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Skagit County Auditor

AFTER RECORDING RETURN TO:

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

CONSERVATION COVENANT

Padilla and Samish Bays Coastal Protection – Samish Island Entrance

Grantor: Skagit Land Trust
Grantee: The Public
Abbreviated
Legal Description: S36, T36N, R2E; Ptn. Gov't Lots 3, 5, 6 and NE SW, Skagit County, WA
Tax Parcel #: 360235-0-027-0004/P47388

RECITALS

a. Skagit Land Trust, (Grantor) is the owner in fee simple of real property known as the Padilla Bay Beach, located in Skagit County, Washington, (Property) more particularly described in Exhibit A and as shown in Exhibit B. Exhibits A and B are attached to this instrument and incorporated herein by reference. If there are differences between these two Exhibits, the legal description in Exhibit A shall control. The property contains approximately 0.20 acres.

b. This document is an environmental (restrictive) covenant (Covenant) executed pursuant to Revised Code of Washington (RCW) Chapter 64.04; the Washington State Department of Ecology (Ecology) Grant Agreement No. SEANCWCP-2023-SkagLT-00050 (Agreement), incorporated by reference hereto; and the U.S. Fish and Wildlife Service (Service) Coastal Wetlands Grant No. F23AP00645-00 (Grant), which has an effective date of January 1, 2023. The Service awarded the Grant from the National Coastal Wetland Conservation Grant Program (CFDA #15.614), which was established under the Coastal Wetlands Planning, Protection, and Restoration Act (16 U.S.C. §§ 3951–3956). A copy of the Grant is kept on file at the office of the Service, 911 NE 11th Avenue, Portland, OR 97232 and at the office of Ecology, 300 Desmond Drive SE, Lacey, WA 98504. The Wildlife and Sport Fish Restoration Program is the administrative subdivision of the Service that administers the grant.

Grantor is the subrecipient of the Service Grant and is responsible for implementing the project. The purpose of the Grant is to protect marine coastline including beach and bluff habitat on Padilla Bay and to protect open space in perpetuity for conservation purposes. The Property was

acquired for \$450,000 using funds from the Coastal Wetlands Grant (\$240,000 or 53.3% of the purchase price) and the non-federal match (\$210,000 or 46.7% of the purchase price).

Project benefits are protecting wildlife values including an off shore eelgrass community and foraging habitat for a multitude of bird species, including shorebirds, waterfowl, and raptors. Ecosystem processes protected include marine sediment supply and transport, detritus recruitment and retention, and exchange of aquatic organisms. Additionally, the project is adjacent to and supports the Padilla Bay National Estuarine Research Reserve. The Property was acquired for the purpose of permanent shoreline and coastal wetland protection and the protection of associated native birds, wildlife, and marine organisms. Grantor hereby acknowledges that the Property was acquired for this purpose and agrees to monitor and enforce the Property in perpetuity for the conservation of said lands and waters and the hydrology and natural heritage resources dependent thereon, consistent with the terms of the Grant and applicable regulations.

c. The upper portion of the property has a trail that the neighbor uses for residential access, formalized through a Trail Access Easement (AF#202405290249). The trail does not impact the shoreline's conservation values or future shoreline restoration.

d. Grantor is creating this Covenant to ensure that the Property will be preserved and managed in perpetuity for the conservation purposes described above, and in accordance with all terms and conditions of the Grant. Grantor acknowledges that the Property is subject to all terms and conditions of the Grant and the Agreement and agrees to monitor the Property in perpetuity for the conservation of the Property's lands, waters, hydrology, and natural heritage resources dependent thereon.

COVENANT

Grantor, as fee simple owner of the Property herein covenants and declares on behalf of itself and all heirs, assigns, and successors in interest into whose ownership the Property might pass that the Property will be preserved and maintained in accordance with the terms and conditions of the Grant in perpetuity. Any change to originally authorized purpose must be mutually agreed upon by the Grantor, Service, and Ecology. Furthermore, it is the intent of the Grantor that such covenants, and the Service's interest as provided herein, shall supersede any prior interests the Grantor has in the Property and shall run with the land in perpetuity and be binding on all current and future owners of any portion of, or interest in, the Property.

Section 1. General Restrictions and Requirements.

Any activity on, or use of, the Property inconsistent with the purposes of the Covenant or the terms of the Grant is prohibited. Grantor declares and covenants on behalf of itself and all current and future owners of any portion of, or interest in, the Property that the Property will only be used for the purposes authorized in the Covenant. Any future purposes permitted under this Covenant, if any, must be mutually agreed upon by the Grantor, Ecology, and the Service. The following general restrictions and requirements also apply to the Property:

- a. Continued Compliance Required.** Grantor shall not convey any interest in any portion of the Property without providing for the continued preservation and maintenance of the Property and continued compliance with this Covenant, and without the express written consent of both Ecology and the Service as provided in Section 5 of this Covenant.
- b. Unauthorized Uses Prohibited.** Grantor shall ensure that the Property is used solely for the purposes authorized in this Covenant. Grantor may not allow or tolerate any activities on the Property that interfere with this Covenant. In the event of unauthorized activities on the Property, Grantor shall take steps to immediately prohibit such activities and notify Ecology as provided in Section 5 of this Covenant.
- c. Leases.** Grantor shall restrict any lease for any portion of the Property to uses and activities consistent with this Covenant and will notify all lessees of the restrictions on the use of the Property. Grantor shall not lease the property without the express written consent of both Ecology and the Service as provided in Section 5 of this Covenant.
- d. Preservation of Reference Monuments.** Grantor shall make a good faith effort to preserve any reference monuments and boundary markers used to define the areal extent of coverage of this Covenant.
- e. Compliance with Federal Regulations and Reporting Requirements.** There shall be no discrimination during the useful life of the Project. The Grantor shall also comply with all applicable federal regulations and reporting requirements, including but not limited to, 2 C.F.R. 200, 2 C.F.R. 1402, 43 C.F.R. § 17.204(c)(2), and 50 C.F.R. 84.

Section 2. Specific Prohibitions.

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific, non-exclusive list of activities and uses are expressly prohibited on the Property:

- a.** Subdivision and residential development.
- b.** Commercial or industrial, or agricultural development and/or use, with the exception of planned agricultural uses in the interim period before the restoration of the property occurs.
- c.** Alteration of the land surface or water bodies except for the purpose of restoring native habitat or habitat forming ecological processes.
- d.** Timber harvest or other removal of vegetation, except for the purpose of restoring habitat or maintaining the Property and its boundaries.
- e.** Granting road or utility easements through the property, with the exception of a trail access agreement with the neighbor, provided that such agreement does not expand trail use.
- f.** Exploration for, and/or extraction of, minerals, hydrocarbons, soils, gravels, sand, or other minerals or naturally occurring elements.
- g.** Hunting or trapping, except for nuisance animals or approved scientific monitoring.
- h.** Recreational activities that cause wildlife disturbance.

- i. Any use that is otherwise inconsistent or interferes with the purposes of this Covenant or the terms of the Grant.

Section 3. Permitted Uses and Activities.

The following uses and activities are permitted on the Property, provided that they are consistent with the conservation purposes of the Grant and comply with applicable federal regulations:

- a. Reestablishment of native plants and enhancement of existing native plant communities to improve the overall quality of riparian habitat along the tributaries, streams, and wetlands located on the property.
- b. Habitat restoration and maintenance.
- c. Low impact, sustainable forest practices to improve forest diversity and complexity so long as those forest practices have negligible negative impact on habitat, native fish and wildlife, water quality, open space, and environmental values, provided that any revenues derived from such forest practices will be applied to the restoration and stewardship of the Property.
- d. Removal of safety hazards, invasive species, and nuisance animals.
- e. Passive, non-motorized, pedestrian recreational use such as hiking and wildlife observation that does not negatively impact wildlife.
- f. Development of trails, boardwalks, or viewing areas in a manner consistent with the purposes and permitted uses of this Covenant with express written consent of both Ecology and the Service as provided in Section 5 of this Covenant.
- g. Removal of buildings, structures, or other remnants of human habitation from the Property.
- h. Any other use or activity consistent with, and necessary to, fulfill the purposes of this Covenant.

Section 4. Access.

- a. The Grantor freely and voluntarily grants Ecology and its authorized representatives, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant, and enforce compliance with this Covenant and associated actions.
- b. This instrument does not convey a right of access or use by a third party to any portion of the Property, with the exception of the use of the existing trail by the neighbor.

Section 5. Notice Requirements.

- a. **Conveyance of Any Interest.** The Grantor shall not convey any interest in any part of the Property, including but not limited to, title, easement, leases, or security or other interests, without prior approval from the Service, obtained by using Ecology as a pass through entity. This does not prohibit the trail access agreement referenced in Recital c. In the event the

Property is no longer necessary for the purposes of the Grant, Ecology will request disposition instructions from the Service in accordance with 2 C.F.R. § 200.311(c). Prior to executing any conveyance, Grantor must:

- i. Provide written notice to Ecology of the intended conveyance at least thirty (30) days in advance of the conveyance.
- ii. Include in the conveying document a notice in substantially the following form, as well as a complete copy of this Covenant:

NOTICE: THIS PROPERTY IS SUBJECT TO A CONSERVATION COVENANT GRANTED BY SKAGIT LAND TRUST ON _____, 2024 AND RECORDED WITH THE SKAGIT COUNTY AUDITOR UNDER RECORDING NUMBER _____. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.

- iii. Unless otherwise agreed to in writing by Ecology, provide Ecology with a complete copy of the executed document within thirty (30) days of the date of execution of such document.

- b. **Reporting Violations.** Should the Grantor become aware of any violation of this Covenant, Grantor shall promptly report such violation in writing to Ecology.
- c. **Emergencies.** For any emergency or significant change in site conditions due to Acts of Nature (for example, flood or fire) resulting in a violation of this Covenant, the Grantor is authorized to respond to such an event in accordance with state and federal law. The Grantor must notify Ecology in writing of the event and response actions planned or taken as soon as practical but no later than within 10 business days of the discovery of the event.
- d. **Notification procedure.** Any required written notice, approval, reporting or other communication shall be personally delivered or sent by first class mail to the following persons. Any change in this contact information shall be submitted in writing to all parties to this Covenant. Upon mutual agreement of the parties to this Covenant, an alternative to personal delivery or first class mail, such as e-mail or other electronic means, may be used for these communications.

Kari Odden Skagit Land Trust P.O. Box 1017 Mount Vernon, WA 98273-4302 Phone # 360.428.7878 Email: kario@skagitlandtrust.org	Heather Kapust Washington State Department of Ecology SEA Program P.O. Box 47600 Olympia, WA 98504-7600 Phone # 360.407.0239 Email: heather.kapust@ecy.wa.gov
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Section 6. Enforcement and Construction.

- a. The Grantor freely and voluntarily grants this Covenant.
- b. The Grantor is responsible for all costs associated with implementation of this Covenant.
- c. Within ten (10) days of execution of this Covenant, Grantor shall provide Ecology with a copy of the Covenant and proof of recording.
- d. The Grantor is responsible for ensuring compliance with the purposes of this Covenant. Grantor may not authorize or tolerate activities inconsistent with the authorized purposes of this Covenant as provided in Section 1 of this Covenant.
- e. Ecology and the Service are each entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant are in addition to all remedies at law or in equity. Enforcement of the terms of this Covenant is at the discretion of Ecology and the Service, and any forbearance, delay or omission to exercise the rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology or the Service of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology or the Service under this Covenant.
- f. This Covenant shall be liberally construed to protect the conservation purposes for which this Covenant was granted.
- g. The provisions of this Covenant are severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.
- h. A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.

Exhibit A

LEGAL DESCRIPTION

That portion of Government Lot 4, Section 35, Township 36 North, Range 2 East, W.M., described as follows:

Beginning at the South meander corner between Sections 35 and 36, Township 36 North, Range 2 East, W.M.;

thence North along the East line of said Government Lot 4 to the South line of County road (Samish Island Road);

thence Westerly along the South line of said County road 50 feet;

thence South parallel to the East line of said Government Lot 4 to meander line;

thence along said meander line, Easterly to the point of beginning.

Situate in the County of Skagit, in the State of Washington.

Exhibit B
PROPERTY MAP

Padilla Bay Beach Property

