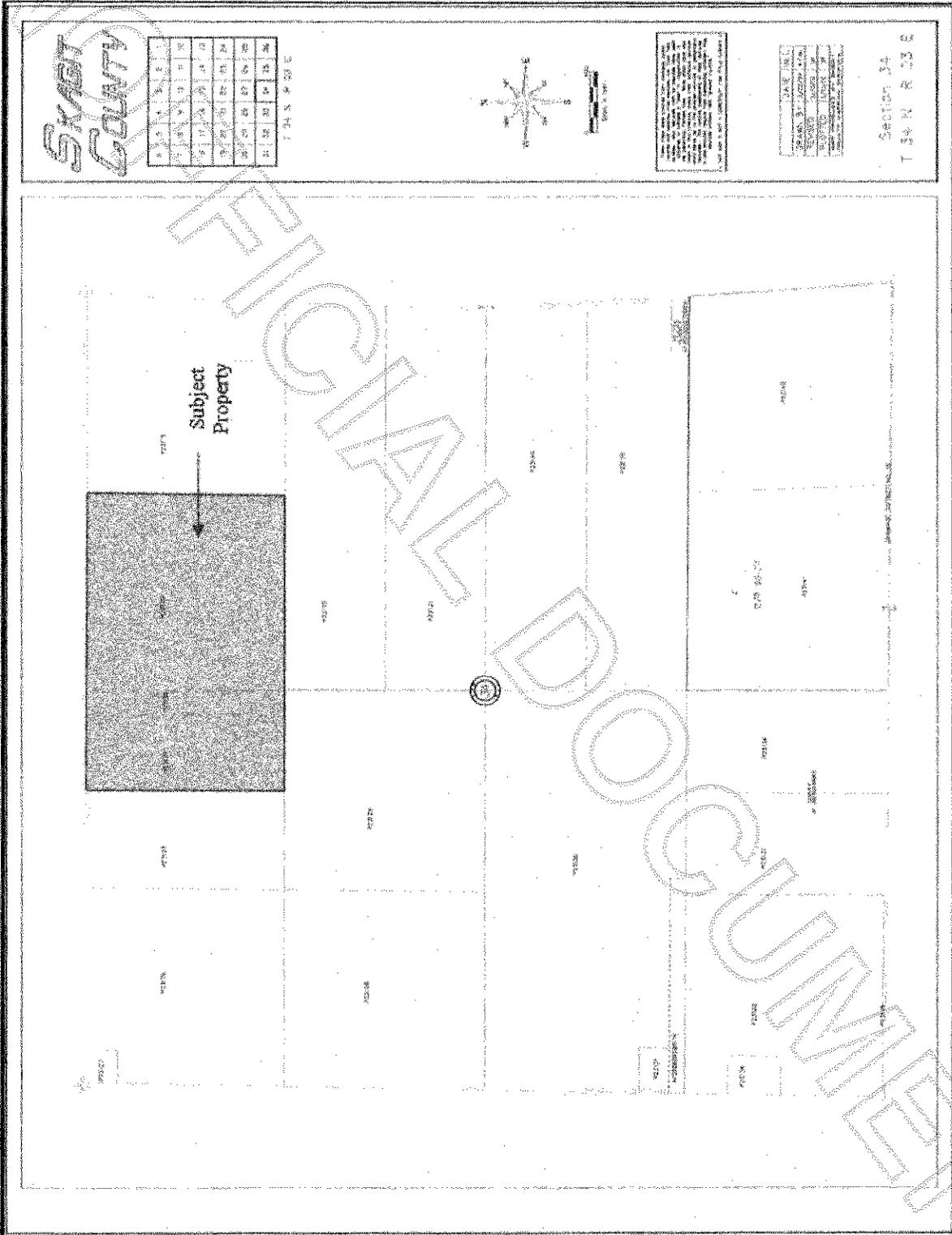
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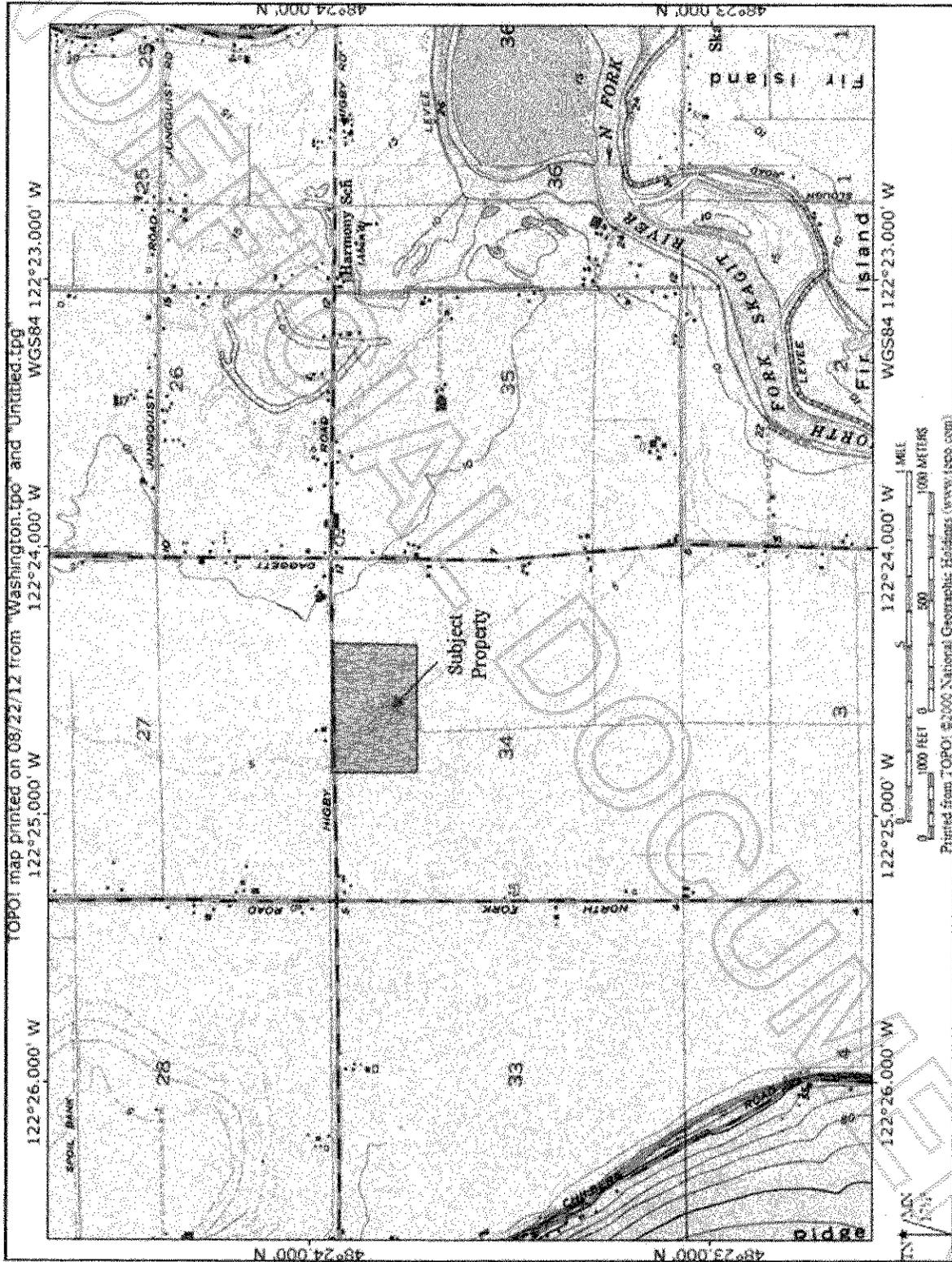
*Source: www.skagitcounty.net. Annotated by appraiser; boundaries are approximate, for visual reference only.

Assessor's Section Map T34/R03E/S34

NORTHWEST REAL ESTATE VALUATION, LLC
Robert W. Suttles, MAI & Associates



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Skagit County Auditor



TOPOI map printed on 08/22/12 from "Washington.tpo" and "Untitled.tpg"
 122°25.000' W 122°24.000' W WGS84 122°23.000' W

*Annotated by appraiser; boundaries are approximate, for visual reference only.

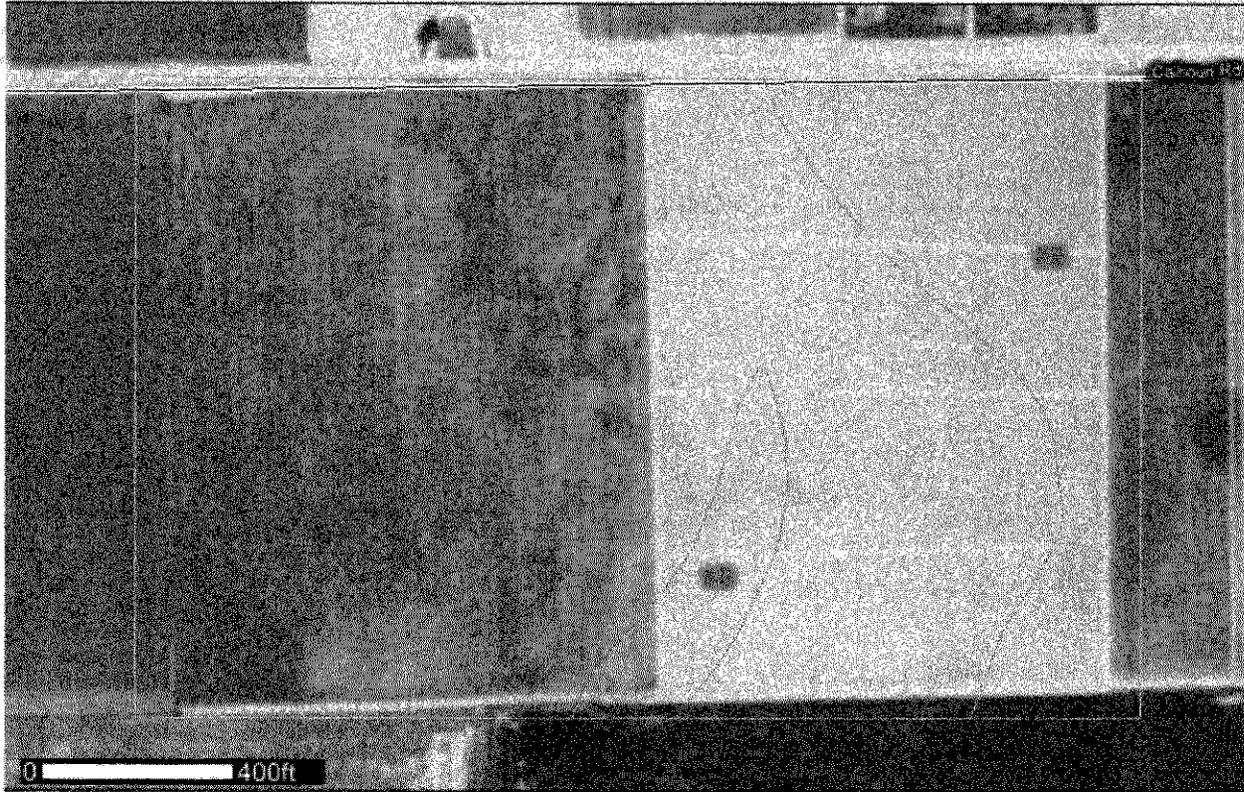
USGS Topographical Map

NORTHWEST REAL ESTATE VALUATION, LLC
 Robert W. Suttles, MAI & Associates



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 Skagit County Auditor

Johnson



Skagit County Area, Washington (WA657)			
Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
123	Skagit silt loam	14.3	22.8%
136	Sumas silt loam	48.7	77.2%
Totals for Area of Interest		63.0	100.0%

Map unit: 123 - Skagit silt loam

Component: Skagit (80%)

The Skagit component makes up 80 percent of the map unit. Slopes are 0 to 1 percent. This component is on delta plains, deltas, flood plains. 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, December. Organic matter content in the surface horizon is about 4 percent. Nonirrigated land capability classification is 5w. This soil meets hydric criteria.

Map unit: 136 - Sumas silt loam

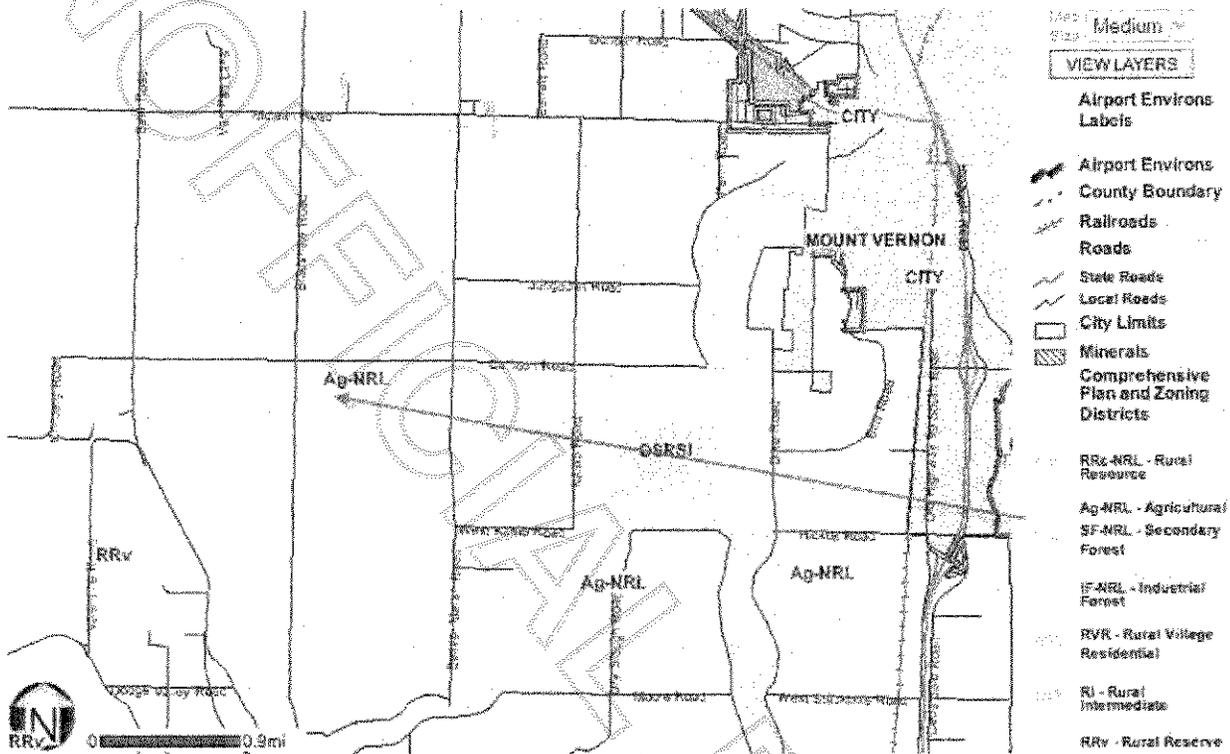
Component: Sumas (80%)

The Sumas component makes up 80 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.



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Land Use Designation:
Agricultural -NRL



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Exhibit C

Payment Schedule

There will be two installments of equal amounts for a total of \$150,000.

The first installment of \$75,000 will be issued at the time of closing on this 26th day of December, 2012. Half of this amount will be from the authority of the Farm and Ranch Lands Protection Program, the Natural Resources Conservation Service acting on behalf of the Commodity Credit Corporation in the amount of \$37,500.

The second installment will be issued by May 31, 2013 for the amount of \$75,000. Half of this amount will be from the authority of the Farm and Ranch Lands Protection Program, the Natural Resources Conservation Service acting on behalf of the Commodity Credit Corporation in the amount of \$37,500.

