

When recorded return to:

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

GNW 20-8681

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| Document Title: Grant Deed of Conservation Easement | |
| Reference Number(s) of Documents assigned or released: Additional reference numbers on page(s) _____ of document. | |
| Grantor: Owens, James V. | SKAGIT COUNTY WASHINGTON REAL ESTATE EXCISE TAX Affidavit No. 2021-4936 Oct 27 2021 Amount Paid \$965.00 Skagit County Treasurer By Lena Thompson Deputy |
| Grantee: Skagit Land Trust | |
| Legal description (abbreviated: i.e. lot, block, plat or section, township, range) Full legal descriptions shown in Exhibit A Por. N1/2 SE1/4 of Sec. 2, Twp. 33 N., R. 4 E., WM. <input type="checkbox"/> Additional legal description is on page(s) 38 of document. | |
| Assessor's Property Tax Parcel/Account Number Portions of P16234 (330402-4-004-0003) and P16232 (330402-4-002-0005) | |
| The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein. | |

This Grant Deed of Conservation Easement (hereinafter referred to as "Easement" or "Conservation Easement") is executed by James V. Owens, whose address is 22496 Amick Road, Mount Vernon, WA 98274 ("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"). The State of Washington, by and through the Washington State Recreation and Conservation Office ("RCO"), is a third-party beneficiary having certain rights hereunder, including third-party rights of enforcement.

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*, also as shown in Exhibit B, *Site Map*, which exhibits are attached hereto and incorporated herein by this reference. In the event of a conflict between the *Legal Descriptions* and the *Site Map*, the *Legal Description* shall control. Exhibit C, *Baseline Report*, attached hereto and incorporated herein by this reference, provides a more complete characterization of the Protected Property.
- 3.2 The Protected Property (41.5 +/- acres) is forested and managed for the production of timber and for wildlife habitat. It is located near Mount Vernon and the community of Big Lake and is part of a large block of low elevation native forest within the Devil's Mountain area. The property has a 13-acre beaver pond classified as a Type "A" wetland and a creek classified as Type "F" that flows into the Nookachamps, a large, low elevation tributary to the Skagit River. The Protected Property is enrolled in current use forestry and is adjacent to Washington State Department of Natural Resources (WDNR) forest land.

4 Conservation Values

- 4.1** Forestry Values. Consistent with Revised Code of Washington (RCW) 76.09.202, the "Forestry Values" of this Conservation Easement includes those resources relating to forest resource management including the growing, harvesting, or processing of timber.
- 4.2** The Protected Property consists of significant forest and open space land, as defined in Revised Code of Washington ("RCW") 84.34.020, and possesses natural, ecological and watershed values of great importance to the Grantor and to the people of Skagit County as providing public benefit. The characteristics of the Protected Property described in this Section 4 are hereinafter collectively referred to as the "Conservation Values." For purposes of this Conservation Easement, the Parties agree that the Primary Purpose of the easement is for forest resource management and other Conservation Values are considered secondary.
- 4.3** 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:
- 4.3.a** Productive mixed-species forestlands that have historically been managed for the production of timber and have the soils and environmental capacity for future economically viable production of timber and other forest resources.
- 4.3.b** Significant natural habitat for diverse native plants and shelter, cover, and food for wildlife, including beaver, bear, cougar, and bobcat.
- 4.3.c** Open-space lands that provide forest and wildlife connectivity to WDNR and private forestlands.
- 4.3.d** Beaver pond, wetlands, and stream that are beneficial to wildlife and protect water supply and moderate water flow to Nookachamps Creek.

- 4.4 The specific Conservation Values and characteristics of the Protected Property are documented in an inventory of relevant features of the Protected Property ("Baseline Documentation") on file at the offices of Skagit Land Trust and, 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 C, *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. The Baseline Documentation may be used to establish that a change in the use or condition of the Protected Property has occurred, but its existence shall not preclude the use of other evidence to establish the condition of the Protected Property as of the date of this Easement. Grantee may use the Baseline Documentation in enforcing provisions of this Easement but is not limited to the use of the Baseline Documentation to show a change in the use or condition of the Protected Property.
- 4.5 In the absence of this Conservation Easement, the Protected Property could be converted to uses incompatible with forest resource management and could be developed in a manner that would destroy its Conservation Values. It would be extremely desirable property for residential development because of its location near Mount Vernon, I-5, and the community of Big Lake, and for recreation because of the pond, walking trails and adjacent public lands.

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 forestlands and 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" and "timberland" as defined in such statute.

- 5.2** Permanent protection of the Protected Property will further the purposes of the Washington State Farm and Forest Account (FFA) established under RCW 79A.15.130, which provides that moneys appropriated to the FFA “must be distributed for the acquisition and preservation of farmlands and forestlands in order to maintain the opportunity for agricultural and forest management activity upon these lands.” The legislatively declared policies of the State of Washington in the Washington State Open Space Tax Act, Chapter 84.34 RCW (OSTA), provide that “it is in the best interest of the state to maintain, preserve, conserve, and otherwise continue in existence adequate open space lands for the production of food, fiber and forest crop, and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens.” The land included in this Conservation Easement is currently designated as Forestland under OSTA as of the Effective Date of the Conservation Easement and it is the intent of all parties that the Protected Property will continue to be managed in a manner that allows it to remain eligible for this designation through the life of this Conservation Easement.
- 5.3** The Skagit County Comprehensive Plan (2016) “seeks to manage growth by protecting natural resource lands, open space and rural areas....” Skagit County’s Comprehensive Plan provides the policy basis for retaining open space and maintaining and enhancing natural resource lands as required by the Growth Management Act, 36.70A.020 RCW, and for protecting and regulating critical areas 36.70A.172 RCW. Critical areas are regulated by the Critical Areas Ordinance of Skagit County (CAO), Skagit County Code (SCC) Chapter 14.24, 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.
- 5.4** The Conservation Values of the Protected Property includes natural mixed hardwood conifer forest ecosystem, the preservation of which is recognized as providing public benefits, including reducing soil erosion, moderating temperature and water flow extremes, and sustaining water quantity and quality to the region’s aquifer and to Nookachamps Creek, which is classified by Washington State Department of Ecology as a 303(d) stream for not meeting water quality standards.

- 5.5** The Conservation Values include the capacity of its forests to store atmospheric carbon as a means to mitigate global warming, which is recognized as being of public benefit by the Federal Energy Policy Act of 1992, Section 1605(b1b) and is supportive of Washington State 70A.45.020 RCW, 70A.45.090(b) RCW and 70A.45.100 RCW. Further, the Protected Property provides resiliency to climate change impacts within the Devil's Mountain forest block due to varied geology, topography and microclimates that are important for sustaining native biodiversity.
- 5.6** In recognition of the importance of the Protected Property, the Washington Wildlife and Recreation Program, administered by the Recreation and Conservation Office (RCO-WWRP), has provided state grant funds to assist in securing the Easement on said property through the Forestland Preservation Category. Pursuant to that certain grant agreement, #19-1541 between RCO and Grantee dated October 2, 2019 ("RCO Grant Agreement"), RCO is a third-party beneficiary of certain rights under this Easement.

6 Grantor and Grantee Conservation Intent

- 6.1** Grantor, sole 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 in perpetuity.
- 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.
- 6.4** To aid in the interpretation of this Conservation Easement, the highest Conservation Value protected by this Conservation Easement shall be its Forestry Values, followed, in no order of priority, by its other Conservation Values.

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 sixty-thousand dollars (\$60,000) is made by Grantee to Grantor, in consideration of the Conservation Easement 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 The Parties agree that the primary purpose of this Conservation Easement is the protection of the Forestry Values of the property, and to enable the Protected Property to remain in forestry use for the production of timber and non-timber products by preserving and protecting in perpetuity its forestry values, character, use and utility, and to prevent any use or condition of the Protected Property that would significantly impair or interfere with its forestry values, character, use or utility. The protection of other Conservation Values shall be considered Secondary Purposes.
- 8.2 Further, the Parties agree:
- 8.2.a To protect the property from conversion to non-forest uses and 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
- 8.2.b To prevent any use of, or activity on, the Protected Property that will significantly impair or interfere with its Conservation Values.
- 8.3 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, maintain and conserve and to enhance, restore or improve by mutual agreement, the Conservation Values of the Protected Property.

9.2 Access to Protected Property

As provided for and limited herein, Grantor hereby grants to Grantee reasonable and non-exclusive access at reasonable times across the Protected Property solely for the purposes of fulfilling Grantee's obligations under this Easement and exercising its affirmative rights under this Easement. Specifically, Grantee shall have the right to:

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

9.2.b Natural Events. To enter upon the Protected Property, at a mutually agreeable date and time and upon prior notice to Grantor, to inspect the Protected Property after major natural events occur, such as fires, windstorms, and floods.

9.2.c 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 15, *Breach and Enforcement—Grantee's Remedies*; and

9.2.d Education and Scientific Purposes. To enter the Protected Property, upon prior arrangement with Grantor, for educational and scientific purposes, 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 15, *Breach and Enforcement—Grantee's Remedies*.

9.4 Enforcement: To enforce the terms of this Conservation Easement, pursuant to Section 15, *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 22, *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 13, *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 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 their sole discretion, may allow for public access to the Protected Property.

11 Reserved Rights and Restrictions in General

- 11.1 Reserved Rights on the Protected Property.** Grantor reserves for themselves and their personal representatives, heirs, successors, and assigns, all rights accruing from ownership of the Protected Property, including the right to engage in, permit, or invite others to engage in, any use of, or activity on, the Protected Property that is not inconsistent with the Purpose of the Conservation Easement and that is not specifically prohibited or otherwise limited by this Conservation Easement. Without limiting the generality of this Subsection, Grantor specifically reserves for themselves and their personal representatives, heirs, successors, and assigns, the uses and activities, set out as permitted in this Section 11 and 12. 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 and 12, though not an exhaustive list, are inconsistent with the Purpose of this Conservation Easement and are prohibited.

12 Allowed and Prohibited Uses and Activities

- 12.1 Allowed Uses and Activities.** In addition to the reserved rights described in Section 11.1, Reserved Rights on the Protected Property, the following uses and activities are allowed.

12.1.a Commercial Forestry: The production and harvest of conifers and hardwoods and other forest management activities that further the Forest Resource Management Values of this Conservation easement and shall be considered consistent with the purpose, terms, and provisions of this Easement, conducted under an approved Forest Stewardship Plan pursuant to Section 12.1.d, and in accordance with all applicable local, state, and federal laws and regulations, including forest practice requirements. It is the intent of the Grantor and Grantee to ensure that the forest management activities, including timber harvesting, are designed to enhance, restore, and maintain the native forest types found on the Property. A goal of forest management shall be the creation of a healthy, sustainable, mixed-age, and mixed-species forest. Grantor may construct temporary access structures that are directly required for forest management purposes, as allowed within the Forest Stewardship Plan pursuant to Section 12.1.d.

12.1.b 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, wildlife cameras, 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.

12.1.c Habitat Restoration, Enhancement and Stewardship: Consistent with protection of the Conservation Values of this Conservation Easement, Grantor may undertake habitat restoration or enhancement activities on both the land and water resources of the Protected Property to further the Purpose of this Conservation Easement, subject to Prior Written Approval pursuant to Section 13, *Notice or Prior Written Approval Required Before Certain Uses and Activities*. Bird houses may be installed and maintained without written approval.

12.1.d Forest Stewardship Plan. Grantor agrees to use the Protected Property consistent with their 2015 Forest Conservation (Stewardship) Plan, which has been accepted by the Grantee. The Forest Stewardship Plan describes the activities that the Grantor intends to undertake so that potential issues that may arise out of operations can be identified, addressed and resolved in advance of the commencement of ground activities. The Forest Stewardship Plan shall be reviewed and updated or revised every ten (10) years, or sooner in the case of a catastrophic forest loss such as wind, fire, or pest outbreak, or as part of a new timber harvest plan. Said plan will be revised or updated by Grantor, in cooperation with and approved by Grantee, as appropriate, with a copy of any updates provided to Grantee. Failure to timely complete said update or revision shall not affect the enforceability or validity of any other provision hereof. Grantor further agrees to allow Grantee the right to maintain restoration plantings and control invasive species if Grantor fails to do so. Failure of Grantor and Grantee to agree to a Forest Stewardship Plan update or revision shall trigger Section 14, *Mediation of Disputes*.

12.1.e Vegetation Management

- (i) **Forest Management.** Grantor may plant native species of trees or shrubs within the Protected Property, as well as undertake forest management practices designed to address native forest health, forest fire prevention, or to enhance or restore native wildlife habitat, including thinning or pruning of existing trees. Prior to such forest management activities, Grantor shall provide Notice pursuant to Section 13, *Notice or Prior Written Approval Required Before Certain Uses and Activities*, the current Forest Stewardship Plan required by Section 12.1.d that describes the management objectives of the plan and the specific practices proposed.
- (ii) **Noxious Weeds and Introduced Species.** Grantor may remove noxious weeds and introduced non-native plant species from the Protected Property.
- (iii) **Legacy Trees.** Designated Legacy Trees, identified in Appendix C: Baseline Report, are to be left standing and undamaged.

- 12.1.f Carbon Credits:** The Grantor may reserve for themselves and their successors, heirs, and assigns all "Carbon Rights" a part of and appurtenant to the Protected Property that occurs by virtue of the forest management and other restrictions established herein from the date of execution of the Easement, subject to any limitations as may be imposed under state or federal rules or regulations. For the purposes of this Easement, Carbon Rights are defined as uses and benefits which accrue to the holder based on the measurable sequestration of atmospheric carbon dioxide stored in the form of forest carbon. Further, Grantor agrees it shall ensure that there is no conflict with, and the terms and conditions of the Conservation Easement are taken into account, when calculating the carbon accounting and shall secure Prior Written Approval from the Grantee pursuant to Section 13, *Notice or Prior Written Approval Required Before Certain Uses and Activities*, prior to any such proposed creation, sale, transfer, or exchange.
- 12.1.g Trails:** Grantor may use, maintain, repair, reconstruct, and replace non-paved 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 foot-trails not existing on the Protected Property as of the Effective Date of the Conservation Easement, subject to Prior Written Approval of the proposed plan for any such trail location and construction, pursuant to Section 13, *Notice or Prior Written Approval Required Before Certain Uses and Activities*.
- 12.1.h Fences:** Grantor may construct, maintain, repair, modify, and replace fences along the perimeter that permit the reasonable passage of wildlife.
- 12.1.i Tribal Cultural or Tribal Spiritual Activities:** The Grantor may grant permission for others to undertake tribal cultural or tribal spiritual activities or uses in accordance with an approved Forest Stewardship Plan or subject to Prior Written Approval pursuant to Section 13, *Notice or Prior Written Approval Required Before Certain Uses and Activities*.
- 12.1.j Emergencies:** Grantor may undertake other activities necessary to protect public health or safety or that are actively required by and subject to compulsion of any governmental agency with authority to require such activity. Any such activity shall minimize impact to the Forestry Values and 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.

12.2 Prohibited Uses. In addition to the restrictions described in Section 11.2, Restrictions on the Protected Property, the following uses and activities are prohibited.

12.2.a No Conversion to Incompatible Uses. Grantor shall not convert the Protected Property to industrial or suburban/residential development or to any other use that is incompatible with the Purpose of the conservation easement.

12.2.b 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 of a conservation easement, subject to Prior Written Approval pursuant to Section 13, *Notice or Prior Written Approval Required Before Certain Uses and Activities*.

12.2.c 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.

12.2.d Mining: The exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Protected Property is prohibited.

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

12.2.f Erosion or Water Pollution: Any use or activity on the Protected Property that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters is prohibited, including disposal of wastewater or storm water in manners inconsistent with the Purpose and terms of this Conservation Easement, except for forestry activities that are permitted and carried out in compliance with the Forest Stewardship Plan and Washington State Forest Practices Rules.

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

12.2.h Structures: The placement or construction of any buildings, structures, utilities, or other improvements of any kind is prohibited, with the exception of a footbridge over the creek and temporary structures necessary for timber harvest.

- 12.2.i Alteration of Land:** Alteration of the topography of the land including through the excavation or placing of soil, dredging spoils, filling, or placement of streambank hardening is prohibited, except any activity or use that is expressly permitted under Section 12.1.a, *Commercial Forestry*.
- 12.2.j Alteration of Wetlands and Watercourses:** The draining, filling, dredging, ditching, or diking of wetland areas or watercourses, the removal or alteration of beaver dams, or any other action that would damage or reduce wetland areas is prohibited, except for a temporary stream crossing for the purpose of forest harvest as permitted under Section 12.1.a above or otherwise permitted through the approved Forest Stewardship Plan referenced in Section 12.1.d.
- 12.2.k Introduced Vegetation:** The intentional introduction of non-native invasive plant species is prohibited.
- 12.2.l Crop Cultivation:** Other than those activities associated with the Forestry Values of the Conservation Easement, the cultivation of any crops including nursery stock, 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 planting and harvest of native tree species.
- 12.2.m 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 permitted activities such as horseback riding or dog walking. Removal of non-native animal species is allowed.
- 12.2.n Wildlife Disruption.** The intentional disruption of native wildlife, including feeding, resting, breeding and nesting activities, is prohibited.
- 12.2.o Stormwater Runoff:** Channelized stormwater outflow and/or discharge of pollutants to the wetlands or creek is prohibited.
- 12.2.p 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.

12.2.q Motorized Vehicles: The use of motorized vehicles is prohibited except as necessary in the accomplishment of forest management activities undertaken in accordance with the approved Forest Stewardship Plan, habitat restoration, vegetation management, or other permitted uses and activities. Use of motorized vehicles may not create impacts that are detrimental to the Purpose of this Conservation Easement.

12.2.r Camping: Public, commercial, or private camping is prohibited, including the use of tents or recreational vehicles.

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

13.1 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.

13.2 Notice Distinguished from Prior Written Approval

13.2.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 13.3 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.

13.2.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 13.3 and await Grantee’s written response as set out in Sections 13.5 and 13.6. 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 13.9 and 13.10.

13.3 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.

- 13.4 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:
- 13.4.a** Forest management activities under Section 12.1.e(i), *Forest Management*;
 - 13.4.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.
- 13.5 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:
- 13.5.a** Moving or removing reference point markers placed under Section 9.6, *Markers*;
 - 13.5.b** Habitat restoration and enhancement activities under Section 12.1.c, *Habitat Restoration, Enhancement and Stewardship*;
 - 13.5.c** Permitting others to undertake tribal cultural or tribal spiritual activities or uses on the Protected Property under Section 12.1.i, *Tribal Cultural or Tribal Spiritual Activities*, when not already set out in the approved Forest Stewardship Plan.
 - 13.5.d** Creating, selling, transferring, or exchanging any Carbon Rights appurtenant to the Protected Property under Section 12.1.f, *Carbon Credits*. Prior written approval will be granted only if such a transaction is consistent with RCO's Carbon and Ecosystem Service Credits Policy in place at the time.
 - 13.5.e** Location and construction of new trails under Section 12.1.g, *Trails*;
 - 13.5.f** Conveyance of any portion of the Protected Property for permanent conservation ownership under Section 12.2.b(ii), *Subdivision*;
- 13.6 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 13.7 and 13.8.

- 13.7 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.
- 13.8 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.
- 13.9 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 13.8, Grantor shall resubmit their notice pursuant to Section 13.12. 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. The Parties agree that failure to grant or withhold consent within the required time on any proposed action, use or activity shall not be deemed or construed to be a waiver of Grantee's rights under this Easement with respect to any future proposed action, use or activity.

13.10 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.

13.11 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.

13.12 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.

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

14 Dispute Resolution

14.1 Preventive Discussions. Grantor and Grantee will promptly give the other notice of problems or concerns arising in connection with the other's actions under this Easement or the use of or activities or conditions on the Protected Property, and will meet as needed, but no later than fifteen (15) business days after receipt of a written request for a meeting, to minimize the same.

14.1.a Mediation. If the Parties disagree as to the consistency of any proposed use or activity with the Purpose or terms of this Easement and the Parties are unable to resolve such disagreement through unassisted preventive discussions between themselves, and if Grantor agrees not to proceed with the use or activity pending resolution of the dispute, Grantor or Grantee may refer the dispute to mediation by request made in writing upon the other and with notice to RCO who have full discretion to participate or not to participate in the mediation. Within ten (10) business days of the receipt of such a request, the parties to the mediation ("Mediation Parties") shall select a single impartial mediator. Mediation shall then proceed in accordance with the following guidelines:

14.1.b Purpose. The purpose of the mediation is to: (a) promote discussion among the Mediation Parties; (b) assist the Mediation Parties to develop and exchange pertinent information concerning the issues in dispute; and (c) assist the Mediation Parties to develop proposals which enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or de facto modification or amendment of the terms, conditions or restrictions of this Easement.

14.1.c Participation. The mediator may meet with the Mediation Parties and their counsel jointly or ex parte. The Mediation Parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of all Mediation Parties with settlement authority will attend mediation sessions as requested by the mediator.

14.1.d Confidentiality. All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the Mediation Parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a party. Records of mediation communications shall be exempt from the requirements of Chapter 42.56 RCW (Washington State Public Records Act) to the extent provided for in Chapter 7.07 RCW (Washington State Uniform Mediation Act).

14.1.e Time Period. Neither party shall be obligated to continue the mediation process beyond a period of sixty (60) days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.

14.1.f Costs. The costs of the mediator shall be borne equally by the Parties; the Mediation Parties shall bear their own expenses, including attorney's fees, individually.

15 Breach and Enforcement—Grantee's Remedies

15.1 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.

15.2 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.

15.3 Grantee's Right to Bring Action.

Grantee may bring an action as provided in Section 15.5 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.

15.4 Emergency Enforcement. If Grantee, in their 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.

15.5 Grantee's Judicial Remedies.

15.5.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.

15.5.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.

15.6 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.

15.7 Costs of Enforcement. In the event Grantee must enforce the terms of this Conservation Easement, Grantor, or their 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 their behalf, at their direction, with their permission, or otherwise subject to their 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 their behalf, at their direction, with their permission, or otherwise subject to their 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 their personal representatives, heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized use or activity.

15.8 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 their behalf, at their direction, with their permission, or otherwise subject to their 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.

15.9 Waiver of Certain Defenses. Grantor acknowledges that they have 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 they 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 13 of this Conservation Easement, *Notice or Prior Written Approval Required Before Certain Uses and Activities*.

15.10 Acts Within and Beyond Grantor's Control. Grantor is responsible for the acts and omissions of persons acting on their behalf, at their direction, with their permission, or otherwise subject to their 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.

15.11 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 their right of action to Grantee, and hereby appoints Grantee their 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.

15.12 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.

16 Property Maintenance, Insurance, Liens, and Taxes

16.1 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.

16.2 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 their 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.

16.3 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.

16.4 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.

17 General Representations and Warranties

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

- 17.1 **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;
- 17.2 **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;
- 17.3 **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.

18 Environmental Representations and Warranties

- 18.1 **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. However, Hazardous Materials shall not include biosolids, herbicides, pesticides, rodenticides, insecticides, and fertilizers applied in accordance with federal, state, and local law.

- 18.2 **Limitations on Waste Disposal.** Grantor may accumulate and store ashes, garbage or other waste ("Trash") on the Protected Property only if such accumulation occurs in the normal course of domestic or Agricultural Activities on the Protected Property. Long-term accumulation of Trash (i.e., exceeding one calendar year in time) may occur within areas designated by Grantor with prior notice to and written consent of Grantee as long as such waste is either destined for transfer off-site, or for incineration on-site, or, in the case of biodegradable material, composted on-site.

18.3 Environmental Warranties

- 18.3.a** Grantor warrants that the Protected Property is in compliance with, and will remain in compliance with, all applicable Environmental Laws.
- 18.3.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 their predecessors by government agencies or third parties arising out of alleged violations of any Environmental Law.
- 18.3.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.
- 18.3.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.

18.4 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.

18.5 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.

18.6 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").

18.7 No Compensatory Mitigation. The creation, enhancement, restoration or preservation of wetlands, fish or wildlife habitat, or other natural resources for the purpose of, directly or indirectly, compensating for or mitigating resource losses or damages in any way associated with actual or potential impacts of development except for impacts caused by Grantor on the Protected Property ("Compensatory Mitigation") is prohibited on the Protected Property. Compensatory Mitigation includes, but is not limited to, mitigation banking, conservation banking, and any other sale or exchange of mitigation credits based on the creation, restoration, enhancement and/or preservation of such natural resources within the Protected Property. The above prohibition shall not be interpreted to disallow the sale of [Carbon Rights] [carbon offset credits] in the manner allowed under Section 12.1.f of this Conservation Easement."

18.8 Compliance with Regulatory Requirements. Grantor shall conduct all reserved and permitted uses and activities under this Easement to meet all requirements of federal, state and local statutes, rules, and regulations as they may be amended from time to time.

19 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 16, 17 and 18.

20 Amendments and Discretionary Consent

20.1 General. 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 Grantee to provide its discretionary consent for certain uses or activities on the Protected Property, 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 as provided for in Subsection 20.2.a below. Nothing in this section shall require Grantee to agree to any amendment.

20.2 Amendments. To be effective, any amendment to this Conservation Easement shall be by the delivery of an amended easement deed, executed by both Grantor and Grantee and recorded in the official records of Skagit County, Washington, and any other jurisdiction in which such recording is required.

20.2.a Consistency with Purpose. If circumstances arise under which a discretionary consent or an amendment to or modification of this Conservation Easement would be appropriate, such discretionary consent or amendment shall meet all of the following requirements:

- (i) No discretionary consent or 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 discretionary consent or amendment shall be consistent with the Purpose of this Conservation Easement and intent to protect such purpose in perpetuity;
- (iii) Any such discretionary consent or 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 Conservation Easement in carrying out the Purpose of the Conservation Easement may be permitted;
- (iv) Any such discretionary consent or amendment shall have a net beneficial or neutral effect on the relevant Conservation Values protected by the Conservation Easement;
- (v) Any such discretionary consent or amendment may not affect the perpetual duration of the Conservation Easement;

- (vi) Any such discretionary consent or amendment shall not result in the release of any portion of the Protected Property from permanent protection under this Conservation Easement absent extinguishment of the Conservation Easement as to such portion of the Property in accordance with the provisions of Section 21;
- (vii) Any such discretionary consent or amendment shall not result in private inurement or confer impermissible private benefit; and
- (viii) The Parties must first obtain the written consent of RCO as a third party beneficiary to this Conservation Easement.

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

21 Extinguishment, Condemnation, and Subsequent Transfer

- 21.1 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.
- 21.2 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.
- 21.3 Valuation and Proceeds.** Grantor acknowledges and agrees that the bargain sale of the perpetual conservation restriction described in this Conservation Easement, at the time of the gift, bears to the fair market value of the Protected Property as a whole at that time. For purposes of this Conservation Easement, the proportionate value of Grantee's real property interest shall remain constant. On a subsequent sale, exchange or involuntary conversion of the Protected Property, Grantee will be entitled to a portion of the proceeds at least equal to that proportionate value. All of Grantee's proceeds from a subsequent sale, exchange or involuntary conversion of the Protected Property shall be used by Grantee in a manner consistent with the conservation purposes of the original bargain sale contribution. Grantor also acknowledges and agrees, that for purposes of this Section, the proportionate value of the Conservation Easement shall be no less than 40%, corresponding to the value that the Conservation Easement bears to the fair market value of the Protected Property unencumbered by the Conservation Easement, evidenced by that certain real property appraisal prepared by The Eastman Company, dated October 5, 2020, on file with Grantee, in support of the Grantee's acquisition of the Conservation Easement.

21.4 Replacement Property. Consistent with RCO grant requirements, Grantee shall use the proceeds it receives from a subsequent sale, exchange or involuntary conversion of the Protected Property for the acquisition of property interests that are (i) substantially equivalent to those conveyed by this Conservation Easement, and (ii) support the goals of the relevant RCO grant programs. Grantee shall consult with and receive the consent of RCO in the selection of any replacement property interests. Upon acquisition of such replacement property interests, Grantee shall convey to RCO the same or substantially equivalent rights as provided for in this Conservation Easement.

21.5 Subsequent Transfers

21.5.a Grantor agrees to:

- (i) Incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which they divest themselves 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 themselves 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 13, *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.

21.5.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.

22 Assignment and Succession

22.1 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.

22.1.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.

22.2 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:

22.2.a Whatcom Land Trust, PO Box 6131, Bellingham, WA 98227; or

22.2.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.

23 RCO Third Party Right of Enforcement

RCO is hereby granted third party right of enforcement of this Easement. As such, RCO may exercise all of the rights and remedies provided to Grantee herein, and is entitled to all of the indemnifications provided to Grantee in this Easement. RCO and Grantee each have independent authority to enforce the terms of this Easement; provided, however, that RCO expects that Grantee shall have primary responsibility for monitoring and enforcement of the Easement. In the event that RCO and Grantee do not agree as to whether the Grantor is complying with the terms of the easement, RCO or Grantee may proceed with enforcement actions without the consent of the other. If RCO elects to enforce the terms of this Easement, it shall first follow the dispute resolution process and remedies described in Section 14

above; provided, however, that RCO shall not be obligated to repeat any non-judicial dispute resolution steps already taken by Grantee.

23.1 This third party right of enforcement does not extend to any other third party and will automatically transfer to another State agency charged with maintaining, preserving and/or restoring forest lands in the event RCO is dissolved or reorganized.

23.2 In the event that the Easement is transferred or assigned without the consent of RCO, which consent shall not be unreasonably withheld, RCO may require that Grantee pay to RCO, at RCO's election, the higher of (i) an amount equal to the fair market value of this Easement, which shall be determined as provided in Section 11.3 and distributed as provided in Section 11.4; or (ii) an amount equal to the Total Project Cost as specified in the RCO Grant Agreement with interest due and payable from the date of breach at the rate provided for in RCW 43.17.240, as may be amended from time to time.

24 No Representation of Tax Benefits

24.1 Grantor has not relied upon any information or analyses furnished by Grantee with respect to the availability, amount or effect of any deduction, credit or other benefit to Grantor under the Code, the Treasury Regulations or other applicable law, or the value of this Conservation Easement or the Protected Property.

24.2 Grantor has relied solely upon its own judgment and/or professional advice furnished by the appraiser and legal, financial and accounting professionals engaged by the Grantor in entering into this Conservation Easement. If any person providing services in connection with this Conservation Easement or the Protected Property was recommended by Grantee, the Grantor acknowledges that Grantee is not responsible in any way for the performance of services by these persons.

24.3 The Conveyance of this Conservation Easement by bargain sale is not conditioned upon the availability or amount of any deduction, credit or other benefit under the Code, the Treasury Regulations or other applicable law.

25 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.

26 General Provisions

- 26.1 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.
- 26.2 Controlling Law.** The interpretation and performance of this Conservation Easement is governed by the laws of the State of Washington.
- 26.3 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 20, *Amendments and Discretionary Consent*.
- 26.4 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.
- 26.5 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.
- 26.6 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.
- 26.7 Joint Obligation.** The obligations imposed by this Conservation Easement upon Grantor are joint and several.
- 26.8 No Forfeiture.** Nothing in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any way.

- 26.9 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.
- 26.10 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.
- 26.11 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.
- 26.12 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.
- 26.13 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.
- 24.2 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.

27 Schedule of Exhibits

- A. Legal Description
- B. Site Map
- C. Baseline Report

{Signature pages follow}

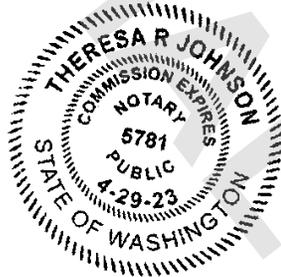
WASHINGTON NOTARY ACKNOWLEDGEMENT (REPRESENTATIVE)

State of Washington
County of Snohomish

I certify that I know or have satisfactory evidence that Roger Riffen 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 POA of James V. Owens to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 10-26-21

(Seal or stamp)



Theresa R Johnson
Signature

Notary
Title

My appointment expires: 4-29-23

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

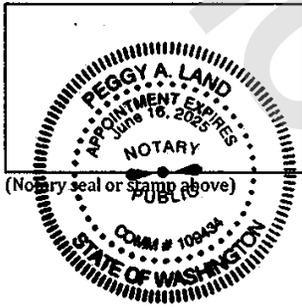
Dated: 10/21/21

By: Mark Hitchcock
Mark Hitchcock, President, Skagit Land Trust

State of Washington)
) ss.
County of Skagit)

I certify that I know or have satisfactory evidence that Mark Hitchcock is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were 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: 10/21/21



Peggy A. Land
Signature of Notary Public
Peggy A Land
Printed Name of Notary Public
My appointment expires June 16, 2025

THE STATE OF WASHINGTON, BY AND THROUGH THE WASHINGTON STATE RECREATION AND CONSERVATION OFFICE, Third Party Beneficiary, does hereby accept the above Grant Deed of Conservation Easement.

Dated: Oct 18, 2021

Signed: [Signature]

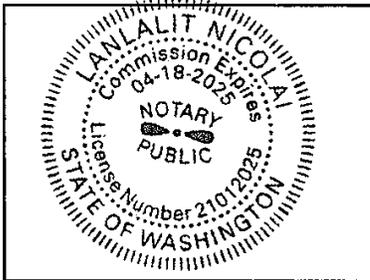
By: Scott T. Robinson

Its: Deputy Director

STATE OF WASHINGTON)
) ss.
COUNTY OF Inuviston)

I certify that I know or have satisfactory evidence that SCOTT T. ROBINSON is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the Deputy Director of Recreation and Conservation ^{office} to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 10/18/2021



(Use this space for notarial stamp/seal)

Lanlalit Nicolai
Notary Public
Print Name Lanlalit Nicolai
My commission expires 04/18/2025

EXHIBIT A

Legal Description**Conservation Easement
Portions of Skagit County Assessor's Parcel Numbers P-16232 and P-16234**

The East 1/2 of the Northwest 1/4 of the Southeast 1/4 and the West 1/2 of the Northeast 1/4 of the Southeast 1/4 of Section 2, Township 33 North, Range 4 East, W.M.

EXCEPT County road rights-of-way, if any;

AND EXCEPT the North 60.0 feet (as measured perpendicular to the North line);

AND ALSO EXCEPT the following described tract:

BEGINNING at the Northwest corner of said East 1/2 of the Northwest 1/4 of the Southeast 1/4 of Section 2, Township 33 North, Range 4 East, W.M.;
thence South 0°34'57" West along the West line of said subdivision for a distance of 233.00 feet;
thence South 89°25'03" East for a distance of 3.00 feet;
thence North 7°11'17" East for a distance of 234.17 feet, more or less, to the North line of said subdivision at a point bearing South 89°43'03" East and a distance of 30.00 feet from the POINT OF BEGINNING;
thence North 89°43'03" West along said North line for a distance of 30.00 feet, to the POINT OF BEGINNING.

TOGETHER WITH an easement for ingress and egress over under and across the North 60.00 feet (as measured perpendicular to the North line) of the East 1/2 of the Northwest 1/4 of the Southeast 1/4 and the West 1/2 of the Northeast 1/4 of the Southeast 1/4 of said Section 2, Township 33 North, Range 4 East, W.M.

AND ALSO TOGETHER WITH a non-exclusive easement for ingress, egress and utilities over, under and across a Southwesterly portion of the South 1/2 of the South 1/2 of the East 1/2 of the Southwest 1/4 of the Northeast 1/4 of said Section 2 as established by Easement recorded December 31, 2012 as Auditor's File No. 201212310194.

ALL OF THE ABOVE BEING SUBJECT TO and TOGETHER WITH easements, reservations, restrictions, covenants, liens, leases, court causes and other instruments of record.

Situate in the County of Skagit, State of Washington.

Containing 41.5 acres

EXHIBIT B

Site Map
Owens Property

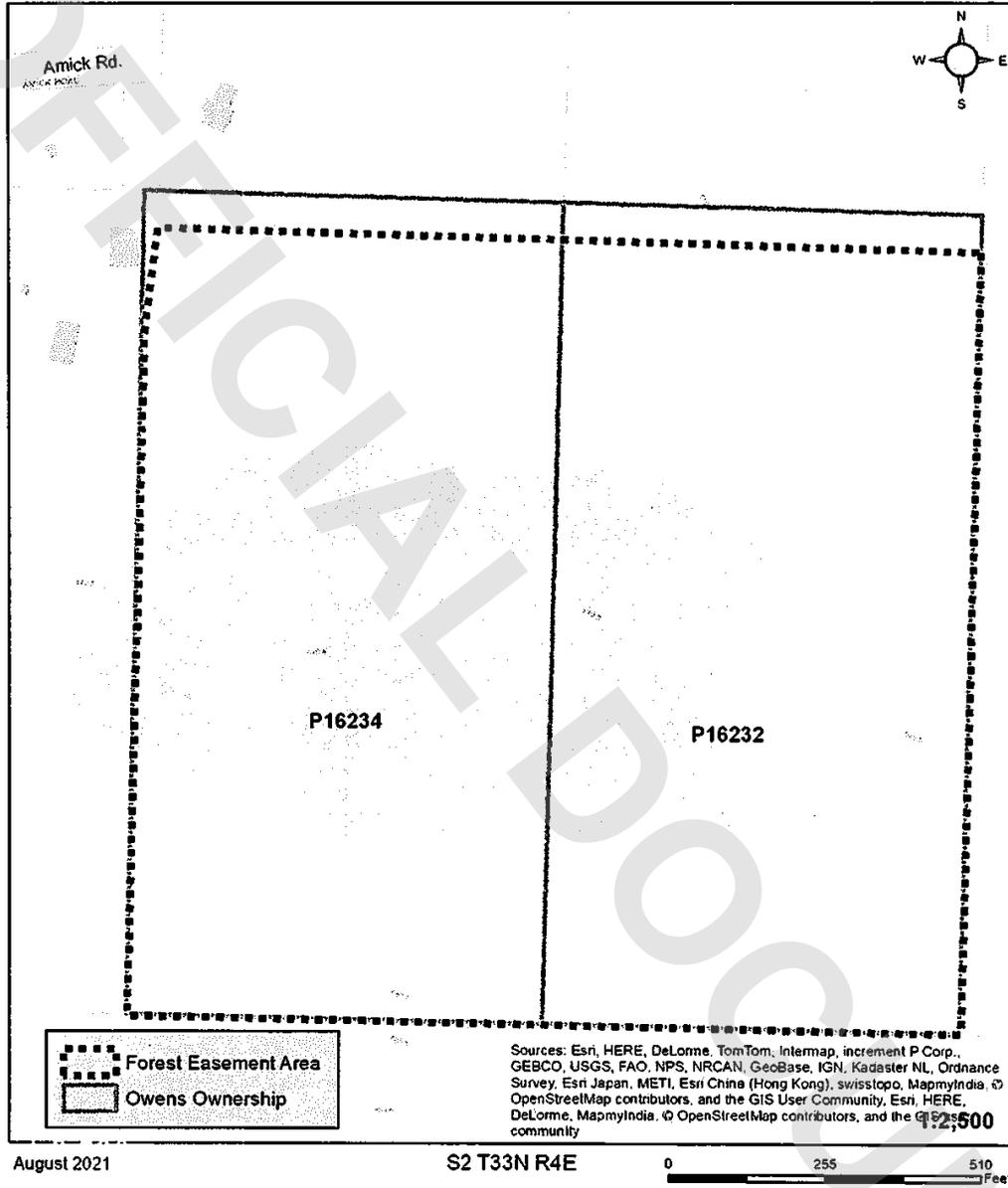


EXHIBIT C

Baseline Report

DEVILS MOUNTAIN (OWENS) CONSERVATION EASEMENT



May 20, 2021

Regina Wandler, MEH

Stewardship Director, Skagit Land Trust

Note – The Baseline Report is on file at the Skagit Land Trust office.

Devils Mountain (Owens) Conservation Easement – Skagit Land Trust

Grantor Information: James V (Jim) Owens

Location: SE of Amick Rd, W of Big Lake
Mount Vernon, WA 98273
Skagit County, Washington
SE ¼ of S02, T33, R04

Legal Description: *Full legal description shown in Exhibit A.*

Assessor's Tax Parcel No: P16234, P16232

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

Property Information

Acres: 41.5 acres

Number of Homes: 0

Elevation: 640-740 ft.

County Zoning: Rural Reserve

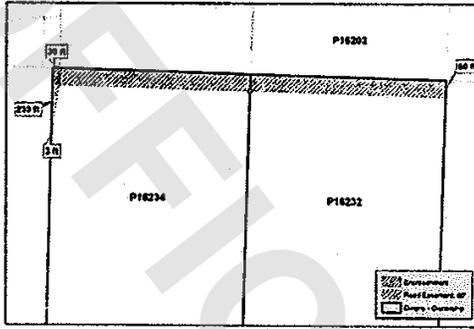
Survey: The Property was surveyed in 1980. A SLT-contracted surveyor replaced missing corner markers and prepared a legal description of the Conservation Easement area in 2021.

Driving Directions: From Mount Vernon, drive east on Blackburn Rd, then turn right (south) on Little Mountain Rd. Turn right (south) on Amick Rd. Parking is available at the adjacent homesite (22496 Amick Rd), or via the gravel road heading east along the north side of the protected area from the end of Amick Rd.

Boundaries: Skagit Land Trust (SLT) staff located the boundaries of the protected area by referencing and measuring from known property corners. A DNR survey from 2019 had recently marked points along the south boundary of the property (AF# 201409110014). Staff marked the N & NW protected area boundaries with fenceposts, SLT tree tags, and flagging prior to acquisition.

Site Overview

The Protected Property features approximately 280 feet of potentially fish bearing stream, about 28.5 acres of working native species dominated forest and about 13 acres of wetland with an intact forested buffer.



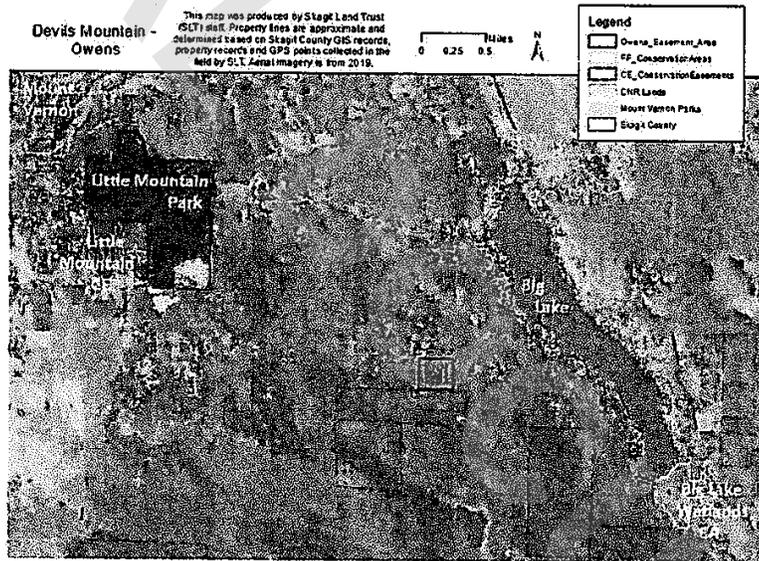
There are no structures on the protected property. The protected property contains a foot trail system that may be accessed via Amick Rd or through the owners homesite to the north.

Map to left: The area protected by the conservation easement does not cover the entirety of P16234 and P16232 – the map shows the location of excluded areas not covered by the conservation easement. These excluded areas contained a gravel driveway and a grassy area with some encroachment by the neighbor to the west.

The protected area contains two ecologically distinct areas; working forest and a wetland complex. The wetland complex dominates a large portion of the property.

Geographic Context

The protected property is on the northeast slope of Devils Mountain, in Big Lake, Skagit County, Washington. The south boundary is shared with a tract of DNR forestland. Other nearby land ownership is primarily private residential and / or working forest. SLT owns property nearby on the south side of Big Lake, to the southeast.



Map to right: Nearby protected lands

Geology

Landforms

Devils Mountain is a landform rising to an elevation of 1,727 ft, immediately west of Big Lake. The protected area is located on the northeast slope of Devils Mountain. On the protected property, the northern and central portion of the property lie fairly flat around 640-660 ft elevation, but the elevation rises sharply to 740 ft at the south boundary.

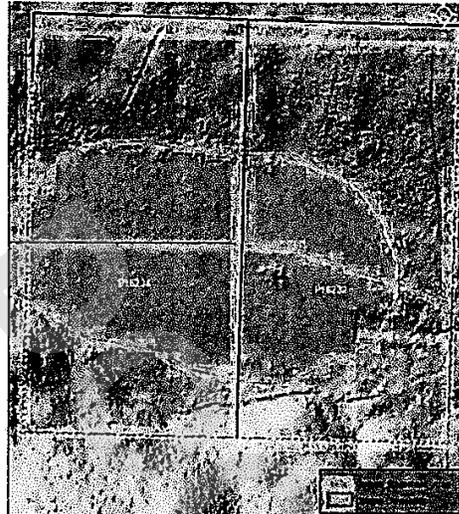
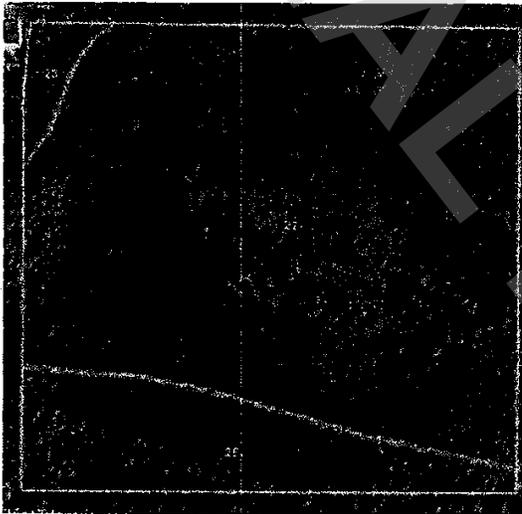
Soils

- USGS Soil Type: 22 and 23 – Cathcart loam; 8-30 percent slopes; 83% of area
- USGS Soil Type: 28 – Chuckanut gravelly ashy sandy loam, 30-65 percent slopes; 17% of area

Soils of the protected property are primarily Cathcart loam, with Chuckanut gravelly ashy sandy loam along the south boundary. This soil is very deep, well drained and was formed on hillslopes with volcanic ash and colluvium from sandstone and glacial drift. This soil drains well and may be droughty, with moderate water capacity (high on the slope along the south boundary). USGS Soil Type 22 has minor components (10% total) of hydric soils. USGS Soil Type 28 has several additional (20%) minor components. Soil map and information was retrieved via USDA's Web Soil Survey.

Map below to left: Soil map showing location of the soils above;

Map below to right: Lidar imagery of protected area, illustrating the topography and location of the wetland complex on the property.



Hydrology

According to DNR data, the wetland located in the center of the protected area is fed by approximately 1000 ft of primarily non-fish bearing seasonal streams flowing downhill and east into the approximately 13 acre Type "A" wetland complex (as rated by the WA Department of Ecology wetland rating system).

Type "A" wetlands are;

Category I. (1) Relatively undisturbed estuarine wetlands larger than one acre; (2) wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR; (3) bogs; (4) mature and old-growth forested wetlands larger than one acre; (5) wetlands in coastal lagoons; (6) interdunal wetlands that score eight or nine habitat points and are larger than one acre; and (7) wetlands that perform many functions well (scoring 23 points or more). These wetlands: (1) represent unique or rare wetland types; (2) are more sensitive to disturbance than most wetlands; (3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (4) provide a high level of function.

There is a seasonal stream which emerges from the wetland on the property, flows east and exits the protected property along the east boundary before dropping down and entering Big Lake. The stream flowing east from the wetland to Big Lake is a Type "F" stream (Fish), meaning that it meets the physical criteria to be potentially used by fish. Salmonids are present and do spawn lower in the stream, closer to Big Lake. The wetlands have not been delineated, and so exact boundaries have not been mapped or marked.

Priority Habitats and Species

According to National Wetland Inventory and WDFW Priority Habitat and Species (PHS) data, there are several acres of freshwater emergent wetland located within the property. A formal wetland delineation has not been completed. There is also a record of occurrence of Yuma myotis (a small brown bat) in the wetland vicinity.

Wetland complex: An approximately 13 acre high quality wetland complex (beaver pond) is located in the protected area. Freshwater wetlands are highly productive and can support a high diversity of species. They can also store and filter water moving across the landscape. This wetland complex has areas of open water and emergent vegetation, with an intact forested buffer around it. It is likely that this wetland is a bog. Beavers are generally very active in this wetland, and their activity has changed the water level several times over the years.

Working forest: The forest was high-grade logged in 1989. It is mostly a third growth mixed hardwood / conifer forest. The forest may be categorized as a North Pacific Maritime Mesic-Wet Douglas-Fir Western Hemlock Forest (DNR 2015). The canopy is primarily composed of conifers (particularly *Pseudotsuga menziesii* and *Thuja plicata*, with some *Abies grandis*), with some hardwood co-dominants (particularly *Alnus rubra*) and a diverse understory, with some large, dense *Rubus spectabilis* patches.

Vegetation

Vascular Plant List provided by Washington Native Plant Society: Devil's Mountain Tree Farm and Pond

This list is for an approximately 40-acre area of privately-owned forest land west of Big Lake, Skagit County, WA. The property includes a 16-acre pond, surrounded by second-growth forest. There are several large, "legacy trees" of Douglas Fir and Sitka Spruce. The list was created as part of a field trip associated with the Washington Native Plant Society Study Weekend, May 18, 2019. Compiled by Brenda Cunningham for Skagit Land Trust.

82 vascular plant species (68 native, 14 introduced) + 4 additional species identified to genus level
4 bryophyte species

Key to symbols:

- * Introduced species.
- + Species is represented by two or more subspecies or varieties in Washington; the species in this list has not been identified to subspecies or variety.

FERNS AND LYCOPHYTES:**Athyriaceae:**

Athyrium filix-femina ssp. *cyclosorum* [LADY FERN]

Blechnaceae:

Struthiopteris spicant [DEER FERN]

Cystopteridaceae:

Gymnocarpium dryopteris [OAK FERN]

Dennstaedtiaceae:

Pteridium aquilinum var. *pubescens*
[BRACKEN]

Dryopteridaceae:

Dryopteris expansa [SPREADING WOOD-FERN]

Polystichum munitum [SWORD FERN]

Equisetaceae:

Equisetum sp. [HORSETAIL]

Polypodiaceae:

Polypodium glycyrrhiza [LICORICE FERN]

GYMNOSPERMS:**Cupressaceae:**

Thuja plicata [WESTERN RED CEDAR]

Pinaceae:

Picea sitchensis [SITKA SPRUCE]

Pinus monticola [WESTERN WHITE PINE]

+ *Pseudotsuga menziesii* [DOUGLAS FIR]

Tsuga heterophylla [WESTERN HEMLOCK]

Taxaceae:

Taxus brevifolia [WESTERN YEW]

DICOTS:**Adoxaceae:**

+ *Sambucus racemosa* [RED ELDERBERRY]

Apiaceae:

Oenanthe sarmentosa [WATER PARSLEY]

Aquifoliaceae:

* *Ilex aquifolium* [ENGLISH HOLLY] – Noxious Weed

Araliaceae:

* *Hedera helix* [ENGLISH IVY] – Noxious Weed

Oplopanax horridus [DEVIL'S CLUB]

Asteraceae:

* *Lapsana communis* [NIPPLEWORT]

* *Mycelis muralis* [WALL LETTUCE]

* *Taraxacum officinale* [DANDELION]

Berberidaceae:

Berberis nervosa [CASCADE OREGONGRAPE]

Betulaceae:

Alnus rubra [RED ALDER]

Betula papyrifera [Paper Birch]

Brassicaceae:

Cardamine oligosperma [LITTLE WESTERN BITTERCRESS]

Caprifoliaceae:

Lonicera involucrata var. *involucrata* [BLACK TWINBERRY]

Cornaceae:

Cornus stolonifera [RED-OSIER DOGWOOD]

Droseraceae:

Drosera rotundifolia [ROUND-LEAF SUNDEW]

Ericaceae:

Gaultheria shallon [SALAL]
Vaccinium oxycoccos [WILD CRANBERRY]
Vaccinium parvifolium [RED HUCKLEBERRY]

Geraniaceae:

* *Geranium robertianum* [STINKY BOB]

Grossulariaceae:

Ribes lacustre [PRICKLY CURRANT]

Hydrophyllaceae:

Hydrophyllum tenuipes [PACIFIC WATERLEAF]

Lamiaceae:

Clinopodium douglasii [YERBA BUENA]

Lycopus americanus [WATER HOARHOUND]

* *Mentha piperita* [BERGAMOT MINT]

+ *Prunella vulgaris* [SELF-HEAL]

Montiaceae:

Claytonia sibirica [CANDYFLOWER]

Nymphaeaceae:

Nuphar polysepala [POND LILY]

Onagraceae:

+ *Circaea alpina* [ENCHANTER'S NIGHTSHADE]

Papaveraceae:

Dicentra formosa ssp. *formosa* [BLEEDING HEART]

Plantaginaceae:

* *Digitalis purpurea* [FOXGLOVE]

Hippuris vulgaris [MARE'S TAIL]

* *Plantago major* [COMMON PLANTAIN]

Veronica sp. [Speedwell]

Polygonaceae:

Persicaria sp. (*Polygonum sp.*) [SMARTWEED]

Primulaceae:

Lysimachia latifolia [BROADLEAVED STARFLOWER]

Ranunculaceae:

* *Ranunculus repens* [CREEPING BUTTERCUP]

Rhamnaceae:**MONOCOTS:****Araceae:**

Lysichiton americanus [SKUNK CABBAGE]

Asparagaceae:

Maianthemum dilatatum [FALSE LILY-OF-THE-VALLEY]

Cyperaceae:

Carex obnupta [SLOUGH SEDGE]

Carex cusickii [CUSICK'S SEDGE]

Juncaceae:

Juncus effusus [SOFT RUSH]

Luzula parviflora [SMALL-FLOWERED WOODRUSH]

Frangula purshiana [CASCARA]

Rosaceae:

Amelanchier alnifolia [SERVICEBERRY]

Aruncus dioicus var. *acuminatus*
[GOATSBEAR]

Comarum palustre [MARSH CINQUEFOIL]

Crataegus douglasii [BLACK HAWTHORN]

Geum macrophyllum [LARGE-LEAVED AVENS]

Malus fusca [CRABAPPLE]

Oemleria cerasiformis [INDIAN PLUM]

Prunus emarginata [BITTER CHERRY]

* *Prunus laurocerasus* [CHERRY LAUREL]

+ *Rosa nutkana* [NOOTKA ROSE]

* *Rubus bifrons* [HIMALAYAN BLACKBERRY] -
Noxious Weed

Rubus spectabilis [SALMONBERRY]

Rubus ursinus [WILD BLACKBERRY]

* *Sorbus aucuparia* [EUROPEAN MOUNTAIN-ASH]

+ *Spiraea douglasii* [HARDHACK]

Rubiaceae:

Galium aparine [CLEAVERS]

Salicaceae:

Populus trichocarpa [BLACK COTTONWOOD]

Salix sp.

Sapindaceae:

Acer circinatum [VINE MAPLE]

Acer macrophyllum [BIG-LEAF MAPLE]

Saxifragaceae:

Tellima grandiflora [FRINGECUP]

+ *Tiarella trifoliata* [FOAMFLOWER]

Tolmiea menziesii [YOUTH-ON-AGE]

Urticaceae:

+ *Urtica dioica* [STINGING NETTLE]

Violaceae:

Viola sp. - on hummocks in pond, likely *V. glabella*

Liliaceae:

Streptopus amplexifolius [CLASPING-LEAVED TWISTED-STALK]

Melanthiaceae:

Trillium ovatum var. *ovatum* [WHITE TRILLIUM]

Poaceae:

* *Phalaris arundinacea* [REED CANARYGRASS]

Potamogetonaceae:

Potamogeton sp. - pondweed

Typhaceae:

Typha latifolia [COMMON CATTAIL]

BRYOPHYTES:

Hylacomium splendens [STAIRSTEP MOSS]
Isoetecium sp. [MOUSE-TAIL MOSS]

Kindbergia oregana [OREGON BEAKED MOSS]
Rhytidiadelphus sp. [CAT'S TAIL MOSS]

Wildlife and Habitat

The forest provides habitat for a wide range of species. There is cover for resting, nesting, and hiding from predators or the elements. Diverse native 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. The landowner has observed a wide range of forest-dwelling species via their wildlife camera, including cougars, bears, bobcats and deer.

The wetland provides a different type of habitat, which complements the forest habitat. There is open water, floating vegetation mats, and shrubby patches along the wetland edge. The wetland is fantastic habitat for songbirds and waterfowl. There are many perches throughout and around the wetland for raptors to rest on and hunt from. Stillwater breeding amphibians lay eggs in the wetland. Beavers have historically been present in the wetland and have built several dams over the years, influencing water levels both in the wetland and lower in the watershed. The wetland provides cool, wet soils, drinking water, and habitat for a wide variety of prey species.

This protected area adjoins other working forestlands, providing connectivity within a much larger landscape and benefiting species that need space to roam. Development is a threat in immediately surrounding areas, making 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.

Amphibians and Reptiles

Chorus frog

Northwestern salamander

Birds

Species observed in May, 2020

Wood Duck (*Aix sponsa*)
 Mallard (*Anas platyrhynchos*)
 Hooded Merganser (*Lophodytes cucullatus*)
 Mourning Dove (*Zenaida macroura*)
 Hummingbird species, unidentified (*Trochilidae sp.*)
 Virginia Rail (*Rallus limicola*)
 Red-breasted Sapsucker (*Sphyrapicus ruber*)
 Hairy Woodpecker (*Dryobates villosus*)
 Pileated Woodpecker (*Dryocopus pileatus*)
 Northern Flicker (*Colaptes auratus*)
 Olive-sided Flycatcher (*Contopus cooperi*)
 Pacific-slope Flycatcher (*Empidonax difficilis*)
 Empidonax sp. (*Empidonax sp.*)
 Common Raven (*Corvus corax*)
 Tree Swallow (*Tachycineta bicolor*)

Violet-green Swallow (*Tachycineta thalassina*)
 Barn Swallow (*Hirundo rustica*)
 Chestnut-backed Chickadee (*Poecile rufescens*)
 Pacific Wren (*Troglodytes pacificus*)
 Swainson's Thrush (*Catharus ustulatus*)
 American Robin (*Turdus migratorius*)
 European Starling (*Sturnus vulgaris*)
 Purple Finch (*Haemorhous purpureus*)
 Song Sparrow (*Melospiza melodia*)
 Spotted Towhee (*Pipilo maculatus*)
 Red-winged Blackbird (*Agelaius phoeniceus*)
 Brown-headed Cowbird (*Molothrus ater*)
 Common Yellowthroat (*Geothlypis trichas*)
 Black-throated Gray Warbler (*Setophaga nigrescens*)
 Wilson's Warbler (*Cardellina pusilla*)
 Western Tanager (*Piranga ludoviciana*)

Black-headed Grosbeak (*Pheucticus melanocephalus*)
 Yellow-rumped Warbler (*Setophaga coronata*)
 Western Wood-Pewee (*Contopus sordidulus*)
 Pacific-slope Flycatcher (*Empidonax difficilis*)

Warbling Vireo (*Vireo gilvus*)
 Steller's Jay (*Cyanocitta stelleri*)
 Bald Eagle (*Haliaeetus leucocephalus*)
 Red-tailed Hawk (*Buteo jamaicensis*)

Mammal

Beaver
 Black bear
 Black-tailed deer
 Bobcat
 Chipmunk sp.
 Cougar
 Coyote
 Douglas' Squirrel

Little brown bat sp.
 Mole sp.
 Northern Flying Squirrel
 Raccoon
 Shrew sp.
 Striped skunk
 Townsend's Vole
 Virginia Opossum

* Species list compiled with the assistance of Jim Owens, the landowner.

Human Environment and History

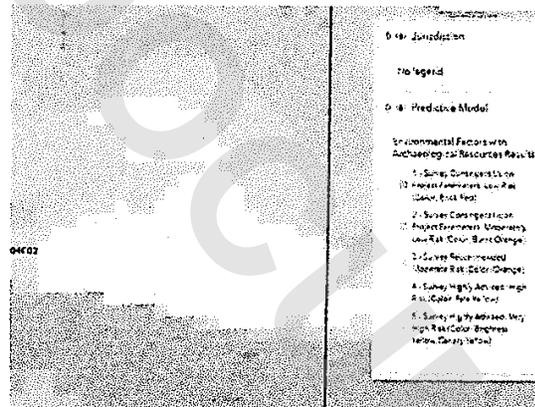
Current Use: The landowners utilize and maintain the protected area as a working forest and for low impact recreation on the trail system (see Site Map). The trail system does not connect to nearby public trails and are currently used exclusively by the landowners, immediate neighbors and their guests.

Structures & Built Environment: No buildings are located on the protected property. There is one small bridge providing foot access over the stream exiting the wetland complex. There is a gravel road providing access for a neighbor to Amick Rd along the N boundary of the property. That road is on land owned by the landowner, but is not in the protected area.

Land Use History: In aerial imagery from 1937 (available from Skagit County), nearby land to the north appears to be young forest. In aerial imagery from 1969, the protected property appears to consist of forest and a comparable wetland to what is present today.

Cultural Resources: The property is mapped as ranging from low to high risk for encountering archeological artifacts in the Washington Information System for Architectural & Archaeological Records Data. Risk is higher immediately surrounding the wetland and low on the south terrace.

Map to right: Cultural resource predictive model map.



Photopoints

**Devils Mountain -
Owens.CE**

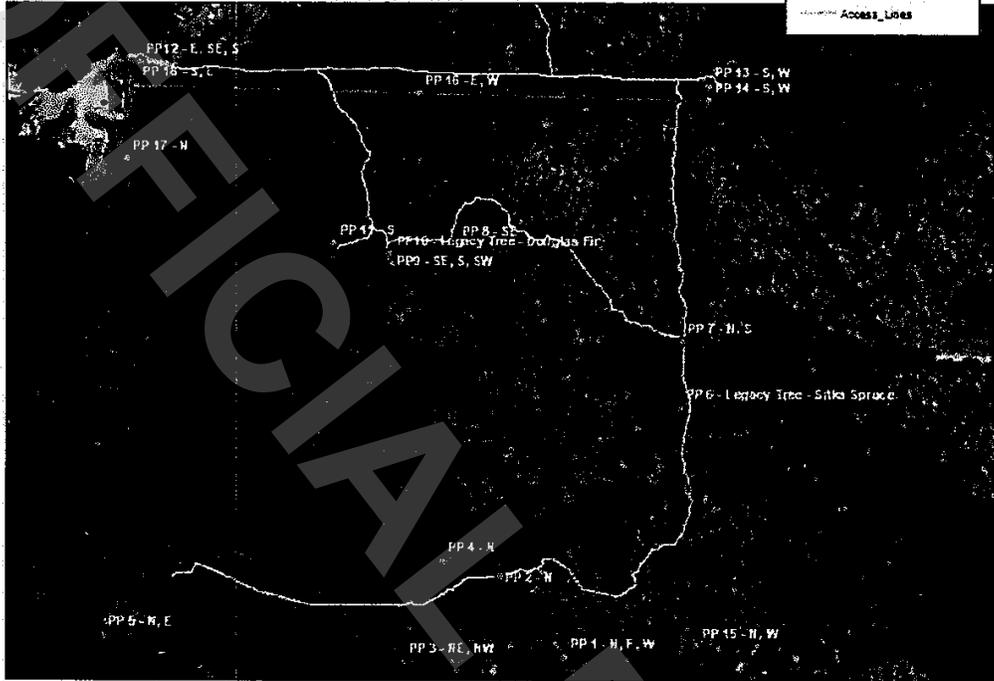
This map was produced by Skagit Land Trust (SLT) staff. Property lines are approximate and determined based on Skagit County GIS records, property records and GPS points collected in the field by SLT. Aerial imagery is from 2019.

0 87.5 175 Feet



Legend

- Owens_Easement_Area
- Photopoints_2021.03.31
- Access_Lines







DevilsMountainOwens.2021.03.31.PP12.E



DevilsMountainOwens.2021.03.31.PP12.S



DevilsMountainOwens.2021.03.31.PP12.SE



DevilsMountainOwens.2021.03.31.PP13.S



DevilsMountainOwens.2021.03.31.PP13.W



DevilsMountainOwens.2021.05.12.PP14.S



DevilsMountainOwens.2021.05.12.PP14.W



DevilsMountainOwens.2021.05.12.PP15.N



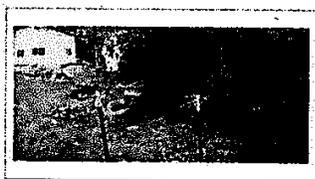
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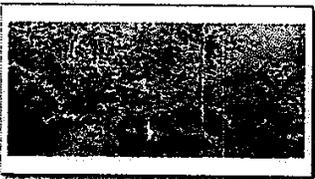
DevilsMountainOwens.2021.05.12.PP16.E



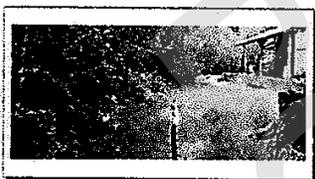
DevilsMountainOwens.2021.05.12.PP16.W



DevilsMountainOwens.2021.05.12.PP17.N



DevilsMountainOwens.2021.05.12.PP18.E



DevilsMountainOwens.2021.05.12.PP18.S

