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Skagit County Auditor

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When recorded return to:

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

GRANT DEED OF CONSERVATION EASEMENT

Grantor: J. Winston Anderson and Elaine M. Anderson

Grantee: Skagit Land Trust

Brief Legal Description: S 7, T 35N, R 2E; Ptn. Gov't Lot 5 and the NW NE
Full legal descriptions shown in Exhibits A and C.

Assessor's Tax Parcel and I.D. Nos.:

P32763 / 350207-0-003-0007; P32784 / 350207-1-004-0004;
P32786 / 350207-1-004-0202; P96273 / 350207-0-003-0304
P132832 / 350207-0-003-1007

This Grant Deed of Conservation Easement (hereinafter referred to as "Easement" or "Conservation Easement") is executed by J. Winston Anderson and Elaine M. Anderson, husband and wife, whose address is 6237 S. Shore Road, Anacortes, Washington 98221 ("Grantor"), in favor of Skagit Land Trust, a Washington nonprofit corporation qualified to do business in Washington, having an address at P.O. Box 1017, Mount Vernon, Washington 98273 ("Grantee").

Recitals

1 Authority to Create Conservation Easement

- 1.1 This Conservation Easement is created pursuant to Revised Code of Washington ("RCW") 64.04.130 and 84.34.210.
- 1.2 This Conservation Easement is also created pursuant to the Internal Revenue Code of 1986, as amended (hereinafter referred to as the "Code") at 26 U.S.C. sections 170(h), 2055 and 2522.

2 Grantor and Grantee

- 2.1 The terms "Grantor" and "Grantee," wherever used in this Conservation Easement, and any pronouns used in their place, mean and include, respectively, the above-named Grantor, and their personal representatives,

heirs, successors, and assigns, and the above-named Grantee, its personal representatives, successors, and assigns.

- 2.2 The term "Party" means Grantor or Grantee; "the Parties" means Grantor and Grantee together.

3 Protected Property

- 3.1 Grantor is the sole owner in fee simple of the real property (the "Protected Property") in Skagit County, Washington, described in Exhibit A, *Legal Description*, and shown on Exhibit B, *Site Map/Plan*, which exhibits are attached hereto and incorporated herein by this reference. In the event of a conflict between the *Legal Description* and the *Site Map/Plan*, the *Legal Description* shall control.
- 3.2 The Protected Property is part of a significant coastal ecosystem, Guemes Island, which is relatively intact and undeveloped. The Protected Property consists of approximately 36 acres and approximately 850 feet of marine shoreline. The Protected Property adjoins over 500 acres of conservation land protected by Grantee, The San Juan Preservation Trust, and the Washington State Department of Fish and Wildlife.
- 3.3 The Protected Property is divided into two designated land use areas under this Conservation Easement, as shown on Exhibit B: (a) a *Building Zone*, of approximately six (6) acres, legally described in Exhibit C, *Legal Description of Building Zone*, attached hereto and incorporated herein by this reference; and (b) a *Habitat Conservation Zone*, of approximately thirty (30) acres, consisting of the remainder of the Protected Property. Exhibit D, *Baseline Report*, attached hereto and incorporated herein by this reference, provides a more complete characterization of the Protected Property.

4 Conservation Values

- 4.1 The Protected Property consists of significant open space land, as defined in Revised Code of Washington ("RCW") 84.34.020.
- 4.2 This Conservation Easement provides significant benefit to Grantor and the people of Skagit County, the State of Washington, and the United States by providing and preserving in perpetuity the following significant resources, all in accordance with the Code:
- 4.2.a Significant relatively natural habitat for native plants, fish, and wildlife, including marine shoreline, forest, and a freshwater stream (Cayou Creek) and a connected wetland, with established riparian vegetation associated with these, and

4.2.b Open-space lands that provide connectivity to over 500 acres of protected lands, as encouraged and supported by the private land protection policies of the State of Washington and as clearly delineated in local land conservation policies adopted in Skagit County, Washington, as set forth in more detail below.

4.2.c Open-space lands that provide scenic views from the public trail on Guemes Mountain.

The characteristics of the Protected Property described in this Section 4 are hereinafter collectively referred to as the "Conservation Values".

4.3 The specific Conservation Values and characteristics of the Protected Property are documented in an inventory of relevant features of the Protected Property ("Baseline Documentation"), which is incorporated into this Conservation Easement by this reference. The Baseline Documentation consists of reports, maps, photographs, and other documentation held by Grantee that provide, collectively, an accurate representation of the Protected Property at the time of this grant of Conservation Easement and that is intended to serve as an objective information baseline for monitoring compliance with the terms of this Conservation Easement. A summary of said Baseline Documentation, signed and dated, by both Grantor and Grantee is contained in Exhibit D, *Baseline Report*. In any conflict or inconsistency between the terms of this Conservation Easement and the Baseline Report, the terms of this Conservation Easement shall control.

4.4 The Property would be extremely desirable property for residential and other development because of its location and orientation. In the absence of this Conservation Easement, the Protected Property could be developed in the future for additional residential and other uses in a manner which would destroy the Conservation Values of the Protected Property.

5 Public Benefit

5.1 The legislatively declared policies of the State of Washington, in Chapter 84.34 RCW, provide that it is in the best interest of the state to maintain, preserve, conserve, and otherwise continue in existence adequate open-space lands and to assure the use and enjoyment of natural resources, wetlands, farmlands, riparian areas, and scenic beauty for the economic and social well-being of the state and its citizens. The Protected Property constitutes "open-space land" as defined in such statute and is enrolled in the state's Current Use Open Space Taxation Program.

- 5.2** The Skagit County Comprehensive Plan (2007) “seeks to manage growth by protecting natural resource lands, open space and rural areas, and establishing Urban Growth Areas....” Skagit County’s Comprehensive Plan provides the policy basis for retaining open space, maintaining and enhancing natural resource lands, and protecting and regulating critical areas as required by the Growth Management Act, Chapter 36.70A RCW. Critical areas are regulated by the Critical Areas Ordinance of Skagit County (CAO), Chapter 14.24 SCC, and are defined as “wetlands, aquifer recharge areas, frequently flooded areas, geologically hazardous areas, and fish and wildlife habitat conservation areas.” SCC § 14.24.010. As the CAO notes, “[s]ome of these areas, such as geologic hazards and frequently flooded areas, are critical because of the hazard they represent to public health. Others, such as fish and wildlife habitats and wetlands, are critical because of their public value.” SCC § 14.24.010.
- 5.3** The Protected Property contains wetlands regulated by the Skagit County CAO Wetlands Protection Standards. SCC § 14.24.230. Guemes Island is designated as a Category I Critical Recharge Area. SCC § 14.24.310. It is also designated as such in the 2010 Guemes Island Sub-Area Plan, Policy 2.7. The northern portion of the Protected Property is located within a Wellhead Protection Area governed by Washington Administrative Code 246-290-135.
- 5.4** The Protected Property is located on Guemes Channel. The Washington State legislature in RCW 90.71.200 has recognized that “Puget Sound...and the waters that flow to it are a national treasure and a unique resource. Residents enjoy a way of life centered around these waters that depends upon clean and healthy marine and freshwater resources.” The Guemes Island Proposed Shoreline Zone for the Protected Property is Rural Conservancy, with the purpose “to protect, conserve and restore ecological functions, natural resources and valuable historic and cultural areas” and is appropriate for low-impact use (Guemes Island Sub-Area Plan).

6 Grantor and Grantee Conservation Intent

- 6.1** Grantor, owner in fee of the Protected Property, has the right to identify, protect, and preserve in perpetuity the Conservation Values of the Protected Property, and desires to transfer such rights to Grantee.
- 6.2** Grantee is a publicly supported, tax-exempt nonprofit organization, qualified under Code sections 501(c)(3) and 170(h)(3) and also qualified as a nonprofit nature conservancy corporation under RCW 64.04.130 and 84.34.250, whose primary purpose is to preserve open space, wildlife habitat, wetlands, forestland, farmland, shoreline, and scenic views. Grantee has the resources to enforce the restrictions placed on the Protected Property under this Conservation Easement.

- 6.3** Grantee commits by accepting this grant to preserve and protect in perpetuity the Conservation Values of the Protected Property for the benefit of this generation and the generations to come.

The foregoing Recitals are incorporated into this Conservation Easement by this reference.

Terms and Conditions

7 Conveyance, Consideration, and General Effect of Conservation Easement

- 7.1** For the reasons stated in the above Recitals and in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, Grantor hereby grants, conveys, and warrants to Grantee a conservation easement in perpetuity over the Protected Property, consisting of the rights in the Protected Property, hereinafter enumerated, subject only to the restrictions contained in this Conservation Easement.
- 7.2** This conveyance is of an interest in real property under the provisions of RCW 64.04.130, and is made as an absolute, unconditional, unqualified, and completed gift subject only to the mutual covenants, terms, conditions, and restrictions set forth in this Conservation Easement and to title matters of record as of the Effective Date of this Easement, and for no other consideration whatsoever.
- 7.3** Grantor expressly intends that this Conservation Easement run with the land and that this Conservation Easement be binding upon Grantor's personal representatives, heirs, successors, and assigns in perpetuity.

8 Purpose

- 8.1** It is the Purpose of this Easement:
- 8.1.a** To preserve, protect, enhance, and restore, in perpetuity, the Conservation Values of the Protected Property, as defined above and documented in the Baseline Documentation; and
- 8.1.b** To prevent any use of, or activity on, the Protected Property that will significantly impair or interfere with its Conservation Values.
- 8.2** Grantor and Grantee intend 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, including without limitation the confinement of all structures and improvements to the Building Zone other than those structures and improvements specifically identified in this Conservation Easement as being allowed in the Habitat Conservation Zone.

9 Rights Conveyed to Grantee

To accomplish the Purpose of this Easement, Grantor conveys the following rights to Grantee:

9.1 Protection: To identify, preserve and protect in perpetuity, and to enhance by mutual agreement, the Conservation Values of the Protected Property.

9.2 Access to Protected Property:

9.2.a Monitoring. To enter the Protected Property annually upon prior written notice to Grantor, to make a general inspection to monitor compliance with this Conservation Easement;

9.2.b Inspection. 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 inspection, or to seek to mitigate or terminate the violation and otherwise enforce the provisions of this Conservation Easement, pursuant to Section 16, *Breach and Enforcement—Grantee's Remedies*; and

9.2.c Education and Scientific Purposes. To enter the Protected Property, upon prior arrangement with Grantor, for educational and scientific purposes to observe and study the Habitat Conservation Zone, or for other purposes allowed by Grantor consistent with this Conservation Easement.

9.3 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, pursuant to Section 16, *Breach and Enforcement—Grantee's Remedies*.

9.4 Enforcement: To enforce the terms of this Conservation Easement, pursuant to Section 16, *Breach and Enforcement—Grantee's Remedies*.

9.5 Assignment: To assign, convey, or otherwise transfer Grantee's interest in the Protected Property in accordance with Section 23, *Assignment and Succession*.

9.6 Markers: To place and replace small markers to identify boundaries, corners, and other reference points on the Protected Property. Grantor shall not remove or move such markers without Prior Written Approval pursuant to Section 14, *Notice or Prior Written Approval Required Before Certain Uses and Activities*.

9.7 Extinguish Development Rights: To prevent development of the Protected Property inconsistent with protection of its Conservation Values, Grantor hereby grants to Grantee all development rights, except with respect to one single-family residence and appurtenant structures as further described in Section 12.1 *Building Zone Allowed Uses and Activities*, that are now or hereafter allocated to, implied, reserved, or inherent in the Protected Property. The Parties agree that such rights are terminated and may not be used on or transferred off of the Protected Property as it now or later 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.

10 Access by Public Not Required

This Conservation Easement does not provide, and may not be construed as providing, access to the general public to any portion of the Protected Property. Grantor, at its sole discretion, may allow for public access to the Protected Property.

11 Reserved Rights and Restrictions in General

Pursuant to Section 3.3, for the purposes of this Conservation Easement, two land use zones are designated on the Protected Property: (1) the *Building Zone*, and (2) the *Habitat Conservation Zone*. The reserved rights and restrictions described in this Section 11 pertain to the entire Protected Property. Sections 12 and 13 address additional allowed and prohibited uses associated with the designated land use zones.

11.1 Reserved Rights on the Protected Property. 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, 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 uses and activities, set out as permitted in this Section 11 and Sections 12 and 13 below. All permitted uses and activities shall be carried out in compliance with all applicable federal, state, and local laws, regulations and requirements.

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

APR 28 2016

Amount Paid \$
Skagit Co. Treasurer
By Deputy

11.2 Restrictions on the Protected Property. Any use of, or activity on, the Protected Property inconsistent with the Purpose of this 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 uses or activities set out as restricted or prohibited in this Section 11 and Sections 12 and 13 below, though not an exhaustive list, are inconsistent with the Purpose of this Conservation Easement and are prohibited.

11.2.a Subdivision: The Protected Property shall remain in unified ownership, which may be joint or undivided, but without division, partition, subdivision, or other legal or de facto creation of lots or parcels in separate ownership. This restriction shall not be interpreted to prohibit:

- (i) Lot line revisions of tax parcels within the Protected Property;
- (ii) Conventional leases of the permitted residence on the Protected Property; or
- (iii) The conveyance of any portion of the Protected Property to an entity that meets the qualifications under the provisions of RCW 64.04.130 for permanent conservation ownership, subject to Prior Written Approval pursuant to Section 14, *Notice or Prior Written Approval Required Before Certain Uses and Activities*.

11.2.b Development Rights: The use or transfer of any development rights that are new or hereafter allocated to, implied, reserved, or inherent in the Protected Property to any other property is prohibited.

11.2.c 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 is permitted only in the Building Zone, and only if removal of such material is necessary to carry out other permitted activities on 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 those activities, Grantor shall promptly restore any affected portion of the Protected Property as nearly as possible to its prior condition.

11.2.d Industrial Use: The use of the Protected Property for any industrial purpose is prohibited; however, this shall not be construed to prohibit home-based manufacturing at a scale that is not detrimental to the Purpose of this Conservation Easement.

11.2.e Commercial Recreation: Commercial recreational use of the Protected Property is prohibited, other than de minimis use of the Protected Property for commercial recreational activities, as such terms are defined by Code section 2031(c)(8)(B) and the applicable Treasury Regulations. By prohibiting more than a de minimis use of the Protected Property for commercial outdoor recreational activities, it is the intent of the Parties to prevent the Protected Property from becoming the site of a commercial recreational enterprise, such as a commercial campground, a golf course, an exclusive hunting grounds or club, a commercial site for an all-terrain vehicle, motocross or other racetrack, a dressage field, or other similar intensive or predominantly commercial use.

11.2.f Erosion or Water Pollution: Any use or activity on the Protected Property 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 or stormwater in manners inconsistent with the Purpose and terms of this Conservation Easement.

11.2.g Dumping: The dumping or disposal of used vehicles, or machinery, rubbish, garbage, debris, hazardous materials, or other unsightly or offensive material is prohibited on the Protected Property.

11.3 Relocation of South Shore Road.

11.3.a South Shore Road, a public county road, transects the Protected Property. It may become necessary to relocate South Shore Road due to inland movement of the marine shoreline.

11.3.b If Skagit County requests, Grantor may permit relocation of South Shore Road onto the Protected Property, provided that (1) Grantor obtains Prior Written Approval pursuant to Section 14, *Notice or Prior Written Approval Required Before Certain Uses and Activities*, (2) Grantor and Grantee mutually agree in writing to any plans for such relocation, and (3) Grantor cooperates with Grantee in efforts to minimize and mitigate for any impacts to the Conservation Values of the Protected Property and to restore any disturbed areas, to the extent possible.

12 Building Zone: Allowed and Prohibited Uses and Activities

12.1 Building Zone Allowed Uses and Activities

12.1.a Structures. Grantor may construct, use, maintain, repair, expand, reconstruct, relocate, remove, demolish, or replace one (1) single-family residence, its one (1) accessory dwelling unit, and their appurtenant structures, including barns and agricultural structures, access driveways, landscaping, gardens, greenhouses, fences, utilities (including water and septic), renewable energy systems, ponds, and other structures reasonably appurtenant to a single-family residence. Grantor shall provide Grantee Notice, pursuant to Section 14, *Notice or Prior Written Approval Required Before Certain Uses and Activities*, prior to submitting any application or pre-application for construction of any structures within the Building Zone. The purpose of this notice requirement is for Grantee to ensure that such structures are not located outside of the Building Zone.

12.1.b Residential and commercial use. Grantor may undertake single-family residential and commercial uses of the Building Zone, including uses related to home-based manufacturing and agriculture.

12.1.c All uses allowed in Habitat Conservation Zone also allowed in Building Zone. In addition to the specific allowed uses listed above in this Section, all of the allowed uses listed in Section 13.1, *Habitat Conservation Zone Allowed Uses and Activities*, are also allowed in the Building Zone.

12.2 Building Zone Prohibited Uses and Activities. Other than the restrictions and prohibited uses listed above in Section 11.2, *Restrictions on the Protected Property*, the only additional restriction in the Building Zone is that no more than one (1) single-family residence, its one (1) accessory dwelling unit, and their appurtenant structures may be constructed in the Building Zone.

13 Habitat Conservation Zone: Allowed and Prohibited Uses and Activities

13.1 Habitat Conservation Zone Allowed Uses and Activities

13.1.a Recreation: Grantor may use the Protected Property for otherwise lawful recreational uses, including, but not limited to, walking, birdwatching, passive enjoyment, and hunting and fishing, including shellfish gathering, to the extent that the use does not interfere with the Purpose of this Easement to protect the Conservation Values of the Protected Property.

13.1.b Habitat restoration and enhancement: Grantor may undertake habitat restoration or enhancement activities on both the land and water resources of the Protected Property to further the Purpose of this Conservation Easement, provided that such activities are conducted in accordance with a restoration plan that is mutually agreed to by Grantor and Grantee. Such plan shall be subject to Prior Written Approval, pursuant to Section 14, *Notice or Prior Written Approval Required Before Certain Uses and Activities*.

13.1.c Pond/wetland habitat: Grantor may use, maintain, expand, and restore the existing constructed pond described in the Baseline Documentation for the dual purposes of wetland habitat enhancement and water supply for community fire protection. This work may include removal of pond or berm vegetation and dredging to increase water depth, provided any such work shall be at a scale and intensity that is consistent with protection of the Conservation Values of the Protected Property. Any maintenance, expansion and/or restoration work shall be subject to Prior Written Approval pursuant to Section 14, *Notice or Prior Written Approval Required Before Certain Uses and Activities*.

13.1.d Septic drain field: Grantor may use, maintain, repair, reconstruct, and replace the septic drain field in its present location, or in the designated drain field reserve area, as described in the Baseline Documentation as existing as of the Effective Date of the Conservation Easement, provided that Grantor shall provide Grantee Notice, at least thirty (30) days in advance of any permit application or pre-application to Skagit County, pursuant to Section 14, *Notice or Prior Written Approval Required Before Certain Uses and Activities*, for any replacement, expansion, or relocation of the septic drain field so that Grantee may ensure consistency with the Purpose and other terms of this Conservation Easement. Any maintenance, repair, reconstruction, or replacement activity shall minimize impact to the Conservation Values of the Protected Property.

13.1.e Vegetation Management

- (i) **Forest management.** Grantor may plant native species of trees or shrubs within the Protected Property, as well as undertake forest management practices designed to address forest health, forest fire prevention, or to enhance or restore native wildlife habitat, including thinning or pruning of existing trees, provided that any cut trees are not removed from the Protected Property for commercial purposes. Prior to such forest management activities within the Habitat Conservation Zone, Grantor shall submit to Grantee, for Prior Written Approval pursuant to Section 14, *Notice*

or Prior Written Approval Required Before Certain Uses and Activities, a forest management plan that describes the management objectives of the plan and the specific practices proposed.

- (ii) **Noxious weeds and introduced species.** Grantor may remove noxious, invasive and introduced non-native plant species from the Protected Property.
- (iii) **Firewood.** Grantor may cut or collect a reasonable quantity of firewood for personal residential use on the Protected Property.
- (iv) **Hazard trees.** Trees or other vegetation that pose a threat to property, public health, the safety of neighbors, the general public, or users of the Protected Property, may be trimmed, pruned, topped, or removed. Except in the case of emergencies, such hazard tree management shall be subject to Prior Written Approval pursuant to Section 14, *Notice or Prior Written Approval Required Before Certain Uses and Activities*. A certified arborist shall arbitrate any disagreement regarding the identification of hazardous or diseased trees.
- (v) **Mowing.** Grantor may mow existing open areas of grass. Mowing shall not modify, damage or destroy native shrubs and trees, nor create additional open meadow areas, unless conducted under the provisions of section 13.1.b: habitat restoration and enhancement.

13.1.f Roads: Grantor may use, maintain, repair, and reconstruct roads existing on the Protected Property as of the Effective Date of the Conservation Easement as described in the Baseline Documentation, including the bridge across Cayou Creek. Any relocation of the existing bridge and/or private roads within the Habitat Conservation Zone shall be subject to Prior Written Approval pursuant to Section 14, *Notice or Prior Written Approval Required Before Certain Uses and Activities*.

- 13.1.g Trails:** Grantor may use, maintain, repair, reconstruct, and replace trails as described in the Baseline Documentation as existing on the Protected Property as of the Effective Date of the Conservation Easement for non-motorized trail use. In addition, Grantor may construct, use, maintain, repair, reconstruct, and replace trails not existing on the Protected Property as of the Effective Date of the Conservation Easement, subject to Prior Written Approval pursuant to Section 14, *Notice or Prior Written Approval Required Before Certain Uses and Activities* of the proposed plan for any such trail location and construction within the Habitat Conservation Zone.
- 13.1.h Stairway to beach:** Grantor may construct, use, maintain, repair, reconstruct, and replace one (1) low-impact stairway beach access structure to make pedestrian access to the shoreline more convenient and safe. Any construction, or replacement activity shall minimize impact to the Conservation Values of the Protected Property and shall be subject to Prior Written Approval pursuant to Section 14, *Notice or Prior Written Approval Required Before Certain Uses and Activities*.
- 13.1.i Fences:** Grantor may construct, maintain, repair, modify, and replace fences along the perimeter of the Protected Property and Building Zone. All fences along the perimeter of the Habitat Conservation Zone shall permit the reasonable passage of wildlife.
- 13.1.j Emergencies:** Grantor may undertake other activities necessary to protect public health or safety or that are actively required by and subject to compulsion of any governmental agency with authority to require such activity. Any such activity shall minimize impact to the Conservation Values of the Protected Property. Grantor shall notify Grantee as soon as practical after undertaking emergency activities that include uses or activities on the Protected Property that are otherwise restricted under this Conservation Easement.

13.1.k Boathouse: Grantor may construct, use, maintain, repair, reconstruct, and replace one (1) single-story structure used solely for storage of boat and/or marine equipment for personal use by grantor, permitted and consistent with local and State code and/or regulations, not located over water, sited next to the cliff, constructed on a removable or temporary foundation, not to exceed an over-ground foot and roof print of 200 ft², with no utilities other than a renewable energy device located on and serving only the structure. Any construction, or replacement activity shall minimize impact to the Conservation Values of the Protected Property and shall be subject to Prior Written Approval pursuant to Section 14, *Notice or Prior Written Approval Required Before Certain Uses and Activities*.

13.2 Habitat Conservation Zone Prohibited Uses

In addition to the restrictions described in Section 11.2, *Restrictions on the Protected Property*, the following uses and activities are prohibited in the Habitat Conservation Zone.

13.2.a Structures: The placement or construction of any buildings, structures, utilities, or other improvements of any kind (including, but not limited to docks, boat ramps, or beach access structures in the shoreline) is prohibited, except as expressly allowed in Section 13.1, *Habitat Conservation Zone Allowed Uses and Activities*.

13.2.b Alteration of land: Change in the topography of the land or shoreline alteration, including any tidelands and bedlands associated with the Habitat Conservation Zone, through the excavation or placing of soil, dredging spoils, filling, placement of bulkheads, shoreline armoring or hardening, and alteration of the coastal sediment input/transport/deposition regime is prohibited, except as expressly allowed in Section 13.1, *Habitat Conservation Zone Allowed Uses and Activities*.

13.2.c Alteration of wetlands and watercourses: The draining, filling, dredging, ditching, or diking of wetland areas or watercourses or any other action that would reduce the wetland area described in the Baseline Documentation as existing as of the Effective Date of this Conservation Easement is prohibited except as expressly allowed in Section 13.1, *Habitat Conservation Zone Allowed Uses and Activities*.

- 13.2.d Tree harvest or vegetation removal:** Removal or destruction of trees or shrubs, including removal of marine shoreline vegetation and plant material overhanging the beach,, herbaceous understory, clear-cutting or any other form of commercial logging, or gathering of other vegetation is prohibited, except incidental to allowed uses and activities within the Habitat Conservation Zone except as expressly allowed in Section 13.1, *Habitat Conservation Zone Allowed Uses and Activities*.
- 13.2.e Introduced vegetation:** The intentional introduction of non-native invasive plant species is prohibited.
- 13.2.f Crop cultivation:** The cultivation of any crops including commercial timber products, nursery stock, fruits and vegetables, row crops, and livestock feed is prohibited; this shall not be construed to prohibit the planting of native trees and plants for the purposes of habitat restoration; or the sale of timber products associated solely with approved restoration activities.
- 13.2.g Domestic and exotic animals:** The introduction or keeping of domestic or exotic animals, including kenneling, grazing, browsing, or pasturing of animals is prohibited. This restriction does not exclude domestic animals that may accompany Grantor and Grantor's guests during activities permitted in the Habitat Conservation Zone, such as horseback riding or dog walking. Removal of non-native invasive animal species is allowed.
- 13.2.h Wildlife disruption.** The intentional disruption of native wildlife, including feeding, resting, breeding and nesting activities is prohibited.
- 13.2.i Stormwater runoff:** Channelized stormwater outflow and/or discharge of pollutants to the freshwater stream or the beach and/or nearshore waters is prohibited.
- 13.2.j Signs:** The construction or placement of commercial signs, billboards, or other commercial advertising material is prohibited. This provision shall not be interpreted to prohibit Grantor from placing small signs that advise "no hunting," "private property," or other small signs indicating the protected conservation status of the Protected Property, provided that such signs are designed and located to avoid or minimize impact on the Conservation Values of the Protected Property.

13.2.k Motorized vehicles: The use of motorized vehicles is prohibited except as necessary in the accomplishment of habitat restoration, vegetation management, or other permitted uses and activities on the Habitat Conservation Zone. Use of motorized vehicles may not create impacts that are detrimental to the Purpose of this Conservation Easement.

13.2.l Camping: Public or commercial camping is prohibited. This restriction does not prohibit temporary recreational camping by Grantor and Grantor's guests.

13.2.m Night lighting: The use of any continuous type of night lighting is prohibited.

14 Notice or Prior Written Approval Required Before Certain Uses and Activities

14.1 Purpose of Notice. The purpose of requiring Grantor to notify Grantee prior to undertaking certain 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 other terms of this Conservation Easement.

14.2 Notice distinguished from Prior Written Approval

14.2.a Notice. As used in this Conservation Easement, a requirement that the Grantor "notify" or "provide Notice" to Grantee pursuant to this Section means that the Grantor shall provide Grantee in writing the information set out in Section 14.3 at least 30 days before undertaking the intended use or activity, unless a different notice period is specified in this Conservation Easement. When this Conservation Easement requires Grantor only to provide "Notice," Grantee's approval is not required for Grantor to proceed.

14.2.b Prior Written Approval. As used in this Conservation Easement, a requirement that Grantor obtain "Prior Written Approval" from Grantor pursuant to this Section before taking action means that the Grantor shall provide Notice as described in Section 14.3 and await Grantee's written response as set out in Sections 14.5 and 14.6. When this Conservation Easement requires Grantor to obtain "Prior Written Approval," a proposed use or activity may be commenced or conducted only after Grantor has received Grantee's express written approval and only in the manner requested by Grantor and approved by Grantee, except as provided in Sections 14.9 and 14.10.

14.3 Required contents of the Notice. 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 and other terms of this Conservation Easement.

14.4 When Notice is required. Grantor shall notify Grantee before Grantor undertakes any use or activity on the Protected Property that may have an adverse and material impact on the Conservation Values of the Protected Property, specifically including but not limited to the following activities identified in the Conservation Easement:

- 14.4.a** Construction of any buildings, structures, or improvements under Section 12.1.a, *Structures* (Building Zone), at least 30 days prior to the time of permit application or pre-application;
- 14.4.b** Septic drain field reconstruction or replacement under Section 13.1.d, *Septic drain field* (Habitat Conservation Zone), at least 30 days prior to the time of permit application or pre-application; or
- 14.4.c** Transferring any interest in all or a portion of the Protected Property Subsection 22.5, *Subsequent Transfers*, at least 30 days prior to the date of such transfer.

14.5 When Prior Written Approval is required. Grantor shall obtain Prior Written Approval from Grantee before Grantor undertakes on the Protected Property any of the following uses or activities identified in the Conservation Easement:

- 14.5.a** Moving or removing reference point markers placed under Section 9.6, *Markers*;
- 14.5.b** Habitat restoration and enhancement activities in the Habitat Conservation Zone under Section 13.1.b, *Habitat restoration and enhancement* (Habitat Conservation Zone);
- 14.5.c** Maintenance, expansion and/or restoration of the existing pond in the Habitat Conservation Zone under Section 13.1.c, *Pond/wetland habitat* (Habitat Conservation Zone);
- 14.5.d** Forest management activities in the Habitat Conservation Zone under Section 13.1.e(i), *Forest management* (Habitat Conservation Zone);
- 14.5.e** Except in case of emergency, removal of hazard trees under Section 13.1.e(iv), *Hazard trees* (Habitat Conservation Zone);
- 14.5.f** Relocation of the existing bridge or private roads within the Habitat Conservation Zone under Section 13.1.f, *Roads* (Habitat Conservation Zone);

14.5.g Location and construction of new trails in the Habitat Conservation Zone under Section 13.1.g, *Trails* (Habitat Conservation Zone);

14.5.h Construction or replacement of a stairway to the beach under Section 13.1.h, *Stairway to beach* (Habitat Conservation Zone);

14.5.i Relocation of South Shore Road onto the Protected Property under Section 11.3, *Relocation of South Shore Road*; or

14.5.j Conveyance of any portion of the Protected Property for permanent conservation ownership under Section 11.2.a, *Subdivision*.

14.6 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 and other terms of this Conservation Easement and to provide comments thereon to Grantor for the purpose of this Conservation Easement only. Grantee's response shall be in accordance with the time period and manner provided in Sections 14.4 and 14.5.

14.7 Time for Grantee's response to a request for Prior Written Approval.

Unless otherwise provided in this Conservation Easement, Grantee shall have thirty (30) days from the receipt of a request for Prior Written Approval, to review the proposed use or activity. The 30-day period shall not begin until Grantee has received adequate information to evaluate the proposed use or activity. If Grantee requires additional information to evaluate the proposed use or activity, Grantee shall request the information from Grantor as soon as practicable, and in any case not later than 30 days after receiving the request for approval.

14.8 Response to a request for Prior Written Approval. Grantee's decision to approve or disapprove the use or activity proposed by Grantor shall be in writing either served personally or sent by first class mail, postage prepaid to Grantor at the address provided to Grantee in the request. A decision by Grantee to disapprove a proposed use or activity shall be based upon Grantee's determination that the proposed use or activity is inconsistent with the Purpose or other terms of this Conservation Easement. If, in Grantee's judgment, it is possible to modify the proposed use or activity to be consistent with the Purpose and other terms of this Conservation Easement, Grantee's response shall inform Grantor of the manner in which the proposed use or activity can be modified to conform to the Purpose and other terms of this Conservation Easement. Once a request for permission has been modified to the satisfaction of Grantee, or Grantee otherwise concurs with the matters set forth in Grantor's request, the proposed use or activity may thereafter be conducted in the manner approved by Grantee.

14.9 Grantee's failure to respond to a request for Prior Written Approval within the allotted time. Where Grantee's Prior Written Approval is required, and if Grantee does not respond within the required time period and manner set forth in Section 14.8, Grantor shall resubmit its notice pursuant to Section 14.12. If Grantee fails thereafter to act on Grantor's resubmitted request for Prior Written Approval within thirty (30) days of receipt, as indicated by the registered or certified return receipt or other proof of delivery, Grantor may assume Grantee's approval of the requested use or activity in question.

14.10 Professional third-party consultation. Where Grantee's Prior Written Approval is required and Grantee lacks the expertise to determine if approval is warranted, Grantee may require that Grantor engage at Grantor's expense a third-party professional (such as a biologist, forester, or engineer), qualified in the appropriate field(s), to prepare a plan and/or review Grantor's plan, with a written report or opinion provided to Grantee at Grantor's expense. The purpose of such third-party consultation is to provide enough information to Grantee to reasonably ensure that the impacts of the proposal to the Conservation Values on the Protected Property will be minimized.

14.11 Emergency conditions beyond Grantor's control. Grantor will not be liable for failure to request approval of any prudent actions taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to persons or the Protected Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any similar cause. After such event has occurred, Grantor shall notify Grantee as soon as practical.

14.12 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 mail, postage prepaid, to the addresses of Grantor and Grantee noted on page 1 of this Conservation Easement, or other address as either Party designates by written notice to the other.

14.13 Constructive receipt of notices. Rejection or other refusal to accept notices, objections, or approvals by any Party shall be deemed receipt thereof.

15 Mediation of Disputes

Either Party may give written notice to the other Party of a dispute and request that the matter be subject to mediation, with the mediator to be selected from those available from a recognized dispute resolution center or mediation service and, with each Party to pay 50% of the mediator's fees. If the Parties cannot agree on a mediator, they each shall name a preferred mediator and the mediator shall then be determined by coin flip. Both Parties shall meet in good faith as is reasonably requested by the mediator in an attempt to resolve the dispute. Except for circumstances requiring immediate action as provided in Section 16.4, *Emergency enforcement*, the Parties shall mediate in good faith for at least thirty (30) days after appointment of a mediator; if no resolution has been reached after thirty days, either Party may pursue other remedies.

16 Breach and Enforcement—Grantee's Remedies

16.1 Common interest/agreements. Grantor and Grantee are presumed to have a common interest in the reasonable application of the terms of this Conservation Easement to the Protected Property, and the Parties undertake the grant and acceptance of the Conservation Easement in a spirit of cooperation which presupposes regular consultation between Grantor and Grantee. Grantor and Grantee shall be bound by any agreements they may mutually reach as to the interpretation of this Conservation Easement that are set forth in writing, provided to each Party, and recorded in the minutes and records of Grantee or its successor and with the Skagit County Auditor.

16.2 Notice of violation. If Grantee determines that Grantor is in violation of the terms of this Conservation Easement 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. Where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose or other terms of this Conservation Easement, the Grantee may demand that Grantor restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee and/or pay damages.

16.3 Grantee's right to bring action.

Grantee may bring an action as provided in Section 16.5 if:

- (i) Grantor fails to cure the violation within 30 days after receipt of a notice of violation from Grantee; or
- (ii) Under circumstances where the violation cannot reasonably be cured within a 30-day period, Grantor fails to begin curing the violation within the 30-day period, or Grantor fails to continue diligently to cure such violation until finally cured.

16.4 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 and/or without waiting for the period provided for cure to expire.

16.5 Grantee's judicial remedies.

16.5.a 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:

- (i) To enjoin the violation, ex parte as necessary, by temporary restraining order, preliminary injunction or permanent injunction; and
- (ii) To require the restoration of the Protected Property to the condition that existed prior to any such injury.

16.5.b Damages: Grantee is deemed to have a valuable, compensable interest in the Conservation Values of the Protected Property. 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 award of damages recovered to the cost of undertaking corrective or restoration action on the Protected Property.

16.6 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. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee is 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 proving either actual damages or the inadequacy of otherwise available legal remedies and Grantor hereby waives any requirement for the posting of any bond as a condition of enforcement. Grantee's remedies described in this Section are cumulative and in addition to all remedies now or hereafter existing at law or in equity.

16.7 Costs of enforcement. In the event Grantee must enforce the terms of this Conservation Easement, Grantor shall pay the costs of (1) restoration necessitated by acts or omissions of Grantor or person(s) acting on its behalf, at its direction, with its permission, or otherwise subject to its supervision and control in violation of the terms of this Conservation Easement, and/or (2) Grantee's reasonable enforcement expenses, including attorneys' and consultants' fees. Grantor's liability shall extend to 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 paid 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.

16.8 Grantee's discretion. Grantee acknowledges its commitment to uphold the Purpose of the Conservation Easement. Enforcement of the terms of the Conservation Easement is, however, at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any terms of this Conservation Easement by Grantor or person(s) acting on its behalf, at its direction, with its permission, or otherwise subject to its supervision and control, 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. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor may impair such right or remedy or be construed as a waiver of such term or any of Grantee's rights under this Conservation Easement.

16.9 Waiver of certain defenses. Grantor acknowledges that it has carefully reviewed this Conservation Easement and its terms and requirements. In full knowledge of the provisions of this Conservation Easement, Grantor hereby waives any claim or defense it may have against Grantee or its successors or assigns under or pertaining to this Conservation Easement 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 14 of this Conservation Easement.

16.10 Acts within and beyond Grantor's control. Grantor is responsible for the acts and omissions of persons acting on its behalf, at its direction, with its permission, or otherwise subject to its supervision and control, and Grantee shall have the right to enforce this Conservation Easement against Grantor for any use of or activity on the Protected Property which is a violation of this Conservation Easement and which result from such act or omission. Nothing contained in this Conservation Easement, however, may 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.

16.11 Actions against trespassers. In the event the terms of this Conservation Easement are violated by acts of trespasser(s) and Grantee has initiated a suit against the trespasser(s) for such violation, Grantor agrees, at Grantee's option and expense, to join in any suit, and hereby assigns its right of action to Grantee, and hereby appoints Grantee its attorney-in-fact, for the purpose of pursuing enforcement action against the trespasser(s). Under such circumstance, Grantee, in its sole and absolute discretion, may apply any damages recovered to the cost of undertaking the suit and any corrective action on the Protected Property.

16.12 Compliance certificates. Upon request by Grantor, Grantee shall, within 30 days execute and deliver to Grantor, or to any party designated by Grantor, any reasonable 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 and otherwise evidences the status of this Conservation Easement. 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 may conduct an inspection, at Grantor's expense, within 30 days of receipt of Grantor's written request.

17 Property Maintenance, Insurance, Liens, and Taxes

17.1 Legal responsibilities. Grantor retains all responsibilities and will bear all costs and liabilities of any kind related to the ownership, operation, and maintenance of the Protected Property, including the control of noxious weeds in accordance with Washington law.

17.2 Insurance. Grantor shall maintain comprehensive general liability insurance coverage for the Protected Property. Such insurance shall name Grantee as an additional insured if available. Grantor shall provide written proof of such insurance and instruct its carrier to provide thirty (30) days' written notice to Grantee of the lapse or alteration of such insurance. If such insurance is not so maintained, Grantee may acquire said insurance and shall receive reimbursement there for from Grantor.

17.3 Liens. Grantor will 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 is diligently challenging the application of such liens to the Protected Property.

17.4 Taxes. Grantor shall pay before delinquency, or file timely appeal of, all taxes, assessments, fees, and 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, for which Grantor shall be obligated to promptly reimburse Grantee; and the obligation created by such payment will bear interest until paid by Grantor at the maximum rate allowed by law.

18 General Representations and Warranties

Grantor represents and warrants that, after reasonable investigation and to the best of Grantor's knowledge:

- 18.1 Good title.** Grantor has good title to the Protected Property, Grantor has the right to convey this Conservation Easement, and the Protected Property is free and clear of any liens, mortgages or other financial encumbrances;
- 18.2 Compliance with applicable laws.** 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;
- 18.3 No proceedings or threatened litigation.** 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.

19 Environmental Representations and Warranties

- 19.1 Applicable law.** As used in this Conservation Easement, "Environmental Law" or "Environmental Laws" mean 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.

19.2 Environmental warranties

19.2.a Grantor warrants that the Protected Property is in compliance with, and will remain in compliance with, all applicable Environmental Laws.

19.2.b 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, nor have civil or criminal proceedings been instigated or be pending against Grantor or its predecessors by government agencies or third parties arising out of alleged violations of any Environmental Law.

19.2.c Grantor warrants that Grantor has no actual knowledge of a release, threatened release, dumping, burying, abandonment, or migration from off-site onto the Protected Property of any Hazardous Materials.

19.2.d 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.) sites.

19.3 Environmental indemnification. Grantor hereby promises to hold harmless and indemnify Grantee against all litigation, claims, demands, penalties, fines, and damages, including reasonable attorney's 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.

19.4 Remediation. If, at any time, there occurs, or has occurred, a release in, on, or about the Protected Property of any Hazardous Material, Grantor agrees to take all steps required under applicable law to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible for remediation.

19.5 Control. Nothing in this Conservation Easement may 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/or the Model Toxic Control Act ("MTCA").

20 Indemnification

Grantor hereby agrees to release and hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with:

- (a) 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; and
- (b) The obligations, covenants, representations, and warranties in Sections 17, 18 and 19.

21 Amendments and Discretionary Consent

21.1 Discretionary Consent. Grantor and Grantee recognize that circumstances could arise that justify amendment of certain terms, covenants, or restrictions contained in this Conservation Easement. In addition, some activities, technologies or uses of the Protected Property that are compatible with the Purpose of this Conservation Easement may not have been anticipated at the time the Conservation Easement was granted. Therefore, Grantor and Grantee have the right to agree to amendments, to this Conservation Easement and/or to discretionary consent for certain uses or activities on the Protected Property, without prior notice to any other party; provided that, in its sole and exclusive judgment, Grantee determines that such amendment or discretionary consent furthers, or is not inconsistent with, the Purpose of this Conservation Easement.

21.2 Amendments. This Conservation Easement may be amended by the execution and delivery of an amended easement deed, but only with the written consent of both Grantor and Grantee.

21.2.a Consistency with Purpose. If circumstances arise under which an amendment to or modification of this Conservation Easement would be appropriate, Grantor and Grantee are free to jointly amend this Conservation Easement, except that:

- (i) No amendment shall be allowed that shall affect the qualification of this Conservation Easement or the status of Grantee under any applicable laws, including RCW 64.04.130, Chapter 84.34 RCW, or section 170(h) of the Code;
- (ii) Any such amendment shall be consistent with the Purpose of this Conservation Easement;
- (iii) Any such amendment may not diminish the effectiveness of this Conservation Easement in carrying out the Purpose of the Conservation Easement in any way and only those amendments that strengthen the effectiveness of the Easement in carrying out the Purpose of the Conservation Easement may be permitted; and
- (iv) Any such amendment may not affect the perpetual duration of the Conservation Easement.

21.2.b Consistency with Grantor policies. Any amendment shall be consistent with Grantee's Conservation Easement Amendment Policy.

21.2.c Recordation required. To be effective, an approved amendment shall be recorded in the official records of Skagit County, Washington, and any other jurisdiction in which such recording is required.

22 Extinguishment, Condemnation, and Subsequent Transfer

22.1 Extinguishment. If circumstances arise 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, upon a finding and declaration to that effect by a court of competent jurisdiction.

22.2 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 join in appropriate actions 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.

22.3 Valuation. This Conservation Easement constitutes a real property interest immediately vested in Grantee, which, for the purpose of Section 22.4, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Protected Property unencumbered by the Conservation Easement (minus any increase in the value after the date of this grant attributable to improvements) by the ratio of the value of the Conservation Easement at the time of this grant to the value of the Protected Property, without deduction for the value of the Conservation Easement, at the time of this grant ("Grantee's Proportionate Share"). In the event that Grantor claims a deduction for federal income tax purposes allowable by reasons of this grant, the values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reasons of this grant, pursuant to section 170(h) of the Code. For the purposes of this paragraph, the ratio of the value of the Conservation Easement to the value of the Property unencumbered by the Conservation Easement shall remain constant.

22.4 Proceeds. In the event of an extinguishment, or the taking of all or part of the Protected Property by eminent domain, Grantee is entitled to its Proportionate Share, after the satisfaction of prior claims, of the proceeds from any sale, exchange, or voluntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment of this Conservation Easement. Grantee shall use all such proceeds in a manner consistent with the Purpose of this Conservation Easement.

22.5 Subsequent Transfers

22.5.a Grantor agrees to:

- UNOFFICIAL COMMENT
- (i) Incorporate the terms of this Conservation Easement 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; *provided*, that any failure to so reference this Conservation Easement shall not diminish its application or the Grantee's interest in the Protected Property.
 - (ii) Describe this Conservation Easement in and append it to any executory contract for the transfer of any interest in the Protected Property; *provided*, that any failure to so reference this Conservation Easement shall not diminish its application or the Grantee's interest in the Protected Property.
 - (iii) 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
 - (iv) Give Notice to Grantee of the transfer of any interest in all or a portion of the Protected Property no later than 30 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.

22.5.b The failure of Grantor to perform any act required by this Section does not impair the validity of this Conservation Easement or limit its enforceability in any way.

23 Assignment and Succession

23.1 Assignment. Grantee's interest in this Conservation Easement is transferable, but Grantee may assign its rights and obligations under this Conservation Easement only to an organization that is a qualified organization at the time of transfer under section 170(h) of the Code (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under RCW 64.04.130 or RCW 84.34.250 (or any successor provision then applicable). As a condition of such transfer, Grantee shall require that the Purpose of this Conservation Easement will continue to be carried out by the transferee. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment.

23.2 Succession. 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 its rights and duties hereunder shall become vested and fall upon the following named entities:

23.2.a The San Juan Preservation Trust, P.O. Box 759, Friday Harbor, Washington 98250; or

23.2.b Such other entity, with purposes similar to the Skagit Land Trust, constituting a "qualified organization" within the meaning of the Code (or corresponding provision of any future statute); provided that if such vesting in the entities named above is deemed to be void under the Rule Against Perpetuities, the rights and obligations under this Conservation Easement shall vest in such organization as a court of competent jurisdiction shall direct, pursuant to the applicable Washington law and the Code (or corresponding provision of any future statute) and with due regard to the Purpose of this Conservation Easement.

24 Interpretation

Any general rule of construction to the contrary notwithstanding, the provisions of this Conservation Easement shall be liberally construed to effectuate the Purpose of this Conservation Easement and the policy and purpose of RCW 64.04.130 and RCW Chapter 84.34. The Parties acknowledge that each Party has reviewed and revised this Conservation Easement and that no rule of construction that ambiguities are to be resolved against the drafting Party shall be employed in the interpretation of this Conservation Easement. If any provision in this Conservation Easement is found to be ambiguous, an interpretation consistent with the Purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

25 General Provisions

25.1 Recordation. 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.

25.2 Controlling law. The interpretation and performance of this Conservation Easement is governed by the laws of the State of Washington.

- 25.3 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 Conservation Easement. No alteration or variation of this instrument is valid or binding unless contained in an amendment that complies with Section 21, *Amendments and Discretionary Consent*.
- 25.4 Subordination.** No provision of this Conservation Easement is to be construed as impairing the ability of Grantor to use the Protected Property as collateral for any loan, provided that any mortgage, deed of trust or other lien arising after the date of execution of this Conservation Easement shall be subordinate to the Purpose and other terms of this Conservation Easement, and said security interest in the Protected Property may not be foreclosed so as to create a division or subdivision of the Protected Property or extinguish or otherwise affect Grantee's rights under this Conservation Easement.
- 25.5 No merger.** In the event Grantee acquires all or a portion of the fee title to the Protected Property, the Parties intend that no merger of title will occur 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 this Conservation Easement would remain permanent and perpetual restrictions on the use of the Protected Property.
- 25.6 Severability.** If any provision of this Conservation Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, may not be affected.
- 25.7 Joint obligation.** The obligations imposed by this Conservation Easement upon Grantor are joint and several.
- 25.8 No forfeiture.** Nothing in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any way.
- 25.9 Successors and Assigns.** The covenants, terms, conditions, and restrictions of this Conservation Easement are binding upon, and inure to the benefit of, the Parties to this Conservation Easement and their respective personal representatives, heirs, successors, and assigns, and continue as a servitude running in perpetuity with the Protected Property.

25.10 Termination of rights and obligations. A Party's rights and obligations under this Conservation Easement 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 will survive transfer.

25.11 Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

25.12 Counterparts. The Parties may execute this instrument in two or more counterparts, each of which shall be signed by all Parties. Each counterpart is 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 controls.

25.13 Notice of suit. Grantor shall immediately provide Grantee with notice of any lawsuit or administrative action involving the Protected Property or which threatens Grantee's rights in this Conservation Easement. Notice shall be sent to Grantee's address and shall include a copy of any lawsuit or administrative action filed. Grantor agrees not to object to Grantee's intervention in any such lawsuit or action. Such lawsuit or action can include, but is not limited to, quiet title action, partition, condemnation or eminent domain, foreclosure, environmental cleanup or enforcement, or any other lawsuit or action affecting the Protected Property and/or potentially affecting the Conservation Values protected by this Conservation Easement.

25.14 Effective Date. The "Effective Date" of this Conservation Easement is the date of recording in the records of Skagit County, Washington. This Conservation Easement is not effective until recorded.

26 Schedule of Exhibits

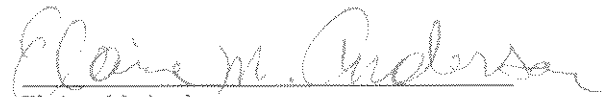
- A. Legal Description of Protected Property
- B. Site Map/Plan
- C. Legal Description of Building Zone
- D. Baseline Report

{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 27 day of April, 2016.


J. Winston Anderson


Elaine M. Anderson

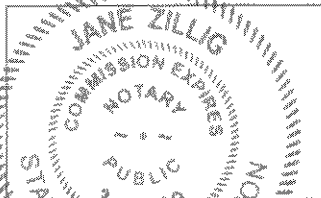
State of Washington)

) ss.

County of Skagit)

I certify that I know or have satisfactory evidence that J. Winston Anderson is the person who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____



Signature of Notary Public

Printed Name of Notary Public

My appointment expires

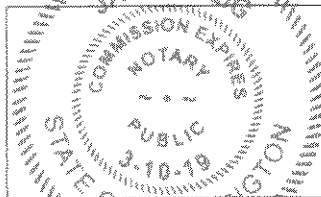
State of Washington)

) ss.

County of Skagit)

I certify that I know or have satisfactory evidence that Elaine M. Anderson is the person who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____



Signature of Notary Public

Printed Name of Notary Public

My appointment expires

(Notary Seal on page above)

SKAGIT LAND TRUST does hereby accept the above Grant Deed of Conservation Easement.

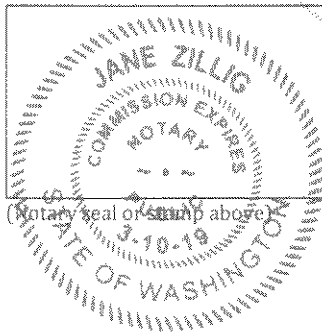
Dated: 4/27/16

By: [Signature]
Sarah Young, President, Skagit Land Trust

State of Washington)
) ss.
County of Skagit)

I certify that I know or have satisfactory evidence that Sarah Young 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 Board of Directors President of Skagit Land Trust to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 4/27/16



[Signature]
Signature of Notary Public

JANE ZILLIG
Printed Name of Notary Public

My appointment expires 3-10-19

Exhibit A

Legal Description of Protected Property

Skagit County Assessor's Parcels Numbers P32763, P96273, P32784, P32786, and P132832

Parcel A:

Government Lot 5, Section 7, Township 35 North, Range 2 East, W.M., EXCEPTING THEREFROM the Easterly 880 feet of said subdivision;

TOGETHER WITH all that portion of vacated South Shore Road No. 1900, vacated February 19, 1991 by instrument recorded under Auditor's File No. 9104080036, records of Skagit County, Washington, as would attach to said premises by operation of law;

EXCEPT that portion conveyed to Skagit County by deed recorded January 28, 1946, under Auditor's File No. 387693, and that portion lying within the unvacated portion of the right-of-way of Guemes Island Road No. XLVII, also known as South Shore Road;

TOGETHER WITH That portion of the West 440 feet of the East 880 feet of Government Lot 5, Section 7, Township 35 North, Range 2 East, W.M., lying Westerly of 'Cayou Creek',

Parcel B:

The Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$, EXCEPTING THEREFROM the Easterly 880 feet of said subdivisions, ALL in Section 7, Township 35 North, Range 2 East W.M., Skagit County, Washington.

Parcel C:

The West 440 feet of the East 880 feet of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$, ALL in Section 7, Township 35 North, Range 2 East, W.M..

Exhibit B

Site Map

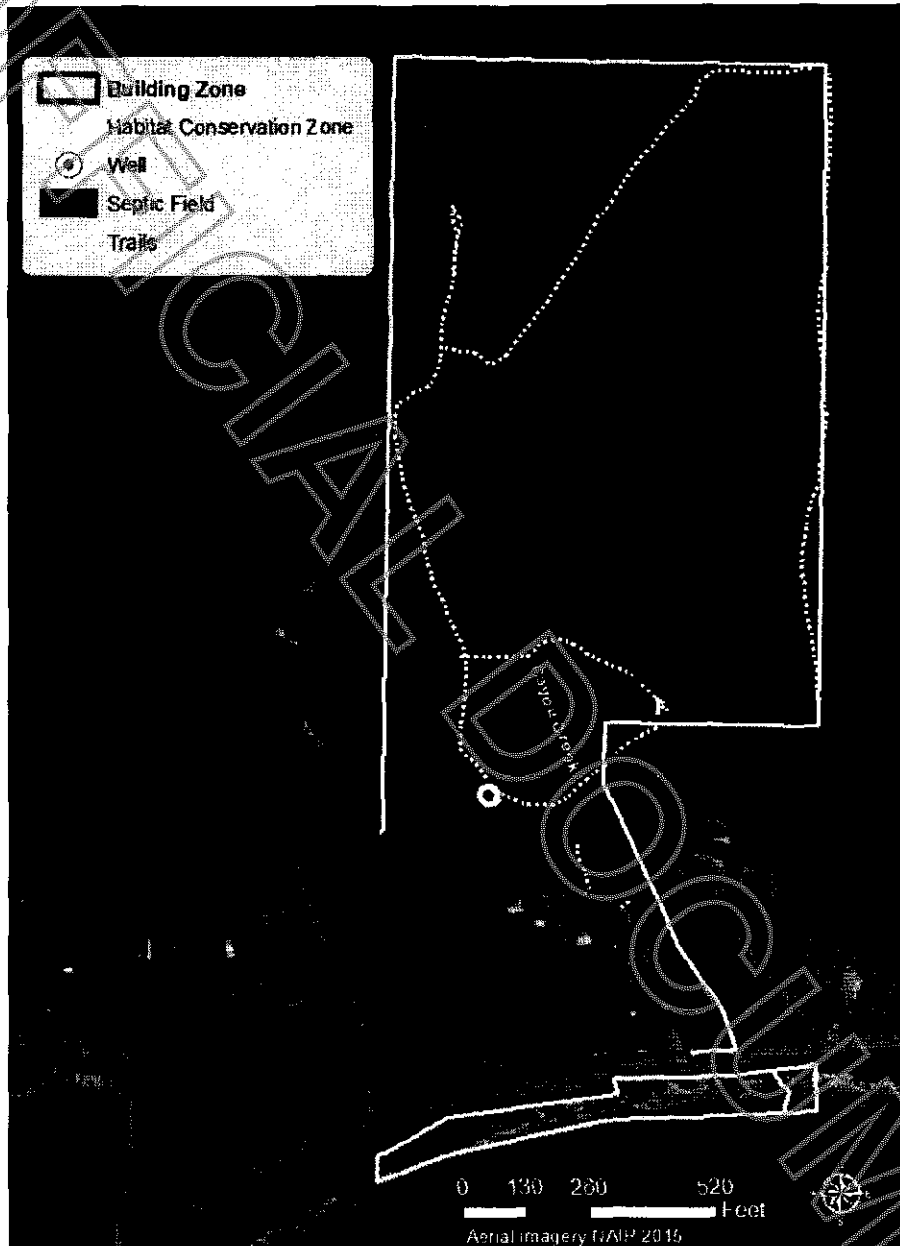


Exhibit C

Legal Description of Building Zone

Commencing at the north $\frac{1}{4}$ corner of Section 7, Township 35 North, Range 2 East, W.M. thence S01-03-29W, along with the north-south centerline, 1321.28' to the northwest corner of Govt. Lot 5, thence continuing S0-01-03-29W, 288.17' to a $\frac{1}{2}$ " rebar/plastic cap, L.S. 26303, which is the northwest corner of the building zone and the true point of beginning, thence S88-51-57E, 409.34' to a $\frac{1}{2}$ " rebar/plastic cap; thence S33-18-37E, 159.12' to a $\frac{1}{2}$ " rebar/plastic cap set on the east edge of an existing gravel driveway; thence continuing southeasterly along said east edge S35-41-20E, 96.42'; thence S24-00-58E, 47.61'; thence S06-44-36E, 64.25'; thence S18-44-18E, 114.93' to a point at the intersection of said east edge with the north line of the County road known as the South Shore Road; thence continuing S81-00-00W along said north line, 41.20'; thence S82-01-36W, 480.55' to a point on a curve; thence on a curve to the left having a length of 112.15' and a radius of 984.93' to the intersection of said north line with the north-south centerline of Section 7; thence N01-3-29E, 530.56' to the true point of beginning.

EXHIBIT D

**GUEMES – ANDERSON
CONSERVATION EASEMENT
BASELINE REPORT**



April 18, 2016
Prepared by
Michael Kirshenbaum, M.S.
Stewardship Director, Skagit Land Trust

Guemes – Anderson Conservation Easement – Skagit Land Trust

Grantor Information: J. Winston Anderson and Elaine M. Anderson

Location: 6237 South Shore Rd.
Anacortes, WA 98221

Legal Description: Ptn. Gov't Lot 5 and the NW NE
Full legal description shown in Exhibits A & C

Assessor's Tax Parcel No: P32763, P32786, P32784, P96273, P132832

Skagit Land Trust (Grantee) Contact: Skagit Land Trust,
PO Box 1017, Mount Vernon, WA 98273
(360) 428-7878

Property Information

Acres: 36 acres appx. (30 acres in Habitat Conservation Zone
and 6 acres in Building Zone).

Number of Structures: 0 in Habitat Conservation Zone, 3 in Building Zone.

Elevation: 0-30 ft.

Zoning: Rural Reserve

Survey: 12/7/15 Skagit County AF#201512070101

Driving Directions: From Mount Vernon drive west to Anacortes to the
Guemes Island Ferry. Upon exiting the ferry, turn right
on South Shore Rd. Travel appx. 1.3 miles and the
property is on the left (6237 South Shore Rd.).

Geographic Context

The protected property is located on Guemes Island in Skagit County, WA. Guemes Island is part of the San Juan Island archipelago located in Puget Sound, which has been identified by the Washington State Legislature as a "national treasure and unique resource (RCW 90.71.200)." The Padilla Bay National Marine Estuary Research Reserve protects open water, tidal mud flats and significant eel grass beds immediately to the east of the island. Guemes Island features a significant portion of conservation land, including a large conservation easement protecting additional acreage immediately to the north of the protected property. The protected property connects salt-water shoreline with upland riparian, forest, meadow and wetland habitat. Located immediately across Guemes Channel from the town of Anacortes, the protected property provides aesthetic value of a relatively undeveloped shoreline at the base of the island's key geographic feature, Guemes Mountain.



Geology & Landform

The soils at the site consist of:

- USGS Soil Type 18 – Bow gravelly loam, low precipitation, 0 to 3 percent slopes.
- USGS Soil Type 35 – Coveland gravelly loam, 0 to 3 percent slopes
- USGS Soil Type 97 – Mukilteo muck, 3 to 10 percent slopes
- USGA Soil Type 98 – Mukilteo Variant Muck

Soil map and information retrieved via the U.S. Natural Resource Conservation Service's Web Soil Survey.

The protected property features a steep, shoreline bank but otherwise has very little topographic variation. The shoreline bank is approximately 20' in height and has an erosion history that has prompted Skagit County to install bank-hardening infrastructure on the shoreside of the upper land mass to protect South Shore Rd. The other notable landform feature is the channel of Cayou Creek, which cuts across the NW and central portions of the property.

Hydrology

Cayou Creek, the only mapped creek on Guemes Island, bisects the property. This is currently a non-fish bearing seasonal stream that does not have observable flow for approximately half of the year. The stream has potential fish habitat if a down-stream culvert under South Shore Rd. and other infrastructure are removed or replaced. The current culvert blocks the passage. The stream was previously modified and features areas of old drain tile, the full extent of which is unknown, that likely impacts hydrology.

A small, modified wetland complex is present in the northern section of the protected property. Approximately 8 acres of wetland-typical vegetation is present in this area. The wetland features an approximately 0.5 acre previously-built open-water pond, along with some associated side channels. This pond can partially dry during summer months and covers more acreage during the winter. Wetlands on the property are categorized as freshwater emergent as part of the National Wetland Inventory (NWI), however the broad scale of the NWI is insufficient to be considered for a detailed delineation. Cayou Creek drains the wetland complex.

The protected property features approximately 850' of marine shoreline. This area features a steep feeder bluff, boulders, rocks and gravels of many sizes, and a portion of the tidal mud flats.

Vegetation

The protected property consists of a variety of vegetation classes, largely grouped into three environments: mature forest, wetland, and open meadow. Areas of the property had previously been cleared for pasture and the regenerating forest features trees in the 25-75 year age class. This forest contains a variety of low-elevation native species typical to Western Washington, including red alder,

western hemlock and western red cedar. The open meadow and wetland areas, as well as the understory of some forested areas, contains a wide variety of species, particularly rose and snowberry.

The Habitat Conservation Zone features approximately 50% forest canopy, 25% open meadow, and 25% wetland habitat.

Protected Area Common Plants (partial list, additional species are present):

<i>Acer macrophyllum</i> (Big Leaf Maple)	<i>Tsuga heterophylla</i> (Western Hemlock)
<i>Alnus rubra</i> (Red Alder)	<i>Pteridium aquilinum</i> (Bracken Fern)
<i>Berberis nervosa</i> and <i>Berberis aquifolium</i> (Oregon Grape)	<i>Symphoricarpos albus</i> (Snowberry)
<i>Oemleria cerasiforma</i> (Indian Plum)	<i>Rosa nutkana</i> & <i>gymnocarpa</i> (Nootka and Baldhip rose)
<i>Populus trichocarpa</i> (Black Cottonwood)	<i>Cornus stolonifera</i> (Red-Osier Dogwood)
<i>Pseudotsuga menziesii</i> (Douglas Fir)	<i>Typha latifolia</i> (Cattail)
<i>Rubus ursinus</i> (Trailing Blackberry)	<i>Juncus</i> (Rush)
<i>Thuja plicata</i> (Western Red Cedar)	

Invasive Vegetation (partial list, additional species are present):

Ilex aquifolium (English Holly)
Rubus armeniacus (Himalayan Blackberry)
Cirsium arvense (Canadian Thistle)
Dipsacus fullonum (Common Teasel)

Wildlife Habitat

Wildlife habitat exists for a variety of species typical to the near-shore and upland environment of coastal western Washington. The mature forest, open meadows, wetland, shoreline and a variety of edge habitats provide nesting and foraging opportunities for native birds, amphibians, insects, mammals and others.

Built Environment and Human Impacts

The Building Zone contains several buildings, including one single-family home, one barn / workshop / apartment (which constitutes an accessory dwelling unit), and a small shed. A driveway forms the eastern boundary of the Building Zone.

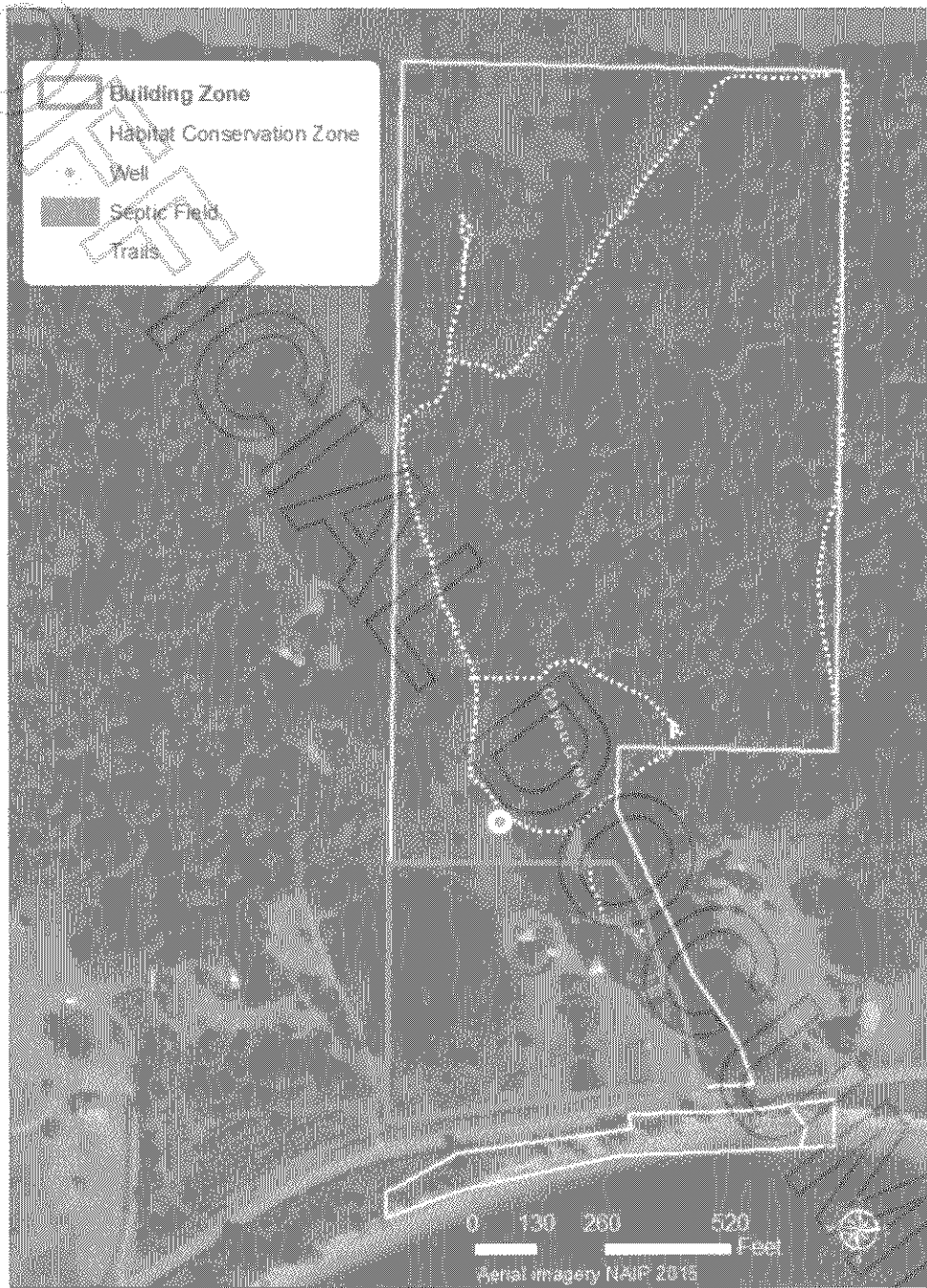
The Habitat Zone features a well, septic drain field (and designated back-up septic drain field), a power transformer and a small portion of the access driveway crosses the Habitat Zone to access a neighboring property to the east.

A mowed trail network, along with two small wooden bridges, are featured in the Habitat Zone.

Mowing also occurs between the access driveway and Cayou Creek.

The shoreline bank is approximately 20' in height and features county-installed low-impact bank-stabilizing infrastructure and native plants at the top of the bluff to protect South Shore Rd.

Site Map



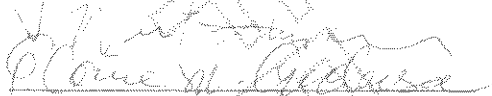
Assessors Map



Additional documentation within the baseline file at Skagit Land Trust offices:

- Photopoints
- Title Report

In compliance with Section 1.170A-14(g)(5) of the federal tax regulations, this natural resources inventory is an accurate representation of the property at the time of conservation easement donation.


Grantor

date: 4-27-16


Skagit Land Trust, Grantee

by: Michael Kirshenbaum, M.S.

its Stewardship Director

date: 4-21-16