

When recorded return to:

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

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**9812310225**

SKAGIT COUNTY WASHINGTON  
DEC 31 P3:39  
REQUEST OF

Grantor: Robert H. Keller Jr. and Patricia E. Karlberg  
Grantee: Skagit Land Trust

Brief Legal Description:

Portions of Government Lots 1 and 2 in T35N R11E S8  
Full Legal Description attached in 'Exhibit A'

Assessor's Tax Parcel Numbers / Account Numbers:

P45977 / 351108-0-014-0218  
P45975 / 351108-0-014-0101  
P45966 / 351108-0-012-0004  
P102779 / 351108-0-016-0100

SKAGIT COUNTY WASHINGTON  
Real Estate Excise Tax  
PAID

DEC 31 1998

By: *[Signature]* Skagit County Treasurer Deputy

**GRANT DEED OF CONSERVATION EASEMENT**

THIS GRANT DEED OF CONSERVATION EASEMENT is made this 29<sup>th</sup> day of December, 1999, by Robert H. Keller Jr. and Patricia E. Karlberg, husband and wife, having an address at 500 Wilson, Bellingham, Washington 98225 (hereinafter referred to as "Grantor"), in favor of the Skagit Land Trust, a Washington nonprofit corporation qualified to do business in Washington, having an address at P. O. Box 1017, Mt. Vernon, WA 98273 ("Grantee").

**I. RECITALS**

A. This Conservation Easement supersedes and replaces the Conservation Easement signed by the same Grantors on January 6, 1998 and the Same Grantee on January 9, 1998 and recorded under Skagit County Auditor's number 9801210070 on January 21, 1998, and provides at least the same degree of protection as the prior Conservation Easement but adds to that protection additional property as described in Exhibit A.

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B. Grantor is the owner in fee simple of that certain real property, inclusive of all standing and down timber (the "Protected Property") situated on the south side of the Cascade River Road and extending to the north bank of the Cascade River, approximately one and one-half miles east of Marblemount, in Skagit County, Washington, described in Exhibit "A" (legal description) and shown on Exhibit "B" (site plan), which are attached and incorporated by this reference.

C. The Protected Property possesses natural, forested, wetland, riparian, scenic, open space, educational, and recreational values (collectively, "Conservation Values") of great importance to Grantor, the people of Skagit County and the people of the State of Washington. The Protected Property enhances the forested, open space and rural character of Skagit County and provides a natural wooded riparian habitat that can be enjoyed from nearby Cascade River Road and the Cascade River. The Protected Property also provides important nesting and feeding habitat for many species of birds, spawning and off-channel rearing habitat for salmon and other fish.

D. The Protected Property consists of approximately 35 acres of low elevation mesic deciduous forest. The forest is composed of western red cedar, black cottonwood, big leaf maple, red alder, hemlock and some Douglas fir. Most trees are approximately 50-60 years old. The surrounding forested area is relatively intact and the majority of it remains undeveloped. One seasonal creek and one permanent creek cross the Protected Property which borders approximately 2,150 feet of the Cascade River.

E. The Protected Property is near the designated boundary of, and is in the travel corridor of the Cascade River portion of the Skagit National Wild and Scenic River. Congress had declared that these rivers, together with their immediate environments "...possess outstanding remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations." 16 U.S.C. 1271 et seq. Restrictions on uses of the Protected Property would benefit the river because of decreased erosion and siltation due to the exclusion of logging.

F. The Protected Property provides habitat for the bald eagle, a threatened species protected under the Endangered Species Act and the Federal Bald Eagle Management Act. Congress has found that encouraging conservation programs "...is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage of fish, wildlife, and plants." The United States Forest Service is active in the upper Skagit River watershed in protecting Bald Eagle habitat

G. The Protected Property is in the watershed of the Skagit River, the largest river draining into Puget Sound. The Washington State legislature in RCW 90.70.001 has recognized "that Puget Sound and related inland marine waterways of Washington state

represent a unique and unparalleled resource. A rich and varied range of marine organisms, composing an interdependent, sensitive communal ecosystem reside in these sheltered waters." The legislature has further recognized that residents of this region enjoy a way of life centered around the waters of Puget Sound which depends upon a clean and healthy marine resource. Restrictions on the uses of the Protected Property would benefit the Skagit River and Puget Sound because of decreased erosion and siltation due to the exclusion of logging and construction near the Cascade River.

H. The legislatively declared policies of the State of Washington in the Washington State Open Space Tax Act, Chapter 84.34 RCW, provide "...that it is in the best interest of the state to maintain, preserve, conserve, and otherwise continue in existence adequate open space lands 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." Under the Open Space Act, lands eligible for preferential real property tax treatment include lands such as the subject Protected Property, presently classified by Skagit County as Open Space Land, where the preservation in its present use would conserve and enhance natural and scenic resources, preserve visual quality along a public highway, and promote conservation of wildlife, including the threatened bald eagle.

I. Portions of the Protected Property are visible from Cascade River Road and the Cascade River providing scenic values to the people of Washington that use these public areas.

J. The Protected Property would also be desirable property for timber harvesting. In the absence of a Grant Deed of Conservation Easement, the Protected Property could be logged in a manner which would destroy the open-space, riparian, and scenic character of the Protected Property and impair its ecological value.

K. The specific Conservation Values of the Protected Property (Section I. B.) are supported by an inventory of relevant features (Baseline Documentation) of the Protected Property, dated December 29, 1998, and supplemented on \_\_\_\_\_, 19\_\_, on file at the offices of Grantee. The Baseline Documentation consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this grant. It is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. When signed by both Grantor and Grantee, the Baseline Documentation is incorporated herein by reference. Within twelve (12) months, of signing this agreement a collection of additional Baseline Documentation may be compiled by Grantee, with the approval of Grantor. This additional Baseline Documentation is also incorporated herein by reference when signed by both Grantor and Grantee. Failure to timely compile the additional Baseline Documentation shall not affect the enforceability or validity of any other provision.

L. Grantor intends that the Conservation Values of the Protected Property be preserved and maintained. All current uses and all Permitted Uses under Section VI. are consistent with this Easement and do not significantly impair or interfere with the Conservation Values of the Protected Property (Section I. B.)

M. Under this Easement, Grantor, owner in fee of the Protected Property, has the right to identify and accepts the responsibility to protect and preserve in perpetuity the Conservation Values of the Protected Property, and desires to transfer to Grantee the right to monitor and enforce compliance with that responsibility.

N. Grantee is a publicly supported, tax-exempt nonprofit organization, qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended, 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.

O. Grantee agrees to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Protected Property for the benefit of this generation and the generations to come.

## II. CONVEYANCE AND CONSIDERATION

A. For the reasons stated above, and in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, Grantor hereby voluntarily grants, conveys, and warrants to Grantee a conservation easement in perpetuity, consisting of certain rights in the Protected Property, enumerated below, subject only to the stated restrictions ("Easement").

B. This action conveys an interest in real property under the provisions of RCW 64.04.130, and is made as an absolute, unconditional, unqualified, and completed gift subject only to the mutual following covenants and terms, conditions, and restrictions set forth, and for no other consideration.

C. Grantor expressly declares that this Easement runs with the land and that this Easement shall be binding upon Grantor.

## III. PURPOSE

A. It is the purpose of this Conservation Easement to help preserve and protect the Conservation Values of the Protected Property as supported by the Baseline Documentation.

B. Grantor intends that the Protected Property shall not be converted nor directed to any uses other than those listed below.

C. Preservation of the Protected Property will enhance the general public's visual access to natural, undeveloped environments. This shall not be construed as affording the general public access to any portion of the land subject to this Conservation Easement.

#### IV. RIGHTS CONVEYED TO GRANTEE

The following rights are conveyed to Grantee by this Easement:

A. Monitor. To monitor the use of, and activities on the Protected Property in perpetuity for compliance with the terms of this Easement and to enhance by mutual agreement the designated Conservation Values of the Protected Property:

B. Access.

1. To enter upon the Protected Property annually, at a mutually agreeable time and upon prior written notice to the Grantor, for the purpose of making a general inspection to assure compliance with this Easement.

2. To enter upon the Protected Property at such other times as are necessary if there is reason to believe that a violation of the Easement is occurring, for the purpose of enforcing provisions of this Easement. Reasonable notice shall be given to the Grantor.

C. Injunction and Restoration. To enjoin any activity on, or use of, the Protected Property which is inconsistent with this Easement, including trespasses by members of the public, and undertake or cause to be undertaken the restoration of such areas or features of the Protected Property as may be damaged by activities contrary to the provisions hereof, all in accordance with Section IX.

D. Assignment. To assign, convey, or otherwise transfer enumerated Grantee's interests in the Protected Property in accordance with Section XIV herein.

#### V. PROHIBITED USES

A. General. Any use of, or activity inconsistent with the Conservation Values of the Protected Property 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 the foregoing, the following uses of, or activities on, the Protected Property, though not an exhaustive list of inconsistent uses or activities, are inconsistent with the purposes of this Easement and shall be prohibited, except as expressly provided in Section VI below:

B. Subdivision. The legal or "de facto" subdivision of the Protected Property, except as permitted in Section VI. B. below.

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C. Construction. The placement or construction of any buildings, structures, or other improvements of any kind (including, without limitation, fences, roads, utilities and parking lots), except as permitted in Sections VI. C., D., I., J., L. and M. below.

D. Alteration of Land. The alteration of the surface of the land, including, without limitation, the commercial excavation or removal of soil, sand, gravel, rock, peat, or sod, except as mutually agreed upon by Grantee and Grantor to preserve or protect the Conservation Values of the Protected Property or as is necessary for uses permitted in Sections VI. C., D., I., J., L. and M. below.

E. Erosion or Water Pollution. Any use or human activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters.

F. Alteration of Water Courses. The draining, filling, dredging, ditching, or diking of wetland areas, the alteration or manipulation of ponds and water courses, or the creation of new wetlands, water impoundments, or water courses, except as necessary to protect public health or safety or property on the Protected Property or adjacent property, or as permitted in Section VI. J. below, or as mutually agreed upon by Grantee and Grantor to preserve, enhance, or protect the Conservation Values of the Protected Property.

G. Removal of Trees and Other Vegetation. The cutting down or other destruction or removal of live and dead trees and other vegetation located on the Protected Property, except as mutually agreed upon by Grantee and Grantor to preserve or protect the Conservation Values of the Protected Property or as necessary to carry out the permitted uses in Sections VI. C., D., F., G., J. and L. below, or to remove plants that are listed as noxious plants by the State of Washington Department of Agriculture. This prohibition includes harvesting or cutting of trees for commercial uses, except the selling of no more than 5 cords of firewood per year, as permitted in Section VI. G. below.

H. Waste Disposal. The disposal or storage of rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or hazardous waste or material on the Protected Property, except as permitted in Section VI. C. below, and provided that Grantor is not required to remove from the Protected Property existing debris, including three abandoned automobiles.

I. Construction of Additional Roads. The construction of any additional roads, trails or paths for vehicular use, except as permitted in Section VI. D. below.

J. Signs. The placement of commercial signs, billboards, or other advertising material on the Protected Property, except as permitted in Section VI. M. below.

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K. Mining. The exploration for, or development and extraction of minerals and hydrocarbons on or below the surface of the Protected Property.

L. Introduced Vegetation. The introduction of nonnative wetland plants and nonnative invasive species on the Protected Property, except as jointly agreed upon by Grantor and Grantee to enhance the Conservation Values of the Protected Property. The previously cultivated area (the pasture) may continue in cultivation.

M. Off-Road Vehicles and Excessive Noise. The operation of motorcycles, dune buggies, snow mobiles, or other type of off-road motorized recreational vehicles or the operation of other sources of excessive noise, except for normal equipment used for proper maintenance (such as chainsaws, mowers and similar devices) and for wood hauling as permitted in Section VI. G. below.

N. Commercial Activity. The operation of any commercial activity including recreational vehicle parks, all-terrain vehicle trails or other outside noisy and obtrusive activity or any commercial activity that would entail a full time employee or have an outdoor impact.. Indoor, cottage type, industry is permissible.

O. High Intensity Lighting. The long term installation of any high intensity outdoor lighting.

## VI. PERMITTED USES

A. General. Grantor reserves for itself any use of, or activity on, the Protected Property which is not inconsistent with the purposes of the easement and which is not prohibited herein. Without limiting the generality of the foregoing, Grantor specifically reserves for itself the following uses and activities

B. Subdivision. The legal or "de facto" subdivision of the Protected Property to create no more than two parcels, provided subdivision is required bylaw to allow construction of an additional residence. Any subdivision must comply with current county zoning ordinances . Grantor will notify Grantee in writing, and consult with Grantee before making an application to subdivide the Protected Property.

C. Residential Use. A total of two residences, may be constructed and maintained on the Protected Property, subject to the Sections VI. D. 1., 2., 3 and 4. below. The existing cabin shall be considered to be one residence.

D. Construction.

1. The construction, maintenance, repair, relocation and replacement of one additional residence on the Protected Property , and maintenance , repair

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- relocation and replacement of the existing cabin. The new residence and the existing cabin shall not exceed 1,200 square feet of living space each.
2. The construction, renovation and replacement of septic systems and drain fields or other human waste disposal system for the existing cabin and additional residence.
  3. The addition of utilities and sheds to the existing cabin and the additional residence.
  4. Before constructing an additional residence or relocating the cabin or an additional residence, Grantor will notify Grantee in writing and consult with Grantee.

E. Drive and Roadways. The construction and maintenance of driveways providing access to the existing cabin and any new residence as is permitted in Section VI.C. and D., provided that any driveway follows existing roads or road beds as shown in Exhibit B. Prior to major road construction, Grantor will notify Grantee in writing and consult with Grantee.

F. Trees. The removal of trees to maintain the open pasture (as delineated on attached Exhibit B) and as is necessary for the permitted uses in Sections VI. C and D. above and the trimming or removal of dangerous or hazardous trees that pose a threat to property, public health and safety, neighbors, users of the Protected Property or surrounding forest areas. The planting of new trees and bushes is permitted. A certified arborist shall arbitrate any disagreement regarding the identification of hazardous trees.

G. Firewood. The cutting and removal of firewood from windfall trees and standing deciduous trees for personal use by Grantor, and the sale of up to five cords of firewood per year.

H. Recreational. To conduct recreational activities such as hiking, bird watching, cross-country skiing and fishing on the Protected Property, and to continue the current classification as Open Space Land classification for current use tax assessment, including such public access as Grantor chooses to permit.

I. Trails. To maintain, renovate, expand, or replace existing trails or to construct new trails on the Protected Property.

J. Fish Enhancement. To construct, repair and enhance ditches, creeks, ponds and slack water habitat for the improvement of native fish use of the Protected Property, and continue enhancement activities as provided for in the Cascade Millpond Land Use Agreement between Washington State Department of Fisheries and Donald and Claudia Cramer and the Cascade Millpond Project Description as shown in Exhibit C. This permitted use shall have the proper permits from State and Federal agencies regulating such matters.

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K. Domestic Livestock. To allow the grazing of livestock so long as the livestock are confined to the open pasture, are prevented from damaging water courses and wetlands and do not exceed the carrying capacity of the land.

L. Fences. To construct, repair or replace perimeter fences around the open pasture, and fences to protect water courses and wetlands.

M. Signs. To place signs on the Protected Property to declare that a Conservation Easement has been placed on the property or to post notice of a wildlife area such as a designated salmon stream or to state the conditions of access to the Protected Property, provided that such signs are built and located to protect and preserve Conservation Values of the Protected Property.

N. Scientific/Educational Use. For the benefit of the public, to allow persons or groups to enter upon the Protected Property for educational, scientific and biological purposes to observe and study on the Protected Property; provided that any such persons or groups first are approved by the Grantor, make prior arrangements with the Grantor, agree to provide the Grantor with copies of any data or reports resulting from such research, and agree to abide by any restrictions on access set forth by the Grantor.

O. Emergencies. To undertake other activities necessary to protect public health or safety on the Protected Property or adjacent property. This easement shall not prevent compliance with laws, regulations, ordinances or orders applied by and subject to compulsion of any governmental agency with authority to require such activity, provided that any such activity shall be conducted so that interference with the Conservation Values of the Protected Property is mitigated or avoided if practical alternatives are available.

P. Current Uses. To continue current uses on the Protected Property.

## VII. NOTICE AND CONSULTATION

A. Notice. Grantor shall notify Grantee and consult with Grantee prior to undertaking certain permitted activities provided in Sections VI. B., D. and E.. Whenever notice is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the use or activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

B. Consultation. Where Grantee's consultation is required, Grantee shall respond in writing within thirty (30) days of receipt of Grantor's written request for consultation. If Grantor must undertake emergency action to protect health or safety on the Protected Property or must act by and subject to compulsion of any governmental agency, Grantor may proceed

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with such action without consulting with Grantee only if Grantor notifies Grantee prior to such action and Grantee cannot respond, within such time as is reasonable.

C. Grantee's Failure to Respond Within the Required Time. Where consultation with Grantee is required, and if Grantee does not respond in the time period and manner set forth herein, Grantor may proceed with the permitted use or activity in question.

D. Addresses for Notices. Any required written notice, demand, request, consent, or communication shall be delivered to:

To Grantors: Robert H. Keller  
Patricia E. Karlberg  
500 Wilson Avenue  
Bellingham, WA 98225

To Grantee: Skagit Land Trust  
P. O. Box 1017  
Mt. Vernon, WA 98273

or to such other address as either party designates by written notices to the other.

### VIII. DISPUTE RESOLUTION

If a dispute arises between the parties concerning the consistency of any proposed use with the conservation value of the Protected Property, or if Grantee withholds required approval contrary to the wishes of the Grantor, the parties shall meet together to discuss the dispute and attempt resolution. Thereafter, either party may refer the dispute to arbitration by request made in writing to the other. Within thirty (30) days of the receipt of such a request, the parties shall select a single arbitrator to hear the matter. The matter shall be determined in accordance with Chapter 7.04 RCW as amended or the Washington State arbitration statute then in effect, and an arbitration award may be entered in any court having jurisdiction. If the arbitration is pursued, the prevailing party shall be entitled, in addition to such other relief as may be granted, a reasonable sum for all its costs and expenses related to such arbitration, including, without limitation, the fees and expenses of the arbitrator and attorney's fees, which shall be determined by the arbitrator or any court of competent jurisdiction that may be called upon to enforce or review the award. The parties agree not to proceed with the proposed use or activity pending resolution of the dispute.

### IX. GRANTEE'S REMEDIES

A. Notice of Failure. If Grantee determines that the Grantor has violated the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and request corrective action sufficient to cure the violation and, where the

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violation involves injury to the Protected Property resulting from any use or activity prohibited by this Easement, to restore the portion of the Protected Property so injured.

B. Grantor's Failure to Respond. If Grantor:

1. Fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee; or
2. Fails to begin curing such violation within the thirty (30) day period under circumstances where the violation cannot reasonably be cured within the thirty (30) day period; or
3. Fails to continue diligently to respond to such violation until finally cured;

Grantee may bring an action as provided in subsection C.

C. Grantee's Action. Grantee may bring action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin or restrain the violation, pursuant to Civil Rule 65, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement; and to require the restoration of the Protected Property to the condition that existed prior to any such injury. Without limiting Grantor's liability, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property.

D. Immediate Action Required. If Grantee 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 waiting for the period provided for cure to expire.

E. Nature of Remedy. Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantee has those remedies available in equity and law appropriate to the circumstances.

F. Costs of Enforcement. In the event Grantee must enforce the terms of this Easement, the costs of restoration and Grantee's reasonable enforcement expenses, including attorney's fees, shall be borne by Grantor against whom a judgment is entered. In the event that Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of such restoration and Grantee's reasonable expenses shall be borne by Grantor who is otherwise determined to be responsible for the unauthorized activity or use. If Grantor prevails in any judicial proceeding initiated by Grantee to enforce the terms of the Easement, Grantor's cost of suit, including attorney's fees, shall be borne by Grantee.

G. Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of the Grantee, and any forbearance by the Grantee to exercise its rights under this

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easement in the event of any breach of any terms of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term of any Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

H. Waiver of Certain Defenses. Grantor acknowledges that it has carefully reviewed this Grant Deed of Conservation Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Grant Deed of Conservation Easement, Grantor hereby waives any claim or defense it may have against Grantee or its successors in interest under or pertaining to this Grant Deed of Conservation Easement based upon waiver, laches, estoppel or prescription.

I. Acts Beyond Grantors Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property or adjacent property resulting from such causes.

J. Estoppel Certificates. Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance or lack thereof with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as requested by Grantor.

#### X. ACCESS BY PUBLIC

Nothing contained herein, shall be construed as affording the general public access to any portion of the land subject to this Conservation Easement.

#### XI. COSTS, LIABILITIES, TAXES, AND INDEMNIFICATION

A. Liabilities and Insurance. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property.

B. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, 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 Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantee is authorized, in the absence of any formal protest from the Grantor as to the validity of such taxes, but in no event obligated to make or advance any 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, and the obligation created by such payment shall bear interest until paid by the Grantor at the maximum rate allowed by law

C. Indemnification. Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, 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:

1. 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 Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties;
2. The obligations specified in subsections A and B of this section;
3. The breach of the environmental representation and warranties specified in subsection C of this section; or
4. The existence or administration of this Easement.

## XII. SUBSEQUENT TRANSFER OR EXTINGUISHMENT

A. Extinguishment. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction

B. Valuation. This Easement constitutes a real property interest immediately vested in Grantee, which the parties stipulate to have a fair market value determined by multiplying the fair market value of the Protected Property unencumbered by the Easement (minus any increase in the value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the Protected Property, without deduction for the value of the Easement, at the time of this grant. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reasons of this grant, pursuant to section 170(h) of the Internal Revenue Code of 1986, as amended. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Protected Property unencumbered by the Easement shall remain constant.

C. Condemnation. If the Easement is taken, in the whole or in the part, by the exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law.

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D. Subsequent Transfers. Grantor agrees (1) to disclose and reference this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including without limitation, an executory contract, trustee's deed, inheritance, gift or leasehold interest, and (2) to describe this Easement in and append it to, any executory contract for the transfer of any interest in the Protected Property, and (3) to 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 Easement and their intent to comply with it. Such certificate shall be appended to and recorded with any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Protected Property. Grantor further agrees to give written notice to the Grantee of the transfer of any interest of at least thirty (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 his or her representative. The failure of the Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability.

#### XIII. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that would disqualify the grant from recognition as a "qualified conservation contribution" under IRC 170(h) or change the status of the Protected Property or the Grantee under any applicable laws, including RCW 64.04.130, Chapter 84.34 RCW, or Section 170(h) of the Internal Revenue Code, as amended. Any amendment shall be consistent with the purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Skagit County, Washington, and any other jurisdiction in which such recording is required.

#### XIV. ASSIGNMENTS

A. Assignment. This Easement is transferable, but Grantee may, after consultation with Grantor, assign its rights and obligations under this easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (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 Conservation Purposes that this Easement is intended to advance 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.

B. 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

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organization, or the Grantee shall cease to exist, then its rights and duties shall become vested in the following named entities to the extent that they shall accept this Easement.:

1. Whatcom Land Trust  
P.O. Box 6131  
Bellingham, WA 98225

2. Such other entity, with purposes similar to the Skagit Land Trust, constituting a "qualified organization" within the meaning of the Internal Revenue Code of 1986 (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 Easement shall vest in such organization as a court of competent jurisdiction shall direct, pursuant to the applicable Washington law and the Internal Revenue Code (or corresponding provision of any future statute) and with due regard to the purposes of this Easement.

#### XV. RECORDING

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 Easement.

#### XVI. GENERAL PROVISIONS

A. Liberal Construction. This Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of RCW 64.04.130 and Chapter 84.34.RCW. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

B. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this 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, shall not be affected thereby.

C. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section XIII herein.

D. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

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E. "Grantor" - "Grantee". The term "Grantor" and "Grantee," wherever used herein, and any pronouns used in the place thereof, shall be held to mean and include, respectively the above-named Grantor, and its personal representatives, heirs, successors, and assigns, and the above-named Grantee, its successors and assigns.

F. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

G. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

#### XVII. SCHEDULE OF EXHIBITS

- A. Legal Description of Property Subject to Easement.
- B. Site Map.
- C. Cascade Millpond Land Use Agreement between Washington State Department of Fisheries and Donald and Claudia Cramer and the Cascade Millpond Project Description

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TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 29<sup>th</sup> day of December, 1998.

Robert H. Keller  
Robert H. Keller  
Patricia E. Karlberg  
Patricia E. Karlberg

State of Washington )  
County of Skagit Wnatcom ) ss.

On this day personally appeared before me, Robert H. Keller and Patricia E. Karlberg,, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 29<sup>th</sup> day of December, 1998.



Connie J. Clement  
Notary Public in and for said State of Washington

Connie J. Clement  
Printed Name

Residing at Bellingham, WA

My commission expires: 8-29-99

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

Dated: Dec. 29, 1998

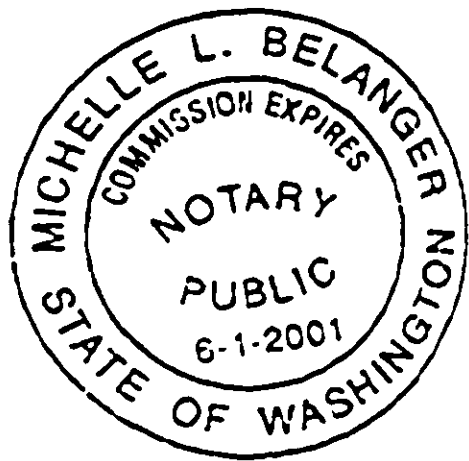
Skagit Land Trust  
Grantee

By Jerald Haegele  
Its President

State of Washington )  
County of Skagit ) ss.

I certify that I know or have satisfactory evidence that Jerald Haegele is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of the Skagit Land Trust to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 12/29/98



Michelle L. Belanger  
Notary Public

Michelle L. Belanger  
Printed Name

My appointment expires 6-1-2001

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**EXHIBIT A: Legal Description of Property Subject to Easement**  
**Page 1 of 3**

**P45977 / Account Number 351108-0-014-0218 and**  
**P45975 / Account Number 351108-0-014-0101**

The Easterly ½ of the following . described property:

That-portion of the Southeast 1/4 of Section 8, Township 35 North, Range 11, East W. M. lying South of the Cascade Highway and North of the Cascade River, EXCEPT the following described tract:

Beginning at the Southeast corner of Government Lot 1 in said Section 8; thence North along the East line thereof to the South line of the Cascade Highway; thence Westerly along the South line of said highway to the North line of said Government Lot 1; thence West along said North line to a point 200 feet West of the North and South center-line of said Government Lot 1; thence North to the South line of the Cascade Highway; thence Westerly along the Cascade Highway 820 feet; thence South to the South line of Government Lot 2 in said Section 8; thence East along the South line of Government Lot 2 and Government Lot 1 to the point of beginning.

ALSO, EXCEPT that portion, if any, of the remainder of said property lying East of an existing fence line located 960 feet, more or less, East of the North and South centerline of said Section 8.

Situate in the County of Skagit, State of Washington.

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**EXHIBIT A: Legal Description of Property Subject to Easement**  
**Page 2 of 3**

**P45966 / Account Number 351108-0-012-0004**

The land referred to in this report is situated in the State of Washington, County of Skagit, and is described as follows:

That portion of Section 8, Township 35 North, Range 11 East., W.M., being in the Northeast 1/4 of the Southeast 1/4 and in the Northwest 1/4 of the Southeast 1/4, and in Government Lots 1 and 2, lying within the following boundaries.

Beginning at a point 200 feet West of the intersection of the North and South center line of Lot I with the present North bank of the Cascade River, thence North 600 feet, more or less, to the center line of the Cascade Highway as now located; thence West along center line of Cascade Highway, 820 feet, more or less, thence South to the North bank of the Cascade River, which is in Lot 2; thence Easterly along bank of Cascade River to point of beginning.

EXCEPT from all of the above, that portion thereof, if any, lying with the East 860 feet of that portion of Government Lot 1, said Section 8, lying South of the Cascade Highway.

ALSO EXCEPT that portion thereof lying within the right of way of the Cascade Highway as conveyed to the State of Washington by deed recorded August 2, 1926 under Auditor's File No. 196233 in Volume 141 of Deeds, page 204, records of Skagit County, Washington.

SUBJECT TO that certain thirty foot wide easement in favor of Bruce Miller as established by that certain Real Estate Contract recorded December 21, 1988 as Auditor's File Number 8812210049.

**EXHIBIT A: Legal Description of Property Subject to Easement**  
**Page 1 of 3**

**P45977 / Account Number 351108-0-014-0218 and**  
**P45975 / Account Number 351108-0-014-0101**

The Easterly ½ of the following described property:

That-portion of the Southeast 1/4 of Section 8, Township 35 North, Range 11, East W. M. lying South of the Cascade Highway and North of the Cascade River, EXCEPT the following described tract:

Beginning at the Southeast corner of Government Lot 1 in said Section 8; thence North along the East line thereof to the South line of the Cascade Highway; thence Westerly along the South line of said highway to the North line of said Government Lot 1; thence West along said North line to a point 200 feet West of the North and South center-line of said Government Lot 1; thence North to the South line of the Cascade Highway; thence Westerly along the Cascade Highway 820 feet; thence South to the South line of Government Lot 2 in said Section 8; thence East along the South line of Government Lot 2 and Government Lot 1 to the point of beginning.

ALSO, EXCEPT that portion, if any, of the remainder of said property lying East of an existing fence line located 960 feet, more or less, East of the North and South centerline of said Section 8.

Situate in the County of Skagit, State of Washington.

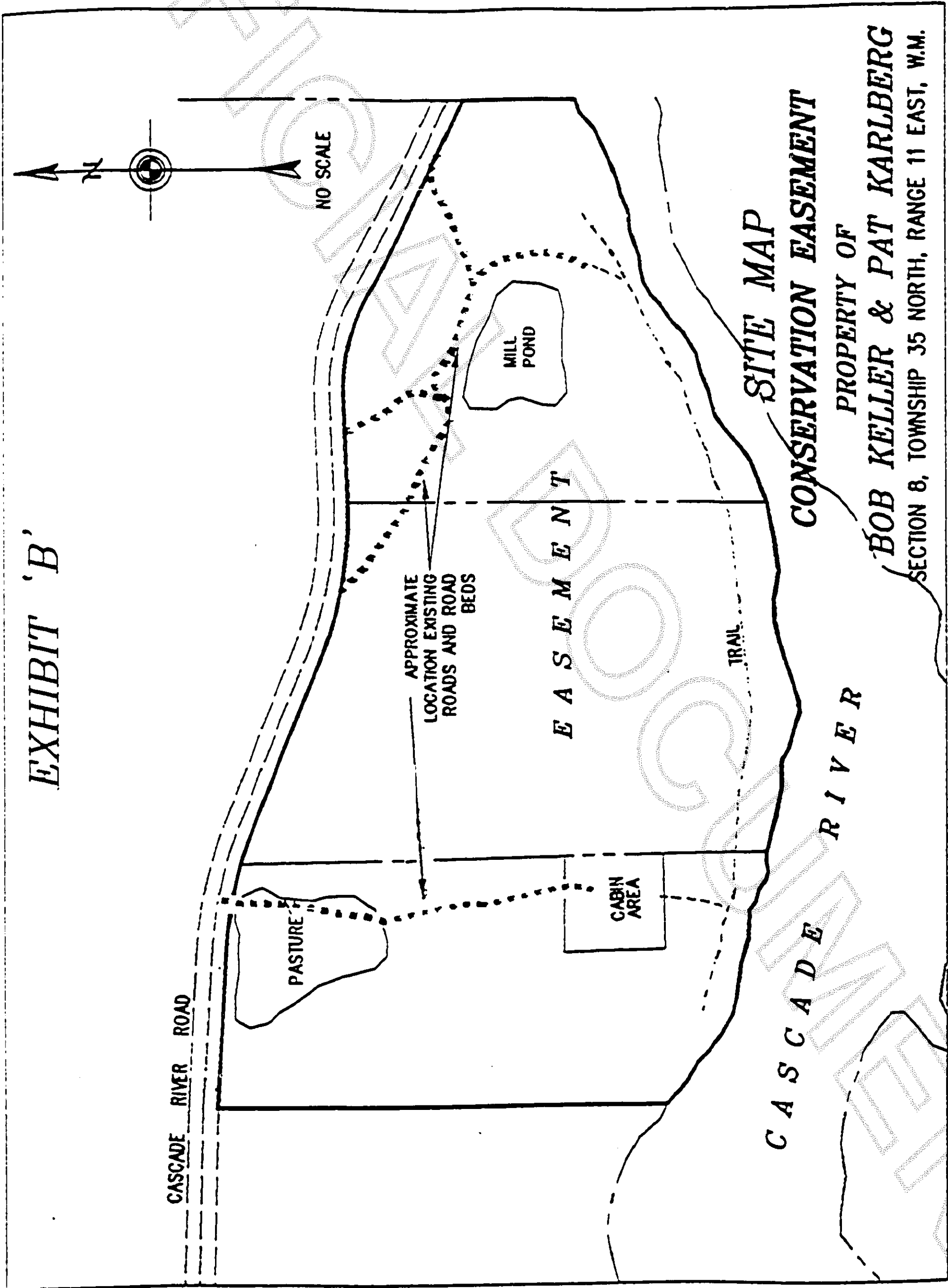
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EXHIBIT 'B'



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**EXHIBIT C: Cascade Millpond Land Use Agreement between Washington State Department of Fisheries and Donald and Claudia Cramer and the Cascade Millpond Project Description**

CASCADE MILLPOND

MAR 22 1994

LAND USE AGREEMENT  
BETWEEN  
WASHINGTON STATE DEPARTMENT OF the Department  
AND  
DONALD G. AND CLAUDIA R. CRAMER

This Agreement is made and entered into by and between Washington State Department of Fisheries, Habitat Management Division, P.O. Box 43155, Olympia, Washington 98504-3155 hereinafter referred to as the "Department" and Mr. and Mrs. Donald G. and Claudia R. Cramer, 6023 Southwest Stevens Street, Number 301, Seattle, Washington 98116 hereinafter referred to as the "Cramers". The Department and the Cramers collectively shall hereinafter be referred to as "Parties" to the Agreement. This agreement shall become effective when signed by both parties and run in perpetuity.

WHEREAS, the Cramers owns property on the Cascade River in Skagit County described as the East 860 feet of that portion of Government Lot 1 in Section 8, Township 35 North, Range 11 East, W.M. lying southerly of the Cascade Highway with tax parcel #083511-0-016-0000.

WHEREAS, this property contains an abandoned millpond on which the Department conducted a wild salmon habitat enhancement project in cooperation with the former landowner.

WHEREAS, the Department wishes to protect its interest in the project for the benefit of wild salmon production and the Cramers are in agreement with the program.

NOW THEREFORE, the parties to this agreement acknowledge and agree to the following:

The Cramers shall:

1. Provide the Department right of entry to their property to inspect condition of the project, make necessary surveys of spawning fish, annually trap outmigrant juvenile fish and make needed repairs or modifications at its option.
2. Maintain the existing tree and shrub vegetation around the pond for at least twenty (20) feet from the water without removal or disturbance unless approved by the Department. Maintain an additional thirty (30) feet wide buffer strip around the pond in like manner except for viewspace thinning.
3. Make no modifications to the pond, its inlet channel or outlet channel without first consulting the Department.

SKAGIT COUNTY WASHINGTON

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"EXHIBIT C"

Page 2 of 3

4. Notify the Department within thirty (30) days of the sale of this property so the Department will know the new landowner.
5. Plant no fish in the pond or outlet channel without first consulting the Department.
6. Retain the right to fish for trout, swim and/or use any non-motorized boat in above described pond at their discretion.

The Department shall:

1. Retain the right to make needed repairs and or modifications to its project at its option and expense to ensure maximum fish production
2. Exercise every reasonable precaution to protect the Cramers's property when entering to conduct its program.
3. Conduct surveys of spawning salmon and trap outmigrant fish at its option and expense.
4. Provide the Cramers information on fish use in the pond and outlet channel.
5. Coordinate land use activities with the Cramers.

CONDUCT OF WORK

Except as otherwise noted, the Department will, with due diligence, furnish all the necessary qualified personnel, material and equipment managing and directing the same to complete any project modifications. Any work will be performed under the coordination of Chris Detrick, an employee of the Department, However, the Department may change the employee so designated as necessary.

PERIOD OF PERFORMANCE

This Agreement shall be recorded in Skagit County and is perpetual.

ASSIGNABILITY

This Agreement is not assignable by either Party in whole or in part.

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WAIVER

Any waiver by any party hereto with regard to any of its rights hereunder shall be in writing and shall not constitute or act as a waiver to any further rights which such party might have hereunder.

No waiver of any breach of this Agreement by one party shall be held to be a waiver by the other party of any other or subsequent breach by the offending party.

TERMINATION

Either party may terminate this Agreement by giving written notice to the other, at the address first noted herein, of such termination and specifying the effective date thereof at least thirty (30) days before the effective date of such termination.

RIGHT OF ENTRY

Unless otherwise agreed in writing, the Cramers shall furnish right of entry on its lands for the Department to conduct planned surveys, inspections, and construction.

HOLD HARMLESS

To the extent authorized by RCW 4.92.090 and RCW 43.88.130, the Department agrees to defend, indemnify and save harmless the Grantor from and against any and all liability, loss, costs, damage and expense, including costs and attorney fees in defense thereof because of actions, claims or lawsuits for damages resulting therefrom, sustained or alleged to have been sustained by any person or persons and on account of damage to property arising or alleged to have arisen directly or indirectly out of or in consequence of the design or construction by the Department of this project.

INDEPENDENT CAPACITY OF PARTIES

The parties declare that the Department, in the performance of this Agreement, are acting as independent contractors and not in any manner as officers, employees or agents of the Cramers. Herein, all references to the Department shall include its agents and employees.

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ENTIRE AGREEMENT

This document contains the entire Agreement between the parties and no statement, promise, inducement or agreement made by the Department or the Cramers or their agent or employees that is not contained in the written Agreement shall be valid or binding. No alteration or modification of any of the terms or conditions of the Agreement will be effective if not in writing and signed by the authorized representative of the parties.

LANDOWNERS

BY: \_\_\_\_\_

BY: Claudio R. Cramer

DATE: Feb 20 1974

WASHINGTON STATE  
DEPARTMENT OF FISHERIES

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

Assistant Director

DATE: \_\_\_\_\_

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**"EXHIBIT C"**

State of Washington  
**DEPARTMENT OF FISH AND WILDLIFE**

Mailing Address: 600 Capitol Way N • Olympia, WA 98501-1091 • 360/302-2200, TDD 360/302-2217  
Main Office Location: Natural Resources Building • 1111 Washington Street SE • Olympia, WA

**CASCADE MILLPOND**  
Project Description

Washington Department of Fish and Wildlife (WDFW) has actively pursued habitat enhancement and development projects in the Skagit River Basin since the early 1980's for the benefit and improvement of wild salmonid fish stocks. In 1988, we identified this previously unnamed isolated pond adjacent to the Cascade River as a habitat development opportunity.

The pond was originally created as a millpond by constructing a berm around a natural spring on the valley terrace. Although the actual date of construction is unknown, it was used as a millpond through the 1950's when it was abandoned.

The original water surface control for the pond and its outlet was a culvert placed in the berm on the river or south side. The culvert outfall to the short channel to the river was sufficiently high that it was not passable by salmon or trout thereby denying fish use of the pond and the inlet stream.

Obstructions in natural streams that do not freely pass fish are illegal by state statute (RCW 060.75.20). To correct this problem at the millpond and restore fish access to valuable habitat, we worked cooperatively with the landowner to construct a new outlet channel that was fish passable. Our design and project was to construct a low maintenance natural rock channel at 1.2% gradient. The new channel exited the pond on the west side and curved around to the original entry to the river below the old culvert. The old culvert was removed and replaced with compacted fill so all pond outflow would be down through the project. Additionally, we placed suitable spawning rock throughout the channel where convenient and at the upper end to further enhance fish production potential. All work was conducted at WDFW expense under legal agreement with the landowner.

Coho salmon and trout immediately colonized the site in the fall and winter of 1989 and have continued to spawn and rear in the channel and pond since that time. Annual surveys for coho spawners have found as many as 50-60 adults using the site between the inlet and constructed outlet channels. Use has sometimes been late in the season because considerable precipitation has usually been required to fully charge the inlet spring providing sufficient flow to attract fish. Surveys for native trout have not been conducted but adult fish have been occasionally observed in the pond.

Spring-fed pond and channel complexes out of the main river channel such as this millpond are especially valuable habitat for wild fish. The reliable relatively even flows protect incubating eggs and rearing juvenile fish from both the ravages of winter storms and low flow summer stranding mortalities resulting in the highest level of production possible.

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**"EXHIBIT C"**

Minor flooding of the Cascade River in winter 1989 forced the river into the lower end of the outlet channel breaching it at about halfway the length leaving the outflow to run down an old river swale. Since the swale was not accessible by migrating fish, we restored the constructed channel with a natural berm in 1990 that has been stable through 1998. Additionally, we further enhanced the site by adding spawning gravel to the inlet stream immediately above the pond to provide habitat for additional spawners especially coho salmon.

Attached is a copy of the plan for the channel protection berm that also includes essential features of the outlet channel construction.

Future maintenance of the project will likely include occasional addition of spawning gravel to the inlet and outlet streams, periodic removal of woody debris that may block the outlet channel and possibly restoration of the channel protection berm should the area again be flooded by the river. We plan annual salmon spawning surveys for future years as long as our program is active in the Skagit River.