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

Land Title and Escrow
01-171413-0E

GRANT DEED OF CONSERVATION EASEMENT

Grantor: North Cascades Institute

2020-5341
SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

Grantee: Skagit Land Trust

DEC 15 2020

Full legal descriptions shown in Exhibits A and B

Assessor's Tax Parcel and I.D. Nos.:
P51987 (361132-0-021-0002)

Amount Paid \$ *405.00*
Skagit Co. Treasurer
By *[Signature]* Deputy

This Grant Deed of Conservation Easement (hereinafter referred to as "Easement" or "Conservation Easement") is executed by North Cascades Institute, whose address is 810 State Route 20, Sedro-Woolley, WA 98284 ("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 of Habitat Conservation Zone*, and in Exhibit B, *Legal Description of Building Zone*, both of which also as shown in Exhibit C, *Site Plan*, which exhibits are attached hereto and incorporated herein by this reference. In the event of a conflict between the *Legal Descriptions* and the *Site Plan*, the *Legal Descriptions* shall control.
- 3.2 The Protected Property is part of an important riparian ecosystem protecting Chinook salmon habitat and adjacent to the federally designated Wild & Scenic Skagit River, and Diobsud Creek, one of its tributaries.
- 3.3 The Protected Property (8.9 acres) has two designated land use areas under this Conservation Easement: (1) a *Habitat Conservation Zone*, of approximately 5.8 acres, as legally described in Exhibit A, *Legal Description of Habitat Conservation Zone*, attached hereto and incorporated herein by this reference; and (2) a *Building Zone*, of approximately 3.1 acres, legally described in Exhibit B, *Legal Description of Building Zone*, attached hereto and incorporated herein by this reference. Exhibit E, *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 a freshwater shoreline along Diobsud Creek and the Skagit River with associated intact native vegetation.

4.2.b Open-space lands that provide connectivity to the Skagit River and Diobsud Creek, 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. 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 E, *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 recreational and residential and other development because of its location and orientation. In the absence of this Conservation Easement, the Protected Property could be developed and modified in the future for 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.

- 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 Habitat Conservation Zone of the Protected Property includes shoreline and floodplain of Diobsud Creek and the Skagit River. The declared policies of Skagit County in the Critical Areas Ordinance of Skagit County (SCC §14.24.20) are “to assist in orderly development, conserve the value of property, safeguard the public welfare, and provide for the protection of the quality and quantity of groundwater used for public water supplies (RCW 36.70A.070(1)) and provide protection for the following critical areas. . . Wetlands, Frequently Flooded Areas . . . and Fish and Wildlife Habitat Conservation Areas. . . It is the purpose of this Chapter to protect, restore where practical, and enhance fish and wildlife populations and their associated habitats.” Restrictions on the uses of the Protected Property would benefit Diobsud Creek, the Skagit River, and Puget Sound because of the protection of the riparian woodland in the floodplain.
- 5.4 Diobsud Creek and the Skagit River at this location have documented presence of 10 anadromous fish species: Chinook, chum, coho, sockeye and pink salmon, as well as Dolly Varden/bull trout, summer steelhead, winter steelhead, cutthroat trout and rainbow trout. Chinook salmon, as well as steelhead, are listed as threatened under the Endangered Species Act, and the stocks of Chinook and steelhead present in the Skagit River are listed as “Depressed” in the Salmonid Stock Inventory (WDFW and WWTIT 2002). The Skagit Watershed Council, the designated lead entity under Washington State Legislation ESHB 2496, has identified the Protected Property as key habitat for the Puget Sound Chinook and therefore important to restore and protect.
- 5.5 In recognition of the importance of the Protected Property, the Washington State Salmon Recovery Funding Board, administered by the Recreation and Conservation Office (RCO-SRFB), has provided state and federal grant funds to assist in securing the Easement on said property (RCO #18-2617). The State of Washington will hold an Assignment of Right (*Exhibit D*) on the Protected Property to ensure compliance with salmon recovery funding requirements.

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 RCW 84.34.210. A payment of twenty-five thousand dollars (\$25,000) is made by Grantee to Grantor, in consideration of the Habitat Conservation Zone conveyance, the receipt of which is acknowledged.
- 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.

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 primary 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 & 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, 12, and 13. All permitted uses and activities shall be carried out in compliance with all applicable federal, state, and local laws, regulations and requirements.

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, 12, and 13, 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 not be subject to new 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) 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.

11.2.d Industrial Use: The use of the Protected Property for any industrial purpose is prohibited.

11.2.e 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 storm water in manners inconsistent with the Purpose and terms of this Conservation Easement.

11.2.f 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.

12 Building Zone: Allowed and Prohibited Uses and Activities

12.1 Building Zone Allowed Uses and Activities

12.1.a All uses allowed in Habitat Conservation Zone also allowed in Building Zone. All of the allowed uses listed in Section 13.1, *Habitat Conservation Zone Allowed Uses and Activities*, are also allowed in the Building Zone.

12.1.b Additional Allowable Uses. Grantor may also undertake residential and commercial uses within the Building Zone, including without limitation uses related to environmental education, outdoor recreation, home-based manufacturing and agriculture, as long as such uses are carried out in a manner that does not adversely and materially impact habitat values of the Habitat Conservation Zone.

12.1.c Structures. Grantor may construct, use, maintain, repair, expand, reconstruct, relocate, remove, demolish, or replace one (1) primary residence, one (1) or more related multi-unit accessory dwelling units, and other structures reasonably required to undertake allowable uses within the Building Zone, including without limitation barns and agricultural or environmental-education related structures, access driveways, landscaping, gardens, greenhouses, fences, utilities (including water and septic), and renewable energy systems. 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 or placed in a location likely to adversely and materially impact habitat values of the Habitat Conservation Zone through the transport of storm water onto the Habitat Conservation Zone.

12.2 Building Zone Prohibited Uses and Activities. The restrictions and prohibited uses, listed above in Section 11.2, *Restrictions on the Protected Property*, apply to the Building Zone. In addition, and as provided for in this Section 12, all uses of the Building Zone shall be carried out in a manner that does not adversely and materially impact habitat values of the Habitat Conservation Zone and no more than one (1) primary residence 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, science and education: Grantor may use the Protected Property, or grant access to the protected property, for otherwise lawful recreational, educational and scientific uses, including, but not limited to, walking, birdwatching, passive enjoyment, hunting and fishing, environmental education use and scientific data collection, 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, enhancement and stewardship: Grantor may undertake habitat restoration or enhancement activities, including removal of existing structures, foundations and utilities, on both the land and water resources of the Protected Property to further the Purpose of this Conservation Easement, subject to Prior Written Approval pursuant to Section 14, *Notice or Prior Written Approval Required Before Certain Uses and Activities*.

- (i) **Stewardship plan.** Grantor agrees to use the Habitat Conservation Zone consistent with a Stewardship Plan to be developed by Grantee, in cooperation with and approved by Grantor, within twelve (12) months of the Effective Date of this Easement and addressing the following matters:
- (1) Protection and restoration of healthy riparian forest; and
 - (2) Maintenance of restoration plantings (if applicable) and control of invasive species. Grantee shall provide a copy of the Stewardship Plan to Grantor upon completion. Failure to timely complete said plan shall not affect the enforceability or validity of any other provision hereof. Said plan may be revised or updated by Grantee, in cooperation with and approved by Grantor, as appropriate, with a copy of any updates provided to Grantor. Grantor further agrees to allow Grantee the right to maintain restoration plantings and control invasive species, as specified in the Stewardship Plan, if Grantor fails to do so. Failure of Grantor and Grantee to agree to a Stewardship Plan shall trigger Section 15, *Mediation of Disputes*.

13.1.c 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 native 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. A forest management plan may be part of the *Stewardship Plan* required by Section 13.1.b.(i)
- (ii) **Noxious weeds and introduced species.** Grantor may remove noxious, invasive and introduced non-native plant species from the Protected Property.

(iii) **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.

13.1.d Trails: Grantor may use, maintain, repair, reconstruct, and replace non-paved or improved foot-trails for non-motorized trail use as described in the Baseline Documentation as existing on the Protected Property as of the Effective Date of the Conservation Easement. In addition, Grantor may construct, use, maintain, repair, reconstruct, and replace non-paved or improved foot-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.e Shelter: Grantor may construct, use, maintain and repair one small, open-sided shelter/lean-to (intended to be used as a weather shelter or meeting space and not for storage, habitation or other non-temporary use), with location and design approved by Grantee, within the Habitat Conservation Zone, 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 structure construction within the Habitat Conservation Zone.

13.1.f Tent Camping: Grantor may allow temporary low-impact tent camping/picnicking near the structure described in 13.1.e *Shelter*.

13.1.g Fences: Grantor may construct, maintain, repair, modify, and replace fences along the perimeter of the Habitat Conservation Zone. All fences along the perimeter of the Habitat Conservation Zone shall permit the reasonable passage of wildlife.

13.1.h Firewood: Grantor may collect annually two cords of dead and downed wood on the property for personal use.

13.1.i 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.

13.2 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 river access structures in the shoreline) is prohibited, except as expressly allowed in Section 13.1, *Habitat Conservation Zone Allowed Uses and Activities*. Use of all existing structures, foundations, and utilities is prohibited and these will be removed, along with all garbage, within one year of the execution of this Conservation Easement, per the Stewardship Plan referenced in 13.1.b.(i).

13.2.b Alteration of land: Alteration of the topography of the land or shoreline in the Habitat Conservation Zone, including through the excavation or placing of soil, dredging spoils, filling, placement of streambank armoring or hardening is prohibited.

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 damage or reduce wetland areas is prohibited.

13.2.d Tree harvest or vegetation removal: Removal or destruction of trees or shrubs, including removal of shoreline vegetation and plant material overhanging the river, 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 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 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, as well as private camping using recreational vehicles. This restriction does not prohibit temporary, low-impact camping (i.e., tent camping) as expressly allowed in Section 13.1.f, *Tent Camping*.

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 Submitting any application or pre-application for construction of any structures within the Building Zone under Subsection 12.1.c, *Structures* (Building Zone), at least 30 days prior to the date of such submission.

14.4.b Transferring any interest in all or a portion of the Protected Property under 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* (Habitat Conservation Zone);

- 14.5.b Habitat restoration and enhancement activities in the Habitat Conservation Zone under Section 13.1.b, *Habitat restoration, enhancement and stewardship* (Habitat Conservation Zone);
- 14.5.c Forest management activities in the Habitat Conservation Zone under Section 13.1.c(i), *Forest management* (Habitat Conservation Zone);
- 14.5.d Except in case of emergency, removal of hazard trees under Section 13.1.c(iii), *Hazard trees* (Habitat Conservation Zone);
- 14.5.e Location and construction of new trails in the Habitat Conservation Zone under Section 13.1.d, *Trails* (Habitat Conservation Zone);
- 14.5.f Conveyance of any portion of the Protected Property for permanent conservation ownership under Section 11.2.a(ii), *Subdivision* (Habitat Conservation Zone);
- 14.5.g Design, location, and construction of one open-sided shelter/lean-to under section 13.1.e *Shelter* (Habitat Conservation Zone).

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 14.7 and 14.8.

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 adverse 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 a 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, or its personal representatives, heirs, successors or assigns, against whom judgment is entered, shall pay the costs of restoration and Grantee's reasonable enforcement expenses, including attorneys' and consultants' fees, 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. . In the event that Grantee secures redress from 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, 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 or costs of enforcement 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 third parties or 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, shall first 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 therefor 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 and in accordance with the State of Washington as explained in Exhibit D: *Assignment of Rights*.

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 Grantee 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:

- (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, pursuant to Section 14, *Notice or Prior Written Approval Required Before Certain Uses and Activities*, 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.

23.1.a Grantor hereby acknowledges its authorization and approval of the assignment of certain rights in this Easement to the State of Washington through the Recreation and Conservation Office. This Assignment of Rights will be substantially in the form attached to this Easement as Exhibit D.

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 Whatcom Land Trust, PO Box 6131, Bellingham, WA 98227; 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 Habitat Conservation Zone
- B. Legal Description of Building Zone
- C. Site Map/Plan
- D. Example Assignment of Rights Document
- E. Baseline Report

{Signature pages follow}

STATE OF Washington }
COUNTY OF Skagit } SS:

I certify that I know or have satisfactory evidence that Saul Weisberg **is / are** the person(s) who appeared before me, and said person(s) acknowledge **he / she / they** signed this instrument, on oath stated **he / she / they is / are** authorized to execute the instrument and acknowledge that as the Executive Director of North Cascade Institute, a Washington Non-Profit Corporation to be the free and voluntary act of such party(ies) for the uses and purposes mentioned in this instrument.

Dated: December 10th 2020

Karen Ashley

Karen Ashley
Notary Public in and for the State of Washington
Residing Sedro-Woolley
My appointment expires: 9/11/2022



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

Dated: 12/08/2020 By: Jim Glackin
Jim Glackin, President, Skagit Land Trust

State of Washington)
) ss.
County of Skagit)

I certify that I know or have satisfactory evidence that Jim Glackin 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: December 8, 2020



(Notary seal or stamp above)

Karen Ashley
Signature of Notary Public
Karen Ashley
Printed Name of Notary Public
My appointment expires 9-11-2022



EXHIBIT A

LEGAL DESCRIPTION OF HABITAT CONSERVATION ZONE (BASED UPON R.O.S. A.F# 873235)
COMMENCING AT THE SOUTHWEST CORNER OF SECTION 32, TOWNSHIP 36 NORTH, RANGE 11 EAST, W.M.; THENCE N02-55-43E, 1192.81' TO THE POINT OF INTERSECTION WITH THE EASTERLY LINE OF STATE ROAD 11 (SR20 AS IT EXISTED AT THE TIME OF THE DEED); THENCE S34-32-00W, 25.55'; THENCE S55-38-00E, 685.92' TO A 5/8" REBAR/CAP, LS26303 AND THE TRUE POINT OF BEGINNING; THENCE N55-38-00W, 195.74' TO A 5/8" REBAR/CAP LS26303; THENCE N32-20-36E, 175.69' TO A 5/8" REBAR/CAP LS 26303; THENCE N06-24-49W, 130.10' TO A 5/8" REBAR/CAP LS26303; THENCE N44-24-52W, 360.58' TO A 5/8" REBAR/CAP LS26303; THENCE N44-24-52W, 19.67' TO POINT OF INTERSECTION WITH THE EASTERLY LINE OF STATE HYWAY SR20 (AS IT EXISTS IN 2020) THENCE N34-32-00E ALONG SAID EASTERLY LINE, 203.93' TO A POINT, SAID POINT BEING S55-38-00E, 25' FROM THE CENTER OF THE DIOBSUD CREEK BRIDGE AND STREAM AS THE SAME EXISTED ON JUNE 4TH, 1949; THENCE S55-38-00E, 600 FEET MORE OR LESS TO THE BANK OF THE SKAGIT RIVER; THENCE SOUTHWEST ALONG THE BANK OF THE SKAGIT RIVER TO A POINT BEARING S55-38-00E FROM THE POINT OF BEGINNING; THENCE N55-38-00W TO THE POINT OF BEGINNING.

EXHIBIT B

LEGAL DESCRIPTION OF BUILDING ZONE (BASED UPON R.O.S. A.F# 873235)

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 32, TOWNSHIP 36 NORTH, RANGE 11 EAST, W.M.; THENCE N02-55-43E, 1192.81' TO THE POINT OF INTERSECTION WITH THE EASTERLY LINE OF STATE ROAD 11 (SR20 AS IT EXISTED AT THE TIME OF THE DEED); THENCE S34-32-00W, 25.55'; THENCE S55-38-00E, 25' TO A POINT ON THE EASTERLY LINE OF STATE HYWAY SR20 (AS IT EXISTS IN 2020) AND THE TRUE POINT OF BEGINNING; THENCE N34-32-00E ALONG SAID EASTERLY LINE, 348.07'; THENCE S44-24-53E, 19.67' TO A 5/8" REBAR/CAP LS26303; THENCE CONTINUING S44-24-52E, 360.58' TO A 5/8" REBAR/CAP LS26303; THENCE S06-24-49E, 130.10' TO A 5/8" REBAR/CAP LS26303; THENCE S32-20-36W, 175.69' TO A 5/8" REBAR/CAP LS26303; THENCE N55-38-00W, 465.18' TO THE POINT OF BEGINNING.

EXHIBIT C

Site Map / Plan



EXHIBIT D

Example Assignment of Rights Document

Middle Skagit Watershed Habitat Acquisition Project Number 18-2617

Upon Recording, Please Return To:
Washington Recreation and Conservation Office
PO Box 40917
Olympia, WA 98504-0917
Attn: Marc Duboiski

Document Title: Assignment of Rights
Assignor: Skagit Land Trust
Assignee: The State of Washington, through the Recreation and Conservation Office,
including any successor agencies
Full legal description shown in Exhibits A&B.

Assessor's Parcel Nos:
P51987 (361132-0-021-0002)

Reference No. of Related Document: _____ (Conservation Easement)

**ASSIGNMENT OF RIGHTS
WASHINGTON STATE RECREATION AND CONSERVATION OFFICE**

This ASSIGNMENT OF RIGHTS (this "Assignment") is executed as of the ____ day of XXXX 2020, by the Skagit Land Trust, a Washington nonprofit corporation ("Assignor SLT"), to and in favor of THE STATE OF WASHINGTON through the Recreation and Conservation Office ("Assignee State"), including any successor agencies.

RECITALS

A. Assignor SLT has entered into a conservation easement ("Conservation Easement") with North Cascades Institute, ("Owner") in Skagit County, Washington. The name and address of the Owner and the recording number of the Conservation Easement are set forth in *Exhibit 1* attached hereto and incorporated herein. The legal description of the Property subject to the Conservation Easement is set forth in *Exhibit 2* attached hereto and incorporated herein.

B. The purpose of the Conservation Easement is described in the Conservation Easement. That purpose is also described in the Project Agreement entered into between Assignor SLT, the recipient of Recreation and Conservation Office ("RCO") funds, and the Assignee State through the RCO entitled Middle Skagit Watershed Habitat Acquisition Project Number 18-2617 dated November ____, 2017 and the supporting materials which are on file with the Assignee State in connection with the Project Agreement, which Project Agreement is incorporated herein by this reference. That purpose includes protection and restoration of riparian habitat, as defined in the Conservation Easement.

C. Owner has authorized Assignor SLT to assign to the Assignee State certain rights for access to and stewardship of the Property covered by the Conservation Easement. Assignment of such rights is a necessary condition to receipt of grant funding under the Project Agreement and the policies of the Salmon Recovery Funding Board administered by the Assignee State. Such rights are valuable to the Assignee State in connection with ensuring protection of habitat under the terms of the Conservation Easement. The assignment of such rights to the Assignee State, however, does not in any way relieve the Assignor SLT of such duties to enforce the Conservation Easement as may be imposed on it under the Conservation Easement and the Project Agreement.

D. These recitals are incorporated herein by this reference.

Now, therefore, Assignor SLT and the Assignee State agree as follows:

AGREEMENT

1. **Assignment.** For and in consideration of monies coming in whole or in part from the State of Washington and in fulfillment of terms of the Project Agreement identified herein, Assignor SLT does hereby assign, transfer, set over, convey and deliver to the Assignee State individually, and as the representative of all the people of the State, the following joint rights (collectively referred to as "joint rights") under the Conservation Easement, the recording number of which is listed in *Exhibit 1* attached hereto and incorporated herein by this reference and as described in *Exhibit 2* attached hereto. The term "joint right" means a right that both the Assignor SLT and Assignee State may independently enforce under the Conservation Easement. The grant of these joint rights does not in any way relieve the Assignor SLT of its duties to enforce the terms of the Conservation Easement or the Project Agreement.

a. **Access.** A right to enter the Property subject to the Conservation Easement at a reasonable time and upon prior arrangement with Assignor SLT and Owner in the manner provided for in the Conservation Easement, in order to monitor and evaluate performance, compliance, and/or quality assurance under the Project Agreement.

b. **Enforcement.** A right to enforce the terms and conditions of the Conservation Easement and to seek injunctive relief, including restoration, and/or damages for any breach thereof.

c. **Amendments.** A right to review and approve any proposed amendments to the Conservation Easement. Review and approval by RCO's Director will be for compliance with the terms of the Project Agreement.

d. **Termination For Reasons of Impracticability.** A right to review and approve any proposed agreements to terminate the Conservation Easement, or release a portion of the Property from the terms of the Conservation Easement, before expiration of the term of the Conservation Easement for the reason that circumstances have rendered the conservation purpose of the Conservation Easement impractical to achieve. Absent approval of the Assignee State acting through the RCO or entry of an order of the Superior Court in which the Property subject to the Conservation Easement is located, the Assignor SLT shall not enter into any termination or release agreement.

e. **Stewardship and Management Plans.** A right to review any Stewardship and/or Management Plans, including restoration and enhancement plans, as defined in the Conservation Easement. Review by RCO's Director will be for compliance with the terms of the Project Agreement. To the extent the rights assigned herein overlap with the rights granted to the Assignor SLT under the Conservation Easement, the rights assigned herein shall not be construed to displace those rights. These Rights shall be held in common with Assignor SLT or Assignor SLT's successors and assigns.

2. **Assignee's Exercise of Rights.** The rights assigned to the Assignee State under this Assignment shall not exceed those granted by Owner to the Assignor SLT under the Conservation Easement. The Assignee State hereby represents and warrants that its exercise of rights under this Assignment will be consistent with the conservation purpose defined in the Conservation Easement and the Project Agreement.

3. **Representations and Warranties of Assignor.** Assignor SLT hereby represents and warrants to the Assignee State that:

a. Owner, identified in *Exhibit 1* attached hereto and incorporated herein, has authorized and approved this Assignment.

b. Assignor SLT shall enforce the terms of the Conservation Easement as provided in the Conservation Easement.

c. Assignor SLT shall comply with, and the Assignee State shall not be responsible for determining compliance with, all applicable federal, state, and local laws, regulations, and policies in its administration of the Conservation Easement or the undertaking of any of its rights under the Conservation Easement.

d. Neither Assignor SLT nor Owner has any claims or causes of action, at law or in equity, with respect to the Conservation Easement as of the date provided above.

4. **Obligations.** It is expressly understood and agreed that, by the acceptance of this Assignment, the Assignee State has not assumed, and shall not become obligated to keep, fulfill, observe, perform or discharge, any duty or obligation of Assignor SLT under the Conservation Easement.

5. **Indemnity.** Assignor SLT shall defend, protect and hold harmless the Assignee State, or any officers or employees thereof, from and against any and all costs, claims, fees and expenses arising out of in part or whole the acts or omissions of Assignor SLT and/or its employees, relating to the Conservation Easement or in any way relating to Assignor SLT's representations and warranties under this Assignment.

6. **Replacement Property.** The Conservation Easement may be extinguished in whole or in part before expiration of its term (if any) under certain circumstances identified in the Conservation Easement. Assignor SLT may be entitled to compensation in such event. Assignor SLT shall use all such proceeds for acquisition, restoration and/or enhancement of substantially equivalent property or property interests. Assignor SLT hereby agrees to consult with, and receive the approval of, the RCO in the selection of any replacement property and to assign to the Assignee State the same or substantially equivalent rights for access to and stewardship of the replacement property as provided for in this Assignment.

7. **Restriction on Assignment.** Assignor SLT shall not assign the Conservation Easement or the performance of any obligations to the Assignee State under the Conservation Easement, without the express written consent of the RCO's Director, which shall not unreasonably be withheld.

8. **Assignment Term.** The term of this Assignment shall be the same as the term of the Conservation Easement, and shall expire upon the expiration date of the Conservation Easement (if any).

9. **Disputes.** Any disputes between Assignor SLT and the Assignee State under this Assignment shall be governed by the terms of the Project Agreement.

10. **Governing Law/Venue.** This Assignment shall be governed by the laws of the State of Washington. In the event of a lawsuit between Assignor SLT and the Assignee State involving this Assignment, venue shall be proper only in Thurston County. Assignor SLT by executing this Assignment acknowledges the jurisdiction of the courts of the State of Washington in this matter.

11. **Severability.** If any provision of this Assignment or any provision of any document incorporated by reference herein shall be held invalid, such invalidity shall not affect the other provisions of this Assignment which can be given effect without the invalid provision and to this end the provisions of this Assignment are declared to be severable.

12. **SCHEDULE OF EXHIBITS:**
Exhibit 1 - Owner and Conservation Easement Recording Number
Exhibit 2 - Legal Description of Property Subject to Conservation Easement

ASSIGNOR:
The Skagit Land Trust

By: _____
XXXX, Its President
Date: _____

STATE OF WASHINGTON)
) ss:
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that XXXXX is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the President of the Skagit Land

Trust to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public

Print Name

My commission expires

ASSIGNEE:

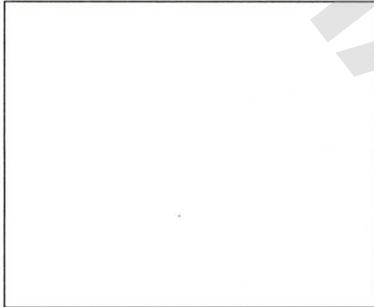
THE STATE OF WASHINGTON, through its Recreation and Conservation Office

By _____
Typed/Printed Name _____
Its: _____
Date: _____

STATE OF WASHINGTON)
) ss:
COUNTY OF THURSTON)

I certify that I know or have satisfactory evidence that _____ 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 _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public

Print Name

My commission expires

EXHIBIT 1 (Assignment of Right Example Only)
OWNER AND CONSERVATION EASEMENT RECORDING NUMBER

Name(s): North Cascades Institute

Address: 810 State Route 20 Sedro Woolley, WA 98284

Recording No.: _____

EXHIBIT 2 (Assignment of Right Example Only)**LEGAL DESCRIPTION FOR PROPERTY
SUBJECT TO CONSERVATION EASEMENT**

LEGAL DESCRIPTION OF HABITAT CONSERVATION ZONE (BASED UPON R.O.S. A.F# 873235)

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 32, TOWNSHIP 36 NORTH, RANGE 11 EAST, W.M.; THENCE N02-55-43E, 1192.81' TO THE POINT OF INTERSECTION WITH THE EASTERLY LINE OF STATE ROAD 11(SR20 AS IT EXISTED AT THE TIME OF THE DEED); THENCE S34-32-00W, 25.55'; THENCE S55-38-00E, 685.92' TO A 5/8" REBAR/CAP, LS26303 AND THE TRUE POINT OF BEGINNING; THENCE N55-38-00W, 195.74' TO A 5/8" REBAR/CAP LS26303; THENCE N32-20-36E, 175.69' TO A 5/8" REBAR/CAP LS 26303; THENCE N06-24-49W, 130.10' TO A 5/8" REBAR/CAP LS26303; THENCE N44-24-52W, 360.58' TO A 5/8" REBAR/CAP LS26303; THENCE N44-24-52W, 19.67' TO POINT OF INTERSECTION WITH THE EASTERLY LINE OF STATE HYWAY SR20 (AS IT EXISTS IN 2020) THENCE N34-32-00E ALONG SAID EASTERLY LINE, 203.93' TO A POINT, SAID POINT BEING S55-38-00E, 25' FROM THE CENTER OF THE DIOBSUD CREEK BRIDGE AND STREAM AS THE SAME EXISTED ON JUNE 4TH, 1949; THENCE S55-38-00E, 600 FEET MORE OR LESS TO THE BANK OF THE SKAGIT RIVER; THENCE SOUTHWEST ALONG THE BANK OF THE SKAGIT RIVER TO A POINT BEARING S55-38-00E FROM THE POINT OF BEGINNING; THENCE N55-38-00W TO THE POINT OF BEGINNING.

XXXX

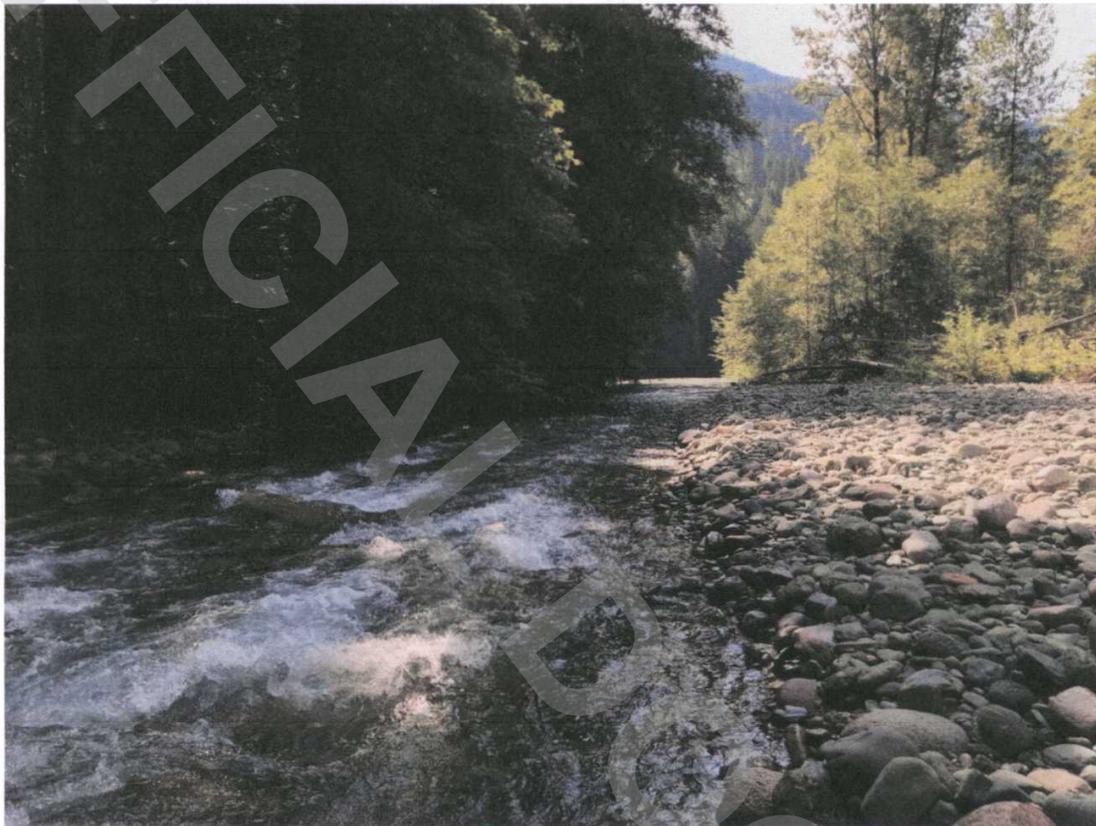
SUBJECT TO and together with easements and restrictions of record.

LEGAL DESCRIPTION OF BUILDING ZONE (BASED UPON R.O.S. A.F# 873235)

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 32, TOWNSHIP 36 NORTH, RANGE 11 EAST, W.M.; THENCE N02-55-43E, 1192.81' TO THE POINT OF INTERSECTION WITH THE EASTERLY LINE OF STATE ROAD 11(SR20 AS IT EXISTED AT THE TIME OF THE DEED); THENCE S34-32-00W, 25.55'; THENCE S55-38-00E, 25' TO A POINT ON THE EASTERLY LINE OF STATE HYWAY SR20 (AS IT EXISTS IN 2020) AND THE TRUE POINT OF BEGINNING; THENCE N34-32-00E ALONG SAID EASTERLY LINE, 348.07'; THENCE S44-24-53E, 19.67' TO A 5/8" REBAR/CAP LS26303; THENCE CONTINUING S44-24-52E, 360.58' TO A 5/8" REBAR/CAP LS26303; THENCE S06-24-49E, 130.10' TO A 5/8" REBAR/CAP LS26303; THENCE S32-20-36W, 175.69' TO A 5/8" REBAR/CAP LS26303; THENCE N55-38-00W, 465.18' TO THE POINT OF BEGINNING.

EXHIBIT E
Baseline Report

DIOBSUD CREEK – North Cascades Institute
CONSERVATION EASEMENT



August 13, 2020

Hannah Williams, B.A. Conservation Assistant, Skagit Land Trust
Michael Kirshenbaum M.S. Conservation Director, Skagit Land Trust
Regina Wandler, M.S. Stewardship Manager, Skagit Land Trust

Diobsud Creek – North Cascades Institute Conservation Easement – Skagit Land Trust

Grantor Information: North Cascades Institute

Location: 810 State Route 20
Sedro-Woolley, WA 98284
SW ¼, S32, T36N, R11E

Legal Description: *Full legal description shown in CE Exhibits A & B.*

Assessor's Tax Parcel #'s: P51987

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

Property Information

Acres: 8.9 acres (approximate)

Number of Homes: 1 home and 1 accessory dwelling unit

Elevation: 320 – 350 ft.

County Zoning: Rural Reserve

Survey: The protected area was surveyed in 2020 and recorded under AF# 202010160117.

Driving Directions: (From Mount Vernon): Drive east on SR 20 about 3 miles past Marblemount. The driveway is on the right.

Boundaries: Diobsud Creek forms the northeast boundary and the Skagit River forms the southeast boundary. State Route 20 runs along the northwest boundary. A fence runs along about half of the southwest boundary. Skagit Land Trust (SLT) staff marked surveyed boundaries with T-posts, SLT tree tags and flagging in 2020.

Site Overview

Habitat Conservation Zone: Approximately 5.8 acres of riparian habitat with 650 feet of Diobsud Creek and 500 feet of Skagit River shoreline.

Building Zone: Approximately 3.13 acres of a homesite with one residence and one accessory dwelling unit (ADU). Currently there is one outbuilding for storage.

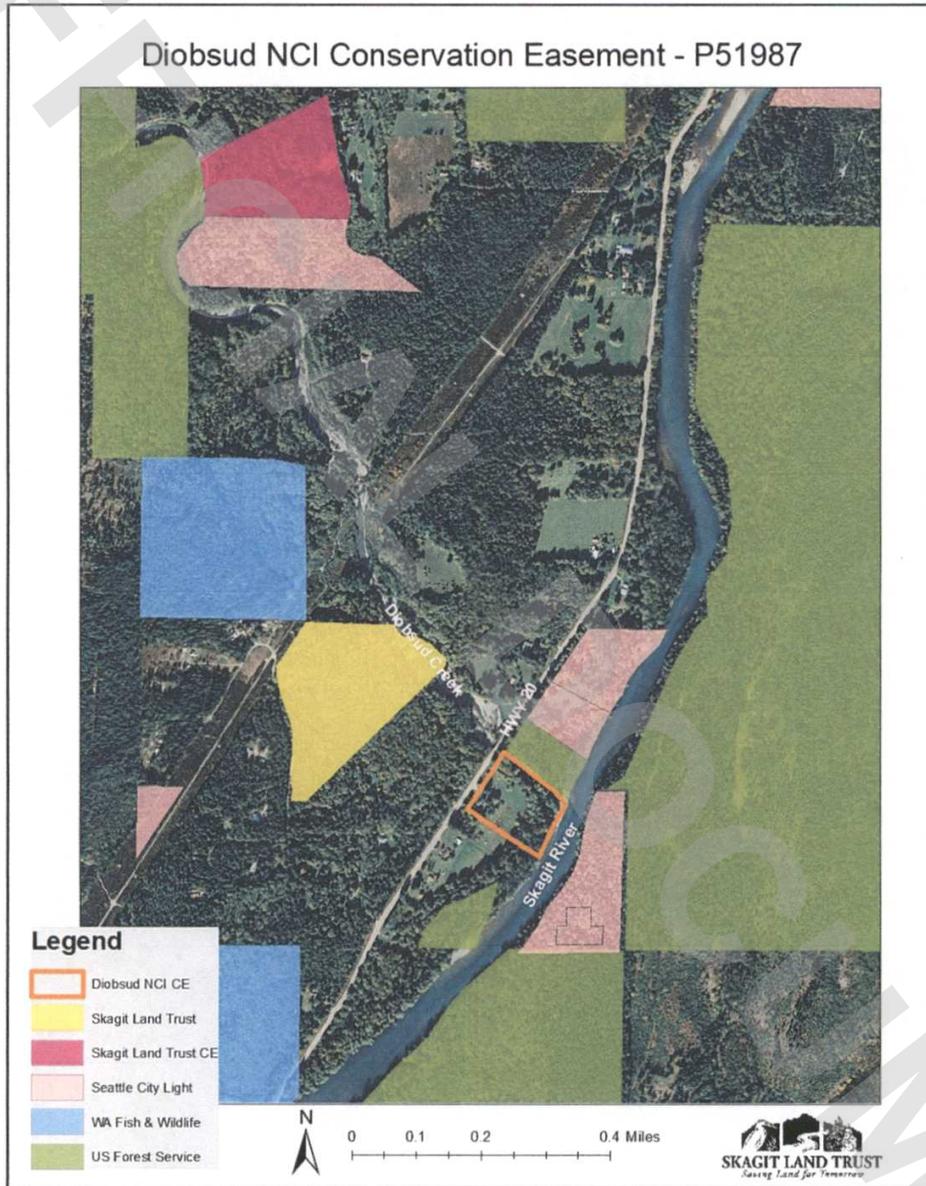
The Habitat Conservation Zone features a maturing riparian forest composed of native species such as cottonwood, cedar, maple, fir and healthy understory that shades Diobsud Creek and the Skagit River. It provides habitat for a variety of salmonids, as well as numerous avian and terrestrial species.



The Building Zone features one home, an ADU, a well and septic systems, and a shed. There is a fenced garden area and mowed field. The Building Zone is used for residential and educational purposes.

Geographic Context

The protected property is located along the mouth of Diobsud Creek, a tributary to the Skagit River in Marblemount, Skagit County, Washington. The Skagit River has been federally



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designated as part of the Wild and Scenic River System. Nearby land ownership includes privately-held rural residential parcels, private commercial forestlands, and a number of conservation-owned parcels. The property is less than three miles from North Cascades National Park and less than one mile from the Mt. Baker-Snoqualmie National Forest.

Geology

Landforms

The protected property lies within the valley of Diobsud Creek and the Skagit River. Diobsud Creek defines its northeastern boundary while the Skagit River defines the southeastern boundary. Semi-regular accretion and avulsion events change the Diobsud Creek shoreline, typically during fall and winter flood events. The Skagit River has minor accretion and avulsion events along the property shoreline. The protected property is almost entirely flat, but the foothills of the North Cascades rise a 1/3 of a mile to the west and across the river to the east.



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Soils

The primary soil type is Sauk silt loam, which is a very deep, well-drained soil, commonly found on terraces along major streams. The soil formed in volcanic ash and alluvium. The native vegetation is mainly mixed conifers and hardwoods. Permeability of this soil is moderately slow. Available water capacity is high. Effective rooting depth is limited by the seasonal high-water table that is at a depth of 12 to 18 inches. Runoff is slow, and the hazard of water erosion is slight. Douglas fir is typically the main woodland species on this unit. Trees of limited extent include red alder, western hemlock, western red cedar, and bigleaf maple. Common forest understory plants are Oregon grape, western sword fern, western bracken fern, and salmonberry. Seedling establishment can be difficult due to rapidly encroaching brush.

Pilchuck loamy sand is also present in the lower southeast portion of the property closer to the Skagit River. This soil is very deep, excessively drained on flood plains. It is formed in sandy alluvium. The native vegetation is mainly mixed hardwoods and conifers with an understory of shrubs. Permeability of this Pilchuck soil is rapid with available water capacity is low to moderate. Effective rooting depth is 60 inches or more. Runoff is slow, and the hazard of water erosion is slight. Douglas fir is the main woodland species with trees of limited extent including black cottonwood, red alder, and bigleaf maple. Common understory plants are vine maple, western sword fern, salmonberry, common snowberry, false Solomons seal, and stinging nettle. The survival rate of seedlings may be low in areas where frequent flooding occurs and there is drought stress of the surface layer.

Soil map (below) and information was retrieved via USDA's Web Soil Survey.

166-Water soil type likely follows an old river channel. What is now covered by land is probably 104- Pilchuck Loamy Sand.



Hydrology

Diobsud Creek flows southeast along the northeast boundary of the property, before joining the Skagit River at the east corner of the protected area. The Skagit River flows southwest along the southeast boundary. According to Washington Department of Fish and Wildlife (WDFW) Priority Habitat Species (PHS), there are mapped Freshwater Forested/Shrub Wetland in the Habitat Zone along the northeast boundary near Diobsud Creek.

Priority Habitats and Species

According to WDFW PHS data, the protected property contains priority areas for the following species: Salmonids (including Pink, Chum, Chinook, Coho, Steelhead, Cutthroat, and Sockeye), Bull Trout, Rainbow Trout, Northern Spotted Owl, and Gray Wolf.

Ecosystems and Plants

Habitat Conservation Zone: The primary conservation feature of the property is the undeveloped shoreline along Diobsud Creek and the Skagit River, which features a riparian forest dominated by native species that allows vital ecological processes to occur, benefiting a wide variety of freshwater stream and riparian forest dependent species. The forest in the Habitat Conservation Zone is continuous (except for one 0.07-acre opening near the Skagit River along the southeast boundary), with a closed canopy and a significant understory layer of younger trees, shrubs, ferns and other woodland species. A side channel flows during high water events along Diobsud Creek and the east corner.

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The forest was most likely originally harvested in the late 19th or early 20th century, resulting in the current second or third growth forest. The forest may be categorized as a North Pacific Lowland Riparian Forest and Shrubland (DNR 2015). Riparian forests are the most structurally and floristically diverse type of vegetation in the Pacific coastal region, and this forest is in good condition, hosting a wide variety of native plant species as well as structural elements of the forest and within the river which provide habitat for many wildlife species (for example, snags, shrub thickets, and gravel bars). The canopy is primarily composed of conifers (particularly *Thuja plicata* – western red cedar), with some deciduous trees (particularly *Acer macrophyllum* – big leaf maple -- and *Alnus rubra* – red alder) with a very diverse and thick shrub understory. The forest on this property performs many functions that protect water quality downstream. As floodwaters pass over property, the presence of trees and shrubs protects the land from erosion and traps sediments carried by the water from upstream. There is also an exchange of nutrients, some leaving the site, while others are accumulated in the forest.

Building Zone: This area features open areas of grass and a 0.65-acre fenced garden area, interspersed with larger native trees and small groupings of nonnative species both invasive and noninvasive.

Native and Naturalized Vegetation

Baldhip Rose
Big Leaf Maple
Black Cottonwood
Bracken Fern
Buttercup
Douglas Fir
English Walnut
False Lily of the Valley
Indian Plum
Lady Fern
Licorice fern
Lungwort
Oceanspray
Old-Man's Beard
Oregon Crabapple
Pacific Bleeding Heart
Pacific Ninebark
Red Alder

Red Elderberry
Red Osier Dogwood
Salal
Salmonberry
Sequoia – planted in Building Zone
Shore Pine
Snowberry
Stinging Nettles
Sword Fern
Thimbleberry
Trailing Blackberry
Vine Maple
Western Dogwood
Western Hemlock
Western Red Cedar
Willow

Noxious Weeds and Invasive Vegetation

Cytisus scoparius (Scotch Broom)
Geranium robertianum (Herb Robert)

Rubus armeniacus (Himalayan Blackberry)
Vinca minor (Vinca)

* Species list compiled with the assistance of landowners.

Habitat and Wildlife

The riparian forest provides habitat for a wide range of species. There is cover for resting, nesting, and hiding from predators or the elements. Understory shrub species, and other vegetation and insects throughout the forest, provide food. There are trees in a wide range of decay, including snags appropriate for nesting and cavity dwelling animals. There are perches for raptors such as bald eagles and osprey to rest on and hunt from. The river provides cool, wet soils and drinking water. This protected area provides connectivity along the creek within a much larger protected landscape of nearby conservation parcels, USFS and NPS land, benefiting species that need space to roam. Development remains a threat in immediately surrounding areas, which could make this corridor even more valuable in the future.

Observed Wildlife Species: The following lists contain species which have been observed on site. Additional, not yet observed species are most likely also utilizing the site (see Priority Habitat and Species above for a list of observed fish species).

Mammals

Cougar
Black Bear
Grey Wolf
Coyote
Red Fox
Bobcat
White-tailed Deer
Mule Deer
River Otter
Beaver
Raccoon
Rabbit
Townsend's Chipmunk
Squirrel
Moles
Mice
Little Brown Bat
Steller Jay

Birds

Varied Thrush
American Robin
Black-Capped Chickadee
Red-Breasted Sapsucker
Rufous Hummingbird
Northern Flicker

Great Blue Heron
Bald Eagle
Sharp Shinned Hawk
Red Tail Hawk
Ruffed Grouse
Yellow Rumped Warbler
Common Raven
Barred Owl
Saw-whet
Pacific Wren
House Wren
Harlequin Ducks
Osprey
Merganser
Dipper

Amphibians

Pacific Treefrog
Garden Slug

Reptiles

Garter Snake

Macroinvertebrates

Mayfly
Caddisfly

* Species list compiled with the assistance of landowners.

Human Environment and History

Current Use: North Cascades Institute purchased the Blue House in 2014 to provide residential housing space for graduate students and staff. An additional dwelling unit was built in 2018.

Structures & Built Environment: There is a single-family residence and an ADU in the Building Zone, along with a detached shed and garden space. There is a well and well house and septic systems within the building zone. In the Habitat Conservation Zone there is a loop foot trail, small clearing (.07 acres in size), and a picnic table that is not a permanent structure and not attached to the ground.



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Land Use History: Aerial imagery dating back to 1998 shows the property similar to current conditions with forest running along the riparian area and a clearing in the Building Zone. The Blue House was built in 1912 and the property was farmed by the Ralph LeFleur and Alma Brostrom family. In 2005 Terri and Bradley Sarver purchased the property and ran a whitewater rafting company, Blue Sky Outfitters, and added a guest house in 2007. Around 2009, Bryan Gillenwater and Angela Anderson purchased the property with the intent on running workshops or craft retreats. After many repairs and remodeling to the house Bryan and Angela decided to not to host workshops and only used the property for recreation. They also removed a red barn that was located between the fenced in garden area and the Skagit River. The foundation of the

barn can still be found just beyond the garden fence. The North Cascades Institute purchased the property in 2014, building an ADU in 2018.

Cultural Resources: Historically, several tribes, including ancestors of the Upper Skagit, utilized lands in the vicinity of the property. Located about a mile below Diobsud Creek on the west side of the Skagit River, there is evidence of two small winter houses. The majority of the property is mapped as very high risk for encountering archeological artifacts in the Washington Information System for Architectural & Archaeological Records Data. During an archeological investigation in 2016, completed on the behalf of the Skagit Fisheries Enhancement Group for an invasive species removal and replanting project, several pieces of firemodified rock and stone tool artifacts were found.

More information about the land use and cultural history can be found in SLT Records.

Photopoints



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Diobsud NCI CE Photopoints



Diobsud Creek NCI CE Photopoint Map



DiobsudNCI 2020.8.13 PP1 E



DiobsudNCI 2020.8.13 PP1 NE



DiobsudNCI 2020.8.13 PP1 S



DiobsudNCI 2020.8.13 PP1 SE



DiobsudNCI 2020.8.13 PP1 SW



DiobsudNCI 2020.8.13 PP2 E



DiobsudNCI 2020.8.13 PP2 N



DiobsudNCI 2020.8.13 PP2 NW



DiobsudNCI 2020.8.13 PP2 SE



DiobsudNCI 2020.8.13 PP2 SW



DiobsudNCI 2020.8.13 PP3 E



DiobsudNCI 2020.8.13 PP3 NE



DiobsudNCI 2020.8.13 PP3 NW



DiobsudNCI 2020.8.13 PP3 S

All photos taken 8/13/2020

Diobsud NCI CE Photopoints



DiobsudNCI 2020.8.13 PP3 W



DiobsudNCI 2020.8.13 PP4 N



DiobsudNCI 2020.8.13 PP4 NW



DiobsudNCI 2020.8.13 PP4 S



DiobsudNCI 2020.8.13 PP4 SW



DiobsudNCI 2020.8.13 PP5 E



DiobsudNCI 2020.8.13 PP5 N



DiobsudNCI 2020.8.13 PP5 NE



DiobsudNCI 2020.8.13 PP5 NW



DiobsudNCI 2020.8.13 PP5 SE



DiobsudNCI 2020.8.13 PP6 N



DiobsudNCI 2020.8.13 PP6 NE



DiobsudNCI 2020.8.13 PP6 NW



DiobsudNCI 2020.8.13 PP6 SE



DiobsudNCI 2020.8.13 PP7 NW

All photos taken 8/13/2020

Diobsud NCI CE Photopoints



DiobsudNCI 2020.8.13 PP7 SW



DiobsudNCI 2020.8.13 PP7 W



DiobsudNCI 2020.8.13 PP8 E



DiobsudNCI 2020.8.13 PP9 NE



DiobsudNCI 2020.8.13 PP9 SE



DiobsudNCI 2020.8.13 PP10 S



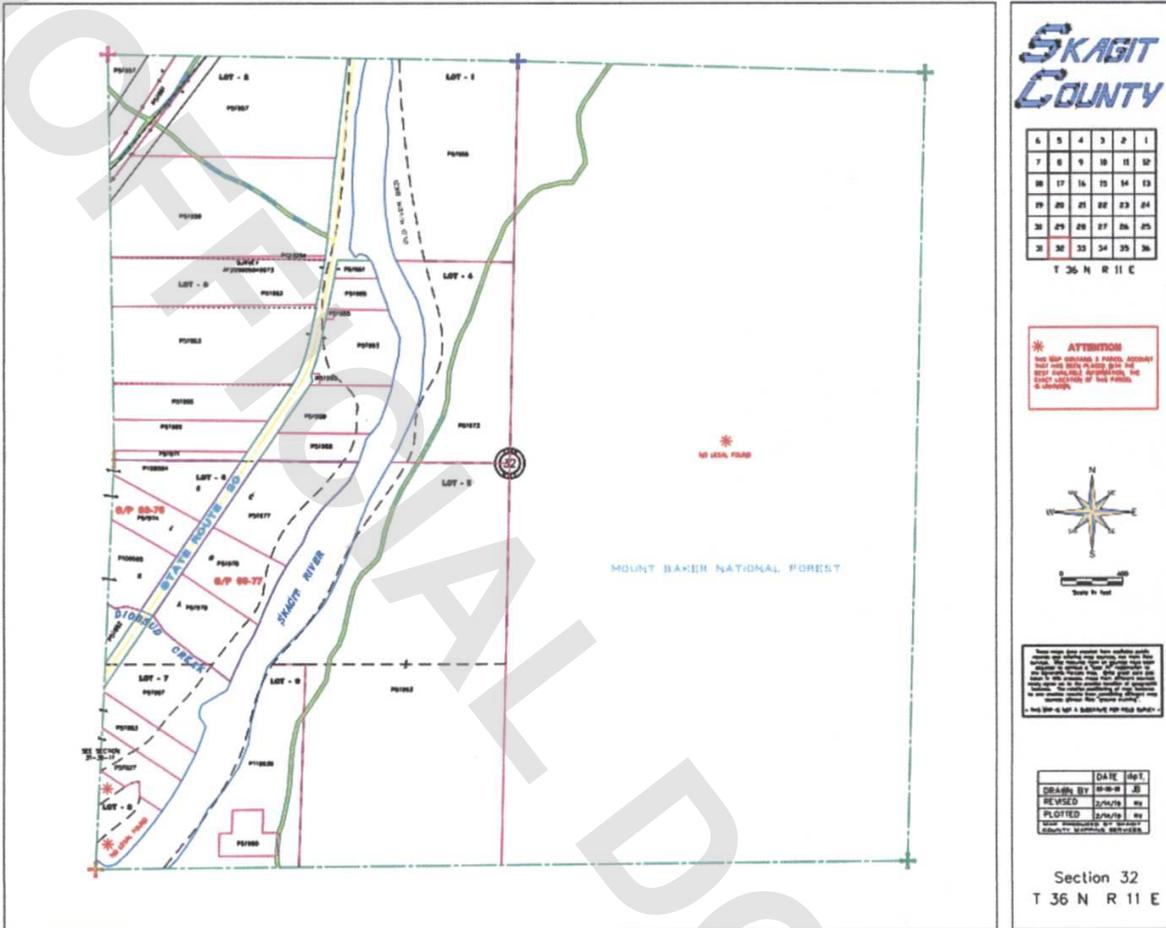
DiobsudNCI 2020.8.13 PP10 SE



DiobsudNCI 2020.8.13 PP10 SW

All photos taken 8/13/2020

Assessors Map



SKAGIT COUNTY

6	5	4	3	2	1
7	8	9	10	11	12
13	14	15	16	17	18
19	20	21	22	23	24
25	26	27	28	29	30
31	32	33	34	35	36

T 36 N R 11 E

*** ATTENTION**
 THIS MAP CONTAINS A PHOTO AERIAL
 THAT WAS TAKEN IN 1998. THIS
 MAP SHOWS THE CURRENT
 LOCATION OF THE PARCELS
 & BOUNDARIES.



Scale in feet

Assessors Map is a public document and is available for public inspection. The information on this map is for informational purposes only and does not constitute a warranty of any kind. The Assessor's Office is not responsible for any errors or omissions on this map.

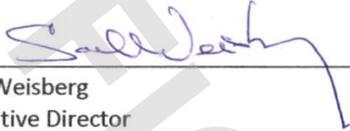
DATE	BY
CREATED	SP-100 JB
REVISED	12/15/20 JB
PLOTTED	12/15/20 JB

Section 32
 T 36 N R 11 E

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

- Title report
- Photopoints (high resolution digital files)
- Updated species lists

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.



Saul Weisberg
Executive Director
North Cascades Institute, Grantor

date: 12/10/2020



Michael Kirshenbaum
Conservation Director
Skagit Land Trust, Grantee

date: 12/3/20