

WHEN RECORDED RETURN TO:

Skagit Land Trust  
Attn: Martha Bray  
P. O. Box 1017  
Mt. Vernon, WA 98273

*copy*

Brief Legal Description: *Full legal description shown in Exhibit A-1.*

1<sup>st</sup> and 2<sup>nd</sup> class tidelands lying within Sections 29, 31 and 32, Township 35, Range 2 E, W. M., "Anacortes Harbor."

Assessor's Tax ID and Parcel Number: 350232-0-013-0103, P33456; 350232-0-026-0009, P33484; 350229-0-006-0008, P33020; 350229-0-007-0007, P33021

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### AMENDMENT OF CONSERVATION EASEMENT

THIS AMENDMENT OF CONSERVATION EASEMENT is made by Washington State Department of Natural Resources, a division of the state of Washington, having an address of P.O. Box 47027, Olympia, WA 98504, (hereinafter referred to as Grantor), and 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 (hereinafter referred to as "Grantee").

#### I. RECITALS

A. Grantor and Grantee are the parties to that certain Grant Deed of Conservation Easement Dated December 10, 1999 and recorded under Skagit County Auditor's file number 199912200134 ("Conservation Easement"), which easement protects certain "Protected Property" described therein in the vicinity of Fidalgo Bay.

B. Grantor acquired on October \_\_\_\_\_, 2006 and is the owner in fee simple of that certain real property also in the vicinity of Fidalgo Bay and adjacent to the aforementioned Protected Property in Skagit County, Washington, more particularly described in Exhibit "A-1" (legal description) and shown on Exhibit "B-1" (site map, depicting both the Protected Property and the Additional Protected Property), which are attached hereto and incorporated herein by this reference (hereinafter the "Additional Protected Property").

C. Grantee received funding for acquisition of the Additional Protected Property through the Texaco-Anacortes Restoration Fund. The declared purpose of this fund is "the rehabilitation or acquisition of spawning or larval rearing habitats that will increase and sustain the production base for Fidalgo Bay herring, smelt, and sand lance (forage fish) stocks."

D. The Additional Protected Property consists of approximately eighty-two acres (and, together with the Protected Property, consists of approximately 532 acres) of first and second class tidelands and estuarine habitat, including important eel grass and inter-tidal habitat important to a range of marine organisms.

E. The Additional Protected Property possesses natural, scenic, open space, shoreline, 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.

F. The Additional Protected Property provides habitat for the bald eagle, peregrine falcon, and Puget Sound Chinook Salmon, threatened and/or endangered species protected under the Endangered Species 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."

G. The Additional Protected Property includes key parcels within Fidalgo Bay, a part of the northern Puget Sound, which is proposed to be designated a Washington state Aquatic Preserve. 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 Additional Protected Property would benefit Puget Sound because of the protection afforded wildlife, and habitat on the Additional Protected Property.

H. A declared goal of Washington State Department of Natural Resources is to manage aquatic lands "for current and future citizens of the state; to sustain long-term ecosystem and economic viability; and to ensure access to the aquatic lands and the benefits derived from them."

I. A goal of Skagit County as stated in the County-wide Regional Comprehensive Plan Policies, adopted in July 1992, Goal 9, is to: "Encourage the retention of open space and development of recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water and develop parks".

J. The declared policies of Skagit County in the Critical Areas Ordinance of Skagit County (Title 14 Chapter 14.06), as adopted June 13, 1996, or as amended, is "to assist in orderly development, conserve the value of property, safeguard the public welfare, and provide for the protection of the quality and quantity of groundwater used for public water supplies and provide protection of: Wetlands, Frequently Flooded Areas, ... and Fish and Wildlife Habitat Conservation Areas.

K. The Additional Protected Property would also be desirable property for commercial and industrial development because of its location and orientation. In the absence of its inclusion under the provisions of the Conservation Easement, the Additional Protected Property could be developed in a manner which would destroy or diminish the fish and wildlife habitat and natural character of the Additional Protected Property and its ecological value.

L. The specific "Conservation Values" (as such term is defined and used in the Conservation Easement) of the Additional Protected Property are documented in an inventory of relevant features dated October 2, 2006, on file at the offices of Grantee and incorporated herein by this reference ("Baseline Documentation"/Exhibit C-1 hereto), which consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Additional Protected Property at the time of this amendment and which is intended to serve as an objective information baseline for monitoring compliance with the terms of the Conservation Easement. Grantor and Grantee further agree that, within twelve (12) months of the execution hereof, a collection of additional Baseline Documentation may be compiled by Grantee, and incorporated herein by this reference. Failure to timely compile the additional Baseline Documentation shall not affect the enforceability or validity of any other provision hereof.

M. Grantor intends that the Conservation Values of the Additional Protected Property be preserved and maintained by the continuation of land uses on the Additional Protected Property that do not significantly impair or interfere with the Conservation Values. These uses include: management for public access which provides opportunity for low intensity recreation, and management and restoration of native plant communities for wildlife, open space and scenic quality; and are consistent with this Easement.

N. Grantor, owner in fee of the Additional Protected Property, has the right to identify, protect, and preserve in perpetuity the Conservation Values of the Additional Protected Property, and desires to transfer such rights to Grantee.

O. 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.

P. Grantee agrees by accepting this amendment to the Conservation Easement to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Additional Protected Property for the benefit of this generation and the generations to come.

## II. AMENDMENT OF CONSERVATION EASEMENT

A. For the reasons stated above, and in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, Grantor and Grantee hereby agree that the Conservation Easement be amended as follows:

1. Exhibit A (legal description) is amended to include, in addition to the property legally described in the original exhibit, the real property legally described in Exhibit A-1 hereto and the Additional Protected Property shall be included as Protected Property under all applicable terms of the Conservation Easement.

2. Exhibit B (map) is deleted and replaced with the site map attached hereto as Exhibit B-1.

3. Exhibit C-1 hereto (Baseline Documentation) is added as an exhibit and any Conservation Values described therein related to the Additional Protected Property are hereafter included in the "Conservation Values" as that term is used throughout the Conservation Easement.

4. Article XVI, "Schedule of Exhibits," is deleted and replaced with the following:

- Exhibit A (legal description of the Protected Property) of the Conservation Easement;
- Exhibit A-1 (legal description of the Additional Protected Property) of the Amendment of Conservation Easement;
- Exhibit B-1 (site map) of the Amendment of Conservation Easement;
- Exhibit C (Baseline documentation of the Protected Property) of the Conservation Easement; and
- Exhibit C-1 (Baseline documentation of the Additional Protected Property) of the Amendment of Conservation Easement.

### III. GENERAL PROVISIONS

A. The parties agree that the mutual obligations, promises and duties herein imposed, together with the obligations and rights set forth in the parties' Agreement to Designate Grantee and to Amend Conservation Easement and Consent Thereto dated October \_\_\_\_, 2006, constitute adequate mutual consideration.

B. In all other respects, except as amended hereby, the Conservation Easement shall remain in full force and effect and shall be interpreted to give meaning to its provisions and those contained herein.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

THIS AMENDMENT OF CONSERVATION EASEMENT requires the signatures of all parties and is executed as of the date of the last signature below.

**SKAGIT LAND TRUST**

Dated: October \_\_, 2006

By: \_\_\_\_\_  
Marlene Moore, President

Attestation:

\_\_\_\_\_  
Jerry Haegele, Secretary

State of Washington            )  
  ) ss.  
County of Skagit                )

On this \_\_\_\_\_ day of October 2006 before me, the undersigned, a Notary Public in and for the state of Washington, duly commissioned and sworn, personally appeared Marlene Moore and Jerry Haegele to me known to be the President and Secretary, respectively of the Skagit Land Trust, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they/he/she is/are authorized to execute the said instrument,

Witness my hand and official seal hereto affixed the say and year first above written.

Given under my hand and official seal this \_\_\_\_\_ day of October , 2006

\_\_\_\_\_  
Notary Public in and for said State of Washington  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name



EXHIBIT A-1

PARCEL "A":

Tidelands of the second class lying within Tidelands shown as first class as Tract 2, "PLATE NO. 12, TIDE AND SHORELANDS OF SECTIONS 31 AND 32, TOWNSHIP 35 NORTH, RANGE 2 EAST, W.M., ANACORTES HARBOR", as shown on the official map of said Plate 12, in the office of the State Land Commissioner at Olympia, Washington.

TOGETHER WITH tidelands of the second class, if any, lying between the line of extreme low tide and the Westerly line of said Tract 2.

PARCEL "B":

Tidelands of the second class lying within Tidelands shown as first class as Tracts 5 and 6, "PLATE NO. 14, TIDE AND SHORELANDS OF SECTION 29, TOWNSHIP 35 NORTH, RANGE 2 EAST W.M., ANACORTES HARBOR", as shown on the official map of said Plate 14, in the office of the State Land Commissioner at Olympia, Washington.

TOGETHER WITH tidelands of the second class, if any, lying between the line of extreme low tide and the Westerly line of said Tract 6.

PARCEL "C":

That portion of first class tidelands shown as Tracts 16, 17 and 18, "PLATE NO. 12, ANACORTES TIDE AND SHORE LANDS", according to the map thereof on file in the office of the State Land Commissioner at Olympia, Washington, embraced within the following described boundaries, to-wit:

Beginning at a point on the North line of Tract 18, "PLATE NO. 12, ANACORTES TIDE AND SHORE LANDS", 650.8 feet South and 2,057.1 feet East of the section corner common to Sections 29, 30, 31 and 32, Township 35 North, Range 2 East, W.M.; thence East along said North line of Tract 18, 600 feet, more or less, to the East line of said Tract 18; thence Southerly along the Easterly lines of said Tract 18, 17 and 16, as follows, to-wit: South  $28^{\circ}36'$  East 790 feet; thence South  $2^{\circ}57'$  West 433.6 feet; thence South  $14^{\circ}22'$  West 10 feet, more or less, to the North line of the Great Northern Railway Company right-of-way; thence Northwesterly along said North line of the Great Northern Railway right-of-way 1,040 feet, more or less, to a point due South of the point of beginning; thence North to the point of beginning.

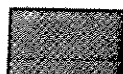

ALL SUBJECT TO easements and restrictions of record.

All situate in Skagit County, Washington



EXHIBIT B-1  
Site Map  
Sections 29 and 32, Township 35 N, Range 2 E and  
Section 5, Township 34 N, Range 2 E



 Protected Property Conservation Easement 12/20/99	 Additional Protected Property Conservation Easement Amendment
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**EXHIBIT C - 1**  
**SKAGIT LAND TRUST**  
**CONSERVATION EASEMENT BASELINE DATA DOCUMENT**

**Grantor Information:**

Department of Natural Resources, Aquatic Lands Division  
PO Box 47027  
Olympia, WA 98504

**Skagit Land Trust (Grantee) Contact:**

Executive Director, Skagit Land Trust, PO Box 1017, Mount Vernon, WA 98273, (360) 428-7878

**Property Information:**

Parcels: P33021, P33456 and P33484 in Sections 29 and 32 of Township 35 North, Range 2 East

Acres: 82.2    Acres Tidelands: 82.2    Acres Forest: 0    Acres Farmland: 0  
County Zoning: Urban Growth Area    Number of Buildings: 0  
Property Tax ID Nos.: 350229-0-007-0007, 350232-0-013-0103 and 350232-0-026-0009  
Type of Ownership: FEE (Public/State)    Mortgage? No

*Soil types:* 100% tideland. The surrounding area includes hydraquents (tidal), vegetated with salt tolerant grasses; Coveland gravelly loam, mainly vegetated with conifers; and several segments of Fidalgo-Lithic Xerochrepts-Rock outcrop complex.

*County Critical Areas:* Shoreline and waterfowl habitat.

*State Priority Habitats and Species:* Marine shoreline, waterfowl concentrations, bald eagle, salmon habitat and urban natural open space.

**Special Features of Property:** Fidalgo Bay has been the subject of study by many organizations concerned with the health of Puget Sound and marine life. A list of references is attached at the end of this document.

The protected property consists of 82.2 acres of shallow tidelands and eelgrass beds in the southernmost area of Fidalgo Bay. Fidalgo Bay is a large saltwater bay located just southeast of the City of Anacortes. The mouth of the bay extends from Cap Sante in Anacortes in the northwest, across to the tip of March's Point in the northeast. The body of the bay extends south to a dike protecting State Route 20 on Fidalgo Island. State Route 20 and the Similk Golf Course occupy the higher land south of Fidalgo Bay. All of the protected property is located north of a railroad trestle that bisects the bay from Weaverling Spit on the west side to March's Point Road on the east side.

Fish, shellfish and invertebrates depend upon the eelgrass beds in Fidalgo Bay for reproduction, foraging, predator avoidance, and rearing to adulthood. Fish inhabiting the bay include juvenile salmon, now recognized as a keystone species, both to our human economy and the ecology of

Puget Sound. Shellfish and forage fish also utilize the mudflats and eelgrass beds. These species are in turn consumed by salmon, herons, shorebirds and waterfowl, which are all important for the raptor populations in the area. March's Point, the upland area to the east of the protected property, supports a large nesting colony of great blue herons. Large numbers of herons are regularly observed feeding in the mudflats, within the protected property, these are likely from the March's Point nesting colony. There are also several bald eagle nests in the vicinity.

Much of the protected property consists of mudflats; tidelands that are drained of surface water during low tides. The mudflats provide habitat for an important link in the food chain of the sea. Incoming tides bring dead plant and animal material and deposit it in the mudflats. A rich diversity of invertebrates lives in the mudflats, consuming this detritus. In turn, the invertebrates form a significant portion of the diet of shorebirds, fish and larger invertebrates.

The protected property includes approximately 2,500 feet of tidelands directly adjacent to the shoreline, much of this area provides gravel appropriate for forage fish spawning beds. According to Washington Department of Fish and Wildlife (Penttila, 1995), the Pacific herring spawning population of Fidalgo Bay is at least the fifth largest in escapement among Puget Sound herring stocks. The herring deposit their eggs primarily on eelgrass in the intertidal and shallow subtidal zones. Herring spawn in most of Fidalgo Bay, including all of the protected property. They spawn during the winter months and many young-of-the-year stay in the bay through the following summer. The herring population in Fidalgo Bay appears to be in good condition at this time. However, threats to habitat throughout their range include dredging for construction, filling tidelands, increased sedimentation, contamination from industrial activities on shore and the loss of eelgrass due to shading-out by artificial structures, such as pipelines and piers, and by the invasion of exotic plants, such as spartina.

Surf smelt spawn year-round in Fidalgo Bay among the sand and gravel shorelines. The protected area contains approximately 1,500 linear feet of surf smelt spawning habitat (Penttila, 1995). Until recently there was a popular sport-fishery of surf smelt in the winter in Fidalgo Bay. Surveys conducted in 1991 and 1992 revealed a significant drop in the population since surveys a decade before. However, a summer fishery of surf smelt was still quite successful. Starting in 1992 the Washington Department of Fish and Wildlife placed a ban on smelt fishing during the fall and winter in Fidalgo Bay. Although surf smelt continue to return to Fidalgo Bay in the summer, the quality and quantity of spawning habitat are threatened. Maintenance of spawning beaches requires wave action and the successful incubation of eggs requires cool temperatures, as found along shorelines that have overhanging vegetation. Smelt continue to spawn among gravels on the eastern shoreline of the bay, including a segment of the protected property, but survivability of the eggs is low. Threats to the smelt population of Fidalgo Bay include contamination from industrial activities on shore and the armoring of the shoreline to protect developments.

The protected area contains approximately 635 linear feet of sand lance spawning habitat (Penttila, 1995). These fish spawn in the intertidal sand and gravel areas along the eastern shore of Fidalgo Bay. Sand lance are not subject to commercial fishery pressures, but are important in the diets of local marine fish, sea mammals and birds.

Native Americans of the Puget Sound region have been gathering shellfish from Fidalgo Bay for thousands of years. There is at least one shell midden on the eastern shore that predates the colonization of the area by non-Native Americans. Native Americans continue to utilize the shellfish populations of Fidalgo Bay today, harvesting numerous species of clams, mussels, and Pacific oysters. Although the bay is open to commercial crab fishing and incidental sport-fishing for crab occurs along the north shore of March's Point, the protected property is very shallow and not easily accessible for crabbing.

The protected property is very visible from a highly trafficked road, traveled by commuters and vacationers from around the world. Travelers to and from the San Juan Islands as well as from Whidbey Island and the Olympic Peninsula drive past the south end of Fidalgo Bay on State Route 20. A recently completed public trail utilizes the railroad trestle crossing the bay. Users of the trail enjoy views of the bay as well. Undeveloped shorelines, such as found on the protected property, provide a sense of open space and a connection to the maritime nature of the area. Rapid growth and development of shorelines in the Puget Sound and San Juan Islands, make the qualities of this property unique and of increasing importance to species inhabiting mudflats and shallow bays.

**Condition of Property:** Much of the shoreline adjacent to the protected property has been affected by diking and riprapping. The entire east shore of the bay has been riprapped to protect March's Point Road. There are no structures between the protected property and the roadway to the east. Further to the east, there is a complex of oil refineries on March's Point. At the mouth of the bay, outside the boundaries of the protected property, piers carry oil pipelines for transporting oil from tankers docked just north of the bay. The potential for oil spills poses a long-term threat to the health of the bay.

There have been at least 5 oil spill events in Fidalgo Bay in the last 10 years that have required clean-up responses (Penttila, 1995). Nine sediment samples were collected from adjacent tidelands and analyzed in 1997 as part of a larger collection in the entire bay (Tetra Tech, 1999). None of these samples showed chemical contamination outside marine sediment quality standards for Washington. One sample, taken just north of the property and adjacent to March's Point Road was contaminated with motor oil, but not at such a level as to require a cleanup. This contamination is not suspected to be related to past oil spills, but rather to highway runoff.

Between 1935 and 1950 a small navigation channel was dredged in Fidalgo Bay south of Weaverling Spit (Tetra Tech, 1999). This channel has not since been maintained, but the area of the channel is excluded from the protected property.

*Spartina alterniflora* is an invasive exotic plant species, introduced accidentally to Puget Sound and the Pacific coast. It is native to the east coast of the United States. It reproduces vegetatively and is rapidly replacing native plant communities, such as eelgrass. In spring 1999 numerous clones of spartina were found within Fidalgo Bay. The Skagit County Noxious Weed Control crew mechanically eradicated them and continues to monitor growth of spartina in Fidalgo Bay.

**History:** Fidalgo Bay has been subject to a variety of alterations for the purposes of economic development. Dredging, filling and the construction of artificial structures, such as pipelines and the railroad causeway, have altered the northern portion of the bay. Fortunately, these activities were very limited within the boundaries of the protected property.

### References

- City of Anacortes. August 1997. Fidalgo Bay-Wide Plan, Final EIS.
- Dinnel, P.A., J. Robinette, I. Dolph and M. Schwertner. 2005. Restoration of native oysters in Fidalgo Bay. Year three report. Progress Report by Skagit County Marine Resources Committee for the Northwest Straits Commission, Mount Vernon, WA. 20 pp. + appendices.
- Dinnel, P., M. Schwertner, R. Knowles, E. Pickett, P. Sund, R. Barsh and R. Haley. 2005. Skagit County creosote inventory and removal project: Phase I. Final Report for the Northwest Straits Commission, Mount Vernon, WA and Washington Department of Natural Resources, Sedro Woolley, WA by Skagit County Marine Resources Committee, Mount Vernon, WA. 18 pp. + appendices.
- Johnson, A., D. Serdar, and D. Davis. November 1997. Survey for Petroleum and Other Chemical Contaminants in the Sediments of Fidalgo Bay. Washington Department of Ecology, Environmental Investigations and Laboratory Services Program, Olympia, Washington.
- Kyle, L, R. Knowles, E. Pickett, J. Ramaglia and P. Sund. 2005. Fidalgo Bay Forage Fish Shade Project. Final Report for the Northwest Straits Commission. 5 pp.
- Penttila, D. May 1995. Baitfish Resources and Habitats of Fidalgo Bay, Skagit County, Washington. Washington Department of Fish and Wildlife, Marine Resources Division, Olympia, Washington.
- People for Puget Sound. 2001. March Point Rapid Shoreline Inventory, Skagit County, Washington. Summary Report for Skagit Marine Resources Committee. 13 pp. + Appendix.
- People for Puget Sound. 2003. March Point Rapid Shoreline Inventory Analyses. Final Report for Skagit Marine Resources Committee. 13 pp. + Appendix. 32 pp. + Appendices.

People for Puget Sound. 2004. Northern Skagit County Bays and Shoreline Habitat Conservation and Restoration Blueprint. Final Report for Skagit County Marine Resources Committee. 44 pp. + many maps and appendices.

Robinette, J. and P. Dinnel. 2003. Restoration of the Olympia oyster in North Puget Sound. Will Olympia oysters thrive in Fidalgo Bay? Final Report by Skagit Marine Resources Committee for the Northwest Straits Commission. 21 pp.

Robinette, J., P. Dinnel, R. Barsh, I. Dolph, J. Giboney, R. Knowles, M. Sato and M. Schwertner. 2004. Restoration of native oysters in Fidalgo Bay. Year two report. Progress Report by Skagit County Marine Resources Committee for the Northwest Straits Commission, Mount Vernon, WA. 11 pp. + appendix.

Robinette, J., R. Barsh, P. Dinnel, I. Dolph and K. Henoch. 2004/2005. Olympia oyster, *Ostrea conchaphila*, restoration in Fidalgo Bay, Washington. Poster presentation at the 2<sup>nd</sup> National Conference on Coastal and Estuarine Habitat Restoration, Seattle, WA, September 2004 and at the Puget Sound, Georgia Basin Research Conference, Seattle, WA, March 29-31, 2005.

Tetra Tech. July 1999. Environmental Site Assessment, Fidalgo Bay Environmental Survey, Skagit County Washington. Prepared for Washington DNR.

*Prepared by Brenda Cunningham, Skagit Land Trust, October 2, 2006*

Additional information on file:     Aerial Photos/Map     On-site Photographs  
    Assessor Printout     Title Search/Insurance