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01/14/2020 11:59 AM Pages: 1 of 10 Fees: \$112.50  
Skagit County Auditor

SKAGIT COUNTY WASHINGTON  
REAL ESTATE EXCISE TAX

*EASEMENT*  
JAN 14 2020

Amount Paid \$  
Skagit Co. Treasurer  
By Deputy

After recording return to:

City of Mount Vernon  
910 Cleveland Ave.  
Mount Vernon, WA 98273

Document Title:	NATIVE GROWTH PROTECTION EASEMENT
Grantor:	MOUNT VERNON SCHOOL DISTRICT #320
Grantee:	CITY OF MOUNT VERNON
Legal Description:	A Ptn of SE ¼ of S 17, T 34 N, R 04 East, WM (See Exhibit B)
Assessor's Parcel/I.D. Number:	P113446

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**NATIVE GROWTH PROTECTION EASEMENT**

THIS NATIVE GROWTH PROTECTION EASEMENT ("Easement") is made this 14 day of December, 2019 by Mount Vernon School District #320, a Washington Municipal Corporation, hereinafter referred to as the "Grantor" or the "District" and the City of Mount Vernon, WA, a Washington Municipal Corporation, hereinafter referred to as the "Grantee" or the "City".

**WHEREAS**, the District prepared a wetland assessment by Shockey Planning Group dated August 31, 2017 (the "Assessment") that determined that the project site contains one Category II wetland and three Category III wetlands as depicted on *Exhibit A*, attached hereto which has been approved by the City.

**WHEREAS**, the City's Critical Areas Ordinance, section MVMC 15.40.040 L, requires the District to record a Native Growth Protection Area easement ("NGPA" or "Easement") over all wetlands and associated buffer areas on the subject site which are described and depicted in the Assessment incorporated by reference; and

**WHEREAS**, the Grantor is the owner of the real property that this Easement burdens as described in **Exhibit B** (the “Easement Area”); and

**WHEREAS**, the Easement Area is located solely on the Madison School (“School”) site that has unique access limitations and requirements for public safety and the safety of school children and others; and

**WHEREAS**, the District wishes to have the NGPA easement encumber all of the property described in Exhibit B to avoid having to survey and create legal descriptions of the subject wetlands and their associated buffers illustrated in Exhibit A; and

**WHEREAS**, the parties intend that the Grantor may modify the Easement Area by recording a surveyed delineation with legal descriptions of each wetland and buffer identified in the Assessment, provided that should there be any future development proposal on the real property identified in Exhibit B such development proposal will be subject to the critical areas rules and/or regulation in effect at that time.

**NOW THEREFORE**, the Grantor, as a condition of the City’s Critical Area Ordinance, hereby grants and conveys to Grantee a permanent non-exclusive easement for conservation purposes in, over, on, under, across and through the Easement Area together with the right of ingress and egress to and from the Easement Area for the purpose of monitoring and enforcing proper operation and maintenance of the Easement Area as follows:

- I. The intent of Grantor and Grantee, through this Easement, is to preserve, protect and maintain the wetland and wetland buffers within the Easement Area and limit use of the Easement Area containing identified wetlands and buffer area(s), defined pursuant to MVMC Chapter 15.40 – Mount Vernon Critical Areas Ordinance, for the purpose of protecting the ecological functions and values provided by said wetlands and its buffer, except that activities within the wetlands and associated buffers within the Easement Area pursuant to MVMC Chapter 15.40.020 (D)(4) may be allowed by letter of approval issued by the City consistent with MVMC 15.40.020(D)(4).
- II. This Easement grants the City the right to access, monitor and maintain the wetlands and wetland buffers in, over, on, under, across and through the Easement Area, in compliance with all applicable rules and regulations related to such actions, and subject to the requirements and limitations provided herein.
- III. This Easement establishes and creates an obligation of the Grantor its heirs, successors and assigns to maintain and protect the Easement Area and leave undisturbed all trees and other vegetation within this area, except for the removal of diseased or dying vegetation that presents a hazard, subject to the requirements and limitations provided herein.
- IV. The rights granted herein shall be subject to the following requirements:

1. Limitations on Grantor Use. Unless approved by the City in writing in advance, Grantor shall not, except as provided below:
  - a. With the exception of activities identified as Allowed without a Specific Development Permit under MVMC 15.40.020(D), engage in any land-use activity that could impair the functions and values of wetland and their buffers within the Easement Area including development activity or by disturbance of the soil or water, and/or by removal of, or damage to, existing vegetation absent written authorization pursuant to Chapter 15.40 of the MVMC. No clearing, grading, filling, logging or removal of woody material, building, construction or road construction of any kind, planting of non-native vegetation or grazing of livestock is allowed within the Easement Area, except as specifically permitted by the City of Mount Vernon on a case-by-case basis consistent with Chapter 15.40 of the MVMC.
  - b. Construct any fill, improvements, install utilities within the Easement Area; or
  - c. Remove any vegetation or trees within the Easement Area, unless such vegetation or trees are determined by a landscaper or arborist retained by the Grantor to be a hazard requiring immediate removal, in which case the Grantor may cut, prune and/or remove such vegetation or trees with hand tools; or
  - d. Excavate, fill, or otherwise alter the topography of the Easement Area; or
  - e. Grant or allow any road or utility construction or easements; or
  - f. Construct, erect, or place any building, structures or improvements either of a permanent or temporary nature; or
  - g. Deposit lawn clippings or similar in the Easement Area.
2. City Access Limitations. All access to the Easement Area by any City official or any representative of the City shall be conducted in coordination with and in compliance with the District's school access and visitation policies, which at a minimum require prior permission from the School obtained at the School's main office. The City may not delegate or assign any access rights to any non-city official without the prior written approval of the district, and such access may be conditioned by the District which shall not be unreasonably withheld or materially impair the City's ability to investigate performance of this Easement.

### 3. Limitations on Grantor Liability and Obligations.

- a. The Grantor shall maintain the Easement Area as set forth Chapter 15.40 of the MVMC including but not limited to the standards set forth in MVMC 15.40.040 L , provided however that the Grantor does not assume any obligation to install any improvements to Easement Area, except as expressly or by reference provided herein.
- b. Grantor shall not be liable to any party or agency, nor be responsible in any manner for any unauthorized damage, fill or development within the Easement Area conducted by any trespassers including but not limited to homeless squatting in the Easement Area or other unauthorized parties ("Unauthorized Users") within the Easement Area.
- c. Should any disturbance of the Easement Area occur by the Grantor or as a result of the Grantor operations or by the Grantor's contractors, employees, or agents, the Grantor shall have the obligation to restore and return the affected area to its natural state immediately, under the provisions of a City approved mitigation plan.
- d. Notwithstanding the limitations in Section I and III, the Grantor may take reasonable means and measures to bar Unauthorized Users from accessing the Easement Area, may remove any Unauthorized Users from the Easement Area, and may remove any material or improvements left by any Unauthorized User within the Easement Area. The Grantor may install permanent fencing, security cameras and signage (in addition to the already installed NGPA signs), so long as such fencing does not adversely impact habitat connectivity around the Easement Area if the Grantor determines there is substantial likelihood of adverse impact through intrusion by Unauthorized Users. Prior to installation of permanent fencing other than the split rail fence already installed on-site, the Grantor shall consult with the City to ensure compliance with MVMC Chapters 15.40 (Critical Areas) and 17.99 (Fences and Walls).

### 4. General Conditions.

- a. The City of Mount Vernon shall have the right, but not the obligation, to enforce the requirements, terms and conditions of this Easement after notice to the Grantor and providing a reasonable opportunity to cure any alleged breach, by any method available under law. The obligation to ensure all terms of this Easement are met is the responsibility of the Grantor.
- b. By acceptance of the Easement for the purposes described, the City of Mount Vernon does not accept or assume any liability of acts or omissions of the Grantor or its invitees, licensees or other third parties within the easement area. Grantor holds the City harmless from any

damage or injury to any property or person by any person entering the easement area not expressly authorized to do so, except for the City employees, officials, agents, contractors or invitees as a result of their negligence.

- c. The parties recognize that this Easement is created, granted and accepted for the benefit of the inherent natural functions provided by the wetland and buffers within the Easement Area, but shall not be construed to provide open or common space for Grantor or members of the public. This Easement does not by operation of law grant or permit public access to any portion of the Easement Area. This Easement does not by operation of law vest Grantor any future development rights including but not limited to any right to apply current land use statutes, ordinances or development regulations to future land use applications.
- d. The Easement granted herein shall be construed as an easement running with the land, and the benefits and burdens herein shall inure to and be binding on Grantee, Grantor, and their heirs, successors and assigns; provided, however, the City may not assign its right in this Easement to any third party without the express written consent of the District. Grantor, its heirs, successors and assigns are hereby restricted in the separate sale of the Easement Area or recorded tract which identifies the Easement Area. Any abutting lot owner (or homeowners' association) created by subdivision of the Madison School site property shall have an undivided interest in the Easement Area or recorded tract which identifies the Easement Area.
- e. Grantor retains the right to use and possession of the Easement Area granted to the extent permitted by the City of Mount Vernon as low impact uses and activities which are consistent with this Easement, City regulations, and do not detract from its integrity. Such uses may be permitted by the City within the Easement Area depending on the sensitivity of the habitat involved. Grantor reserves the right to use the Easement Area for other uses consistent with the intent and purpose of this easement, such as a habitat enhancement project for mitigation of impacts arising from other projects of the Grantor.
- f. Any consent required from any party herein may be subject to reasonable conditions.
- g. Grantor covenants that it owns the property legally described herein and has lawful right to convey the Easement in the property to the City.

5. Modification of the Easement Area

Modification of the Easement Area shall not occur unless approved by the City. Any proposed modification to the Easement Area shall comply with a critical areas assessment approved by the City that includes delineation of all critical

areas and associated buffers. Approval of any assessment not previously approved by the City shall be subject to all zoning or other land use control ordinances subject to vesting in effect at the time of the Grantor's submission of a valid and fully complete land use application that complies with the City's municipal code and all other ordinances in effect prior to approval.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the dates set forth above:

**MOUNT VERNON SCHOOL DISTRICT #320**

Carl Bruner

BY: Dr. Carl Bruner

ITS: SUPERINTENDENT

**CITY OF MOUNT VERNON**

Heleen Lowell

BY: Heleen Lowell

ITS: Development Services  
Director's Designee

APPROVED AS TO FORM

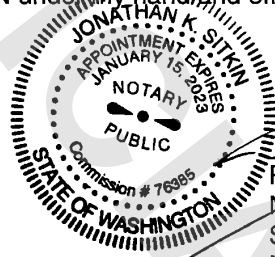
[Signature]

MOUNT VERNON CITY ATTORNEY

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAGIT )

On this day before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, D. C. Bruner, to me known to be the Superintendent of Mt. Rainier School District, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute the said instrument on behalf of the corporation.

GIVEN under my hand and official seal this 18 day of December, 2019.

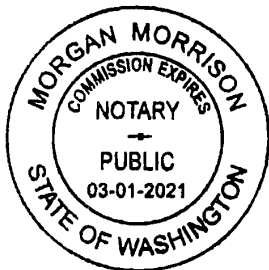


[Signature]  
Print Name: JONATHAN K SITKIN  
NOTARY PUBLIC in and for the  
State of Washington, residing at BELLEVUE  
My commission expires: 1/15/23

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Skagit )

On this day before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, Rebecca Lowell, to me known to be the Planner of City of Mukwonago, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute the said instrument on behalf of the corporation.

GIVEN under my hand and official seal this 19th day of December, 2019.



[Signature]  
Print Name: Morgan Morrison  
NOTARY PUBLIC in and for the  
State of Washington, residing at Skagit  
My commission expires: 3-1-2021

**EXHIBIT A**  
**MAP OF WETLAND AND WETLAND BUFFER AREAS**

UNOFFICIAL DOCUMENT



**EXHIBIT B**  
**LEGAL DESCRIPTION OF EASEMENT AREA**

Lot 2 of Short Plat No. MV-5-93, according to the Short Plat thereof, recorded January 12, 1994 under Auditor's File No. 9401120063, records of Skagit County

All Situate in Skagit County, Washington