



199912200134  
Kathy Hill, Skagit County Auditor  
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RETURN TO:  
Skagit Land Trust  
P.O. Box 1017  
Mount Vernon, Washington 98273

Document Title: Grant Deed of Conservation Easement FIRST AMERICAN TITLE CO.

Reference number of documents assigned or released:

56084-2

Grantor: State of Washington, acting by and through the Department of Natural Resources

Grantee: Skagit Land Trust

Legal Description: (see full legal on attached Deed as Exhibit "1")

**Parcel A:** Ptn of Tract 15, "Plate No. 12, Tide and Shorelands of Section 32, Township 35 North, Range 2, East, W.M., Anacortes Harbor."

**Parcel B:** Ptn of Tract 15, "Plate No. 12, Tide and Shorelands of Section 32, Township 35 North, Range 2 East, W.M., Anacortes Harbor."

**Parcel C:** Tracts 8, 9, 10, 11, 12, 13, 14 and that ptn of Tracts 16 and 17, "Plate No. 12, Tide and Shorelands in Section 32, Township 35 North, Range 2 East, W.M., Anacortes Harbor."

**Parcel D:** Tracts 4, 5, 6, 7, 8, 9 and 10, "Plate No. 13, Tide & Shorelands in Section 5, Township 34 North, Range 2 East, W.M., Anacortes Harbor."

**Parcel E:** Second Class Tidelands in front of and abutting upon Government Lots 5 and 6, Section 32, Township 35 North, Range 2 East, W.M.

**Parcel F:** Second Class Tidelands in front of and abutting upon Government Lot 4, Section 4, Township 34 North, Range 2 East, W.M.

Assessor's Parcel/Tax I.D. Number: Parcel A: 350232-0-021-0004/R33478 Parcel B: 350232-0-022-0003-R33479  
(Continued on next page)

SKAGIT COUNTY WASHINGTON  
Real Estate Excise Tax

DEC 20 1999

Amount Paid \$-0-  
Skagit Co. Treasurer  
By DC Deputy

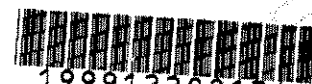
Lot 8, Parcel C:                      Lot 9, Parcel C:                      Lot 10, Parcel C:                      Lot 11, Parcel C:  
350232-0-014-0201/R33459    350232-0-015-0200/R33462    350232-0-016-0209/R33465    350232-0-017-0208/R33468  
350232-0-014-0003/R33457    350232-0-015-0002/R33460    350232-0-016-0001/R33463    350232-0-017-0000/R33466  
350232-0-014-0102/R33458    350232-0-015-0101/R33461    350232-0-016-0100/R33464    350232-0-017-0109/R33467

Lot 12, Parcel C:                      Lot 13, Parcel C:                      Lot 14, Parcel C:                      Lot 16 & 17, Parcel C:  
350232-0-018-0207/R33471    350232-0-019-0206/R33474    350232-0-020-0203/R33477    350232-0-023-0200/R33482  
350232-0-018-0108/R33470    350232-0-019-0008/R33472    350232-0-020-0005/R33475    350232-0-023-0002/R33480  
350232-0-018-0009/R33469    350232-0-019-0107/R33473    350232-0-020-0104/R33476    350232-0-023-0101/R33481

Lot 4, Parcel D:                      Lot 5, Parcel D:                      Lot 6, Parcel D:                      Lot 7, Parcel D:  
340205-0-042-0201/R19994    340205-0-043-0200/R19997    340205-0-044-0209/R20000    340205-0-045-0208/R20003  
340205-0-042-0003/R19992    340205-0-043-0002/R19995    340205-0-044-0001/R19998    340205-0-045-0000/R20001  
340205-0-042-0102/R19993    340205-0-043-0101/R19996    340205-0-044-0100/R19999    340205-0-045-0109/R20002

Lot 8, Parcel D:                      Lot 9, Parcel D:                      Lot 10, Parcel D:                      Gov Lot 5, Parcel E:  
340205-0-046-0207/R20006    340205-0-047-0206/R20009    340205-0-048-0205/R20012    350232-0-010-0205/R33450  
340205-0-046-0009/R20004    340205-0-047-0008/R20007    340205-0-048-0007/R20010    350232-0-010-0007/R33448  
340205-0-046-0108/R20005    340205-0-047-0107/R20008    340205-0-048-0106/R20011    350232-0-010-0106/R33449

Gov Lot 6, Parcel E:                      Parcel F:  
350232-0-011-0204/R33453            340204-0-077-0002/R19870  
350232-0-011-0006/R33451            340204-0-077-0101/R19871  
350232-0-011-0105/R33452            340204-0-077-0200/R19872



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## GRANT DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT is made this 10<sup>th</sup> day of December, 1999, 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), in favor of 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 is the owner in fee simple of that certain real property (hereinafter the "Protected Property") in Skagit County, Washington, more particularly described in Exhibit "A" (legal description) and shown on Exhibit "B" (map); which are attached hereto and incorporated herein by this reference.
- B. Grantor received funding for acquisition of the Protected Property through the Coastal Protection Fund (RCW 90.48.400). The declared purpose of this fund is for environmental restoration and enhancement projects intended to restore or enhance environmental, recreational, archaeological, or aesthetic resources for the benefit of Washington's citizens.
- C. The 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.
- D. The Protected Property consists of approximately four-hundred and fifty acres of first class tidelands and estuarine habitat, including important eel grass and inter-tidal habitat important to a range of marine organisms.
- E. The Protected Property is adjacent to 800 feet of shoreline also protected by a conservation easement. Restrictions on the uses of the Protected Property will add to the contiguous protection of shoreline and associated tidelands.
- F. The 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 Protected Property includes most of the south end of Fidalgo Bay, a part of the northern Puget Sound. The Washington State legislature in RCW 90.70.001 has recognized "that

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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 Puget Sound because of the protection afforded wildlife, and habitat on the 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 Protected Property would also be desirable property for commercial and industrial development because of its location and orientation. In the absence of this Grant Deed of Conservation Easement, the Protected Property could be developed in a manner which would destroy or diminish the fish and wildlife habitat and natural character of the Protected Property and its ecological value.

L. The specific Conservation Values of the Protected Property are documented in an inventory of relevant features November 15, 1999, on file at the offices of Grantee and incorporated herein by this reference ("Baseline Documentation"/Exhibit C.), which consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. 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.



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M. Grantor intends that the Conservation Values of the Protected Property be preserved and maintained by the continuation of compatible land uses on the Protected Property. These uses include: 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. Grantor, owner in fee of the Protected Property, has the right to identify, protect, and preserve in perpetuity the Conservation Values of the Protected Property, and desires to transfer such rights to Grantee.

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 grant 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 over the Protected Property, consisting of the rights in the Protected Property, hereinafter enumerated, subject only to the restrictions set forth herein ("Easement").

B. Grantor expressly intends that this Easement run with the land and that this Easement shall be binding upon Grantor's personal representatives, successors, and assigns.

## III. PURPOSE

A. It is the purpose of this Easement to preserve and protect the estuarine habitat, scenic, open-space, natural character and ecological value of the Protected Property. All uses must be consistent with the preservation of Conservation Values of the site best characterized as "fully functioning estuarine habitats".

B. Further, it is the purpose of this Easement to benefit the public by allowing for access to the Protected Property for scientific research, and for members of the public to observe and enjoy its natural environment to the extent such entry does not damage the Conservation Values on the Protected Property.

C. Grantor intends that the Protected Property shall not be converted nor directed to any uses other than those identified herein, subject to the Public Trust Doctrine, the treaty rights of federally-recognized Indian tribes, and the police powers of state and local jurisdictions.



#### IV. RIGHTS CONVEYED TO GRANTEE

To accomplish the purpose of this Easement the following rights are hereby conveyed to Grantee:

A. Identification and Protection. To identify, preserve and protect in perpetuity and to enhance by mutual agreement the 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 purposes of enforcing the provisions of this Easement.

C. Injunction and Restoration. To seek to enjoin any activity on, or use of, the Protected Property by any person or entity which is inconsistent with this Easement, and to 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 Grantee's interest in the Protected Property in accordance with Section XIII. herein.

#### V. PROHIBITED USES

A. General. Any use of, or activity on, the Protected Property inconsistent with the purposes of the Easement is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in or permit any such use or activity. Without limiting the generality of 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. Further subdivision of the Protected Property, including but not limited to platting, replats, judicial partition or testamentary partition. Any subdivision potential which exists now or as created in the future shall be deemed to be extinguished.



C. Construction. Placement or construction of any buildings, structures, or other improvements of any kind including, without limitation, roads, utilities, parking lots, bulkheads, piers, docks and breakwaters subject to the power of condemnation.

D. Erosion or Water Pollution. Any use or activity on the Protected Property that causes or is likely to cause significant soil degradation or erosion or significant water pollution.

E. Alteration of Land and Natural Hydrology. Draining, filling, dredging, ditching, or diking of tideland areas is prohibited except for the study of any incidental archeological findings, and as deemed necessary by Grantor and Grantee to preserve or protect the Conservation Values of the Protected Property, provided that any such activity shall be subject to prior written approval by Grantee.

F. Alteration of Naturally Occurring Habitats. Alteration of naturally occurring habitats, including removal of native vegetation located on the Protected Property, except as deemed necessary by Grantor and Grantee to protect or preserve the Conservation Values of the Protected Property; provided that any such activity shall be subject to prior written approval by Grantee. Removal of plants that are listed as noxious plants by the State of Washington Department of Agriculture –and the Department of Natural Resources is permitted.

G. Application of Agricultural Chemicals. Application of agricultural chemicals including fertilizers, animal wastes and pesticides, except as deemed necessary by Grantor and Grantee to preserve, protect, or enhance the Conservation Values of the Protected Property; provided that any such activity shall be subject to prior written approval by Grantee.

H. Waste Disposal. Disposal or storage of rubbish, garbage, debris, hydrocarbons, abandoned vehicles or equipment or parts thereof or other unsightly, offensive, or hazardous waste or material on the Protected Property.

I. Roads, Trails and Waterways. Construction of roads, trails, paths or waterways for any use.

J. Signs. Placement of commercial signs, billboards, or other advertising material on the Protected Property.

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

L. Wildlife Disruption. Intentional disruption of wildlife breeding and nesting activities. This would include, but not limited to, any human activity or disruption by domestic animals.

M. Introduced Plants and Animals. Introduction of nonnative plant and animal species, except as deemed necessary by Grantor and Grantee to protect the Conservation Values of the



Protected Property; provided that any such activity shall be subject to prior written approval of Grantee.

N. Commercial Aquaculture. Planting and raising of plants or animals for commercial purposes.

O. Mitigation Banking and Credits. Wetland or aquatic resource creation, enhancement, restoration or preservation for the purpose of, directly or indirectly, compensating for or mitigating wetland or aquatic resource losses or damages in any way associated with actual or potential impacts of development, whether by a public or private entity or person including Sale or exchange of wetland or aquatic resource mitigation credits based on the creation, restoration, enhancement or preservation of wetlands and/or aquatic resources within the Protected Property. Provided the property may be used for functional enhancement and restoration associated with other oil spills or hazardous waste spills within Fidalgo Bay.

## VI. PERMITTED USES

A. General. Grantor reserves for itself, and its successors and assigns, 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, and its successors and assigns, the following uses and activities, but is not obligated to undertake any of the following uses and activities:

B. Public Use and Enjoyment. To allow entry on the Protected Property by persons and groups for observation and enjoyment of its natural environment, including recreational activities such as boating or bird watching, provided that such activities are conducted in a manner and intensity that does not adversely impact plant and wildlife habitat on the Protected Property.

C. Scientific/Educational Use. To allow entry on the Protected Property by persons or groups for educational, scientific, and biological observation and study.

D. Restoration Planning and Implementation. Management practices designed to enhance or restore naturally occurring habitats within the Protected Property. Such activities shall be carried out in compliance with federal, state and local regulations, and shall be mutually agreed upon by both Grantor and Grantee. If such restoration work involves activities prohibited in Section V., above, Grantor shall submit to Grantee, for review and approval, a restoration or stewardship plan that describes the restoration objectives of the plan and the specific practices proposed. Provided, sediment nourishment to maintain and enhance the functions of existing mudflats and eelgrass habitats and natural succession processes is explicitly recognized here as anticipated potential restoration.

E. Management Plan. Grantor will work with Grantee and other agencies to fund and develop a management plan for this area which shall identify the Conservation Values and resources





to be conserved consistent with the purposes Chapter 79.71, RCW (Resource Conservation Areas) and this easement.

F. Signage. To place signs on the Protected Property to declare that a Conservation Easement held by Skagit Land Trust has been placed on the property or to post notice of a wildlife or natural preserve area or to state the conditions of access to the Protected Property, provided that such signs are built and located to protect and preserve the Conservation Values of the Protected Property.

G. Emergencies. To undertake other activities necessary to protect public health or safety on the Protected Property or adjacent property, or which are actively required by and subject to compulsion of any governmental agency with authority to require such activity, provided that any such activity shall be conducted in a manner that protects the Conservation Values of the Protected Property to the greatest practicable extent, taking into account all the surrounding circumstances.

H. Easements. To allow the development of existing easements which will not significantly diminish the Conservation Values of the Protected Property, and measures to mitigate impacts will result in a clear net gain in the Conservation Values. Mitigation sequencing shall focus on avoidance of the Property as the preferred mitigation action.

## VII. NOTICE AND APPROVAL

A. Information Exchange. Grantor shall provide the name, address and telephone number of the individual(s) responsible for the management of the subject property to Grantee by September 1, 2000 and annually thereafter. Grantee shall provide to Grantor's manager(s) a copy of its annual monitoring report and Grantee's current address for purposes of the notices to be provided pursuant to this easement by December 31, 2000 and annually thereafter.

B. Notice. Grantor shall notify Grantee and receive Grantee's written approval prior to undertaking certain permitted activities provided in Sections V.E., F., G., J., M., and VI.D, E., G., H. The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted uses and activities is to afford Grantee an opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the purposes of this Easement. 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.

C. Approval. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request for approval. Grantee may withheld approval only upon a reasonable determination by Grantee that the action as



proposed would be inconsistent with the purposes of this Easement. Grantee's approval may include reasonable conditions which must be satisfied in undertaking the proposed use or activity. If Grantor must undertake emergency action to protect health or safety on the Property or must act by and subject to compulsion of any governmental agency, Grantor may proceed with such action without Grantee's approval, provided, that Grantor shall notify Grantee of such actions as soon as is practicable.

D. Grantee's Failure to Approve Within the Required Time. Where Grantee's approval is required, and if Grantee does not grant or withhold its approval in the time period and manner set forth herein, Grantor may assume Grantee's approval of the permitted use or activity in question.

E. Addresses for Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing either served personally or sent by first class mail, postage prepaid, addressed to as follows:

To Grantors: Washington State Department of Natural Resources  
Aquatic Resources Division  
P.O. Box 47027  
Olympia, WA 98504

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

or to such other address as either party from time to time shall designate by written notices to the other.

### VIII. DISPUTE RESOLUTION

All disputes between the parties concerning the construction or implementation of the rights and liabilities of the parties pursuant to this agreement shall be subject to this dispute resolution section.

A. Either party may give written notice to the other party of a dispute and request that the matter be subject to mediation with the mediator to be selected from those available from a recognized dispute resolution center or mediation service, with each party to pay 50% of the mediator's fees. Both parties shall meet in good faith as is reasonably requested by the mediator in an attempt to resolve the dispute. Thirty (30) days after appointment of a mediator, if no resolution has been reached to the mutual satisfaction of the parties, either party may pursue arbitration.

B. Any arbitration shall be conducted pursuant to Washington State statutes, Washington Superior Court Rules and Skagit County Local Rules for Mandatory Arbitration, no matter the amount in controversy or the remedy sought. The arbitrator shall have full powers in law and equity



to award damages, declare rights and liabilities, prohibit acts, require that acts be performed or to enjoin any activity or use. To commence arbitration, a party must commence an action in Skagit County Superior Court to compel. The arbitrator's award shall be subject to appeal only pursuant to the provisions of Chapter 7.04 RCW now or as hereafter amended. The court shall have full jurisdiction to enforce the arbitrator's decision, including Civil and Criminal contempt.

C. The foregoing notwithstanding, either party may commence an action in Superior Court (whether mediation or arbitration has commenced or not) to seek a temporary injunction or preliminary injunction pursuant to Washington State Laws and the Superior Court Rules. The Court shall have exclusive jurisdiction to hear such temporary or preliminary injunction matters and the Superior Court's decision with respect to such injunction requests shall stand until a hearing on the merits is conducted before the arbitrator and an arbitrator's award is made. The Court shall enter an injunction at any time it is shown by a preponderance of the evidence that a violation of the terms of this Easement will cause any injury to the conservation values protected by this Easement.

#### IX. GRANTEE'S REMEDIES

A. General. Grantor and Grantee are presumed to have a common interest in the reasonable application of the terms of this Easement to the Protected Property and the parties undertake the grant and acceptance of the Easement in a spirit of cooperation which presupposes regular consultation between Grantor and Grantee, not less frequently than bi-annually. Grantor and Grantee shall be bound by agreements as to the interpretation of this Easement that are set forth in writing and recorded in the minutes and records of Skagit Land Trust or its successor.

B. Notice of Failure. If Grantee determines that the Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Protected Property so injured.

C. Grantor's Failure to Respond. If Grantor: (1) fails to cure a violation within thirty (30) days after receipt of a notice thereof from Grantee or under circumstances for which the violation cannot be reasonably cured within the thirty (30) day period, fails to commence curing such violation within thirty (30) days of notice; or fails to continue diligently to cure such violation until finally cured; Grantee may then invoke dispute resolution as set forth in Section VIII. Above.

D. Grantee's Action. Pursuant to Section VIII., Grantee may bring action in Skagit County Superior Court to enforce the terms of this Easement, to enjoin the violation, ex parte as



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necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including damages for the loss of the Conservation Values; and to require the restoration of the Protected Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property.

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, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

F. Costs of Enforcement. In the event that Grantee enforces the terms of this Easement, the cost of restoration and Grantee's reasonable enforcement expenses shall be born by Grantor, or its successors or assigns, as the case may be. In the event that Grantee secures redress for an easement violation without initiating or completing the judicial proceeding, the cost of such restoration and Grantee's reasonable expenses, shall be born by Grantor, or its successors, or assigns, as the case may be.

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 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.

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.

I. Acts Beyond Grantor's 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 resulting from such causes.

J. Estoppel Certificates. Upon request by Grant, 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. COSTS, LIABILITIES, AND INDEMNIFICATION

Liabilities. 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.

## XI. 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, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. In the event of such extinguishment, the Court shall award Grantee the fair market value of the easement. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this Easement.

B. 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.

C. Subsequent Transfers. Grantor agrees (1) to incorporate the terms of 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, a 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.

## XII. 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 shall affect the qualification of this Easement or the status of Grantee under any applicable laws, including RCW 64.04.130, Chapter 84.34 RCW, or Section 170(h) of the Internal Revenue Code of 1986, as amended, and 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 the Lands Records Office, Olympia, Washington and any other jurisdiction in which such recording is required.

## XIII. ASSIGNMENT

A. Assignment. This Easement is transferable (with Grantor's approval, which will not be unreasonably withheld), but Grantee may 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 organization, or the Grantee shall cease to exist, then its rights and duties hereunder shall become vested and fall upon the following named entities to the extent that they shall accept this Easement, in the following order:

1. San Juan Preservation Trust  
P.O. Box 327  
Lopez Island, WA 98261

2. Such other entity, with purposes similar to Skagit Land Trust, constituting a "qualified organization" within the meaning of the Internal Revenue Code of 1986 and constituting a "non-profit nature conservancy corporation" as defined by RCW 64.04, 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.

#### XIV. RECORDATION

Grantee shall record this instrument, at Grantee's expense, at the time of Grantor's receipt of the property, in the official records of Skagit County, Washington, the Lands Records Office, Olympia Washington and may re-record it at any time as may be required to preserve its rights in this Easement.

#### XV. GENERAL PROVISIONS

A. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Washington.

B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, 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.

C. 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.

D. 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.

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

F. "Grantor" - "Grantee". The terms "grantor" and "grantee" whenever used herein, and any pronouns used in the place thereof shall mean and include, respectively, the above-named grantor, successors and assigns and the above-named grantee, and its successors and assigns. All covenants, terms, conditions, restrictions and rights of this Easement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, 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.

H. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

## XVI. SCHEDULE OF EXHIBITS

- A. Legal Description of Property Subject to Easement.
- B. Site Map.
- C. Baseline Documentation



CONSERVATION EASEMENT FOR SOUTH FIDALGO BAY

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

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 10<sup>th</sup> day of December 1999

Washington State Dept. of Natural Resources (Grantor)

Jennifer M. Belcher  
by JENNIFER M. BELCHER,  
Commissioner of Public Lands

State of Washington )  
County of Skagit ) ss.

On this day personally appeared before me Jennifer M. Belcher to me known to be the individual 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 10 day of December, 1999

Michelle Benton  
Notary Public in and for said State of Washington

Michelle Benton  
Printed Name

Residing at  
Olympia, WA

My commission expires: 4/12/01



Approved as to Form Only  
This 10<sup>th</sup> day of December, 1999

CHRISTINE O. GREGOIRE

By Jonathon Gurish  
JONATHON GURISH  
Assistant Attorney General



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Conservation Easement for South Fidalgo Bay

State of Washington )  
County of Skagit ) ss.

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

Dated: December 9, 1999

Jerald R. Haegele, President  
for Skagit Land Trust (Grantee)

By: Jerald R. Haegele

Its President

State of Washington )  
County of Skagit ) ss.

On this day personally appeared before me Jerald R. Haegele to me known to be the president of Skagit Land Trust described in and who executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of Skagit Land Trust, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

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



Katie Kroon 12/9/99  
Notary Public in and for said State of Washington  
Residing at La Conner  
Commission Expires July 6, 2000  
Printed Name:

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Kathy Hill, Skagit County Auditor  
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EXHIBIT "A"

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PARCEL "A":

That portion of Tract 15, "Plate No. 12, Tide and Shorelands of Section 32, Township 35 North, Range 2 East, W.M., Anacortes Harbor", according to the recorded plat thereof, on file in the office of the Commissioner of Public Lands in Olympia, Washington; described as follows:

Commencing at the initial point of said Tract 15; thence South 21 degrees 19' East along the Westerly line of said Tract 15, a distance of 316 feet; thence South 29 degrees 05' East along said Westerly line of said Tract 15, a distance of 202.5 feet; thence South 30 degrees 03' East along said Westerly line of said Tract 15, a distance of 195 feet; thence South 89 degrees 33' East to the East line of said Tract 15; thence North 14 degrees 22' East along the Easterly line of said Tract 15 to the Northeast corner thereof; thence North 89 degrees 33' West along the North line of said Tract 15, a distance of 2139 feet, more or less, to the point of beginning;

EXCEPT that portion thereof, if any, conveyed to the State of Washington by Deed recorded October 15, 1956 under Auditor's File No. 542873.

PARCEL "B":

That portion of Tract 15, "Plate No. 12, Tide and Shorelands of Section 32, Township 35 North, Range 2 East, W.M., Anacortes Harbor", according to the recorded plat thereof on file in the office of the commissioner of Public Lands in Olympia, Washington described as follows:

Commencing at the initial point of said Tract 15; thence South 21 degrees 19' East along the Westerly line of said Tract 15, a distance of 316 feet; thence South 29 degrees 05' East along said Westerly line of said Tract 15, a distance of 202.5 feet; thence South 30 degrees 03' East along said Westerly line of said Tract 15, a distance of 195 feet to the true point of beginning of this description; thence South 89 degrees 33' East to the East line of said Tract 15; thence South 14 degrees 22' West along the Easterly line of said Tract 15 to the Southeast corner thereof; thence North 89 degrees 22' West along the South line of said Tract 15, a distance of 1444 feet to the Southwest corner of said Tract 15; thence North 15 degrees 48'



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EXHIBIT "A"  
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East along the Westerly line of said Tract 15, a distance of 262 feet; thence North 5 degrees 35' West along the Westerly line of said Tract 15, a distance of 150 feet; thence North 15 degrees 5' West along said Westerly line of said Tract 15, a distance of 200 feet; thence North 30 degrees 03' West along said Westerly line of said Tract 15, a distance of 101.3 feet, more or less, to the true point of beginning.

EXCEPT that portion thereof, if any, conveyed to the State of Washington by Deed recorded October 15, 1956 under Auditor's File No. 542873.

PARCEL "C":

Tracts 8, 9, 10, 11, 12, 13, 14 and that portion of Tracts 16 and 17 lying South of the railway, "Plate No. 12, Tide & Shorelands in Section 32, Township 35 North, Range 2 East, W.M., Anacortes Harbor", according to the recorded plat thereof, EXCEPT that portion of said Tracts 14, 16 and 17, conveyed to the State of Washington for highway purposes by Deed dated September 7, 1956 and recorded October 15, 1956, under Auditor's File No. 542873, ALSO EXCEPT that portion of said Tracts 16 and 17 conveyed to the State of Washington for highway purposes by Deed dated November 20, 1957 and recorded January 3, 1958 under Auditor's File No. 560284.

PARCEL "D":

Tracts 4, 5, 6, 7, 8, 9 and 10, "Plate No. 13, Tide & Shorelands in Section 5, Township 34 North, Range 2 East, W.M., Anacortes Harbor", according to the recorded plat thereof, EXCEPT that portion of said Tracts 4, 8, 9 and 10 conveyed to the State of Washington for highway purposes by Deed dated September 7, 1956 and recorded October 15, 1956 under Auditor's File No. 542873.

EXCEPT that portion of the above described premises conveyed to the State of Washington for highway purposes by Deed dated January 18, 1961 and recorded February 17, 1961 under Auditor's File No. 603915.

PARCEL "E":

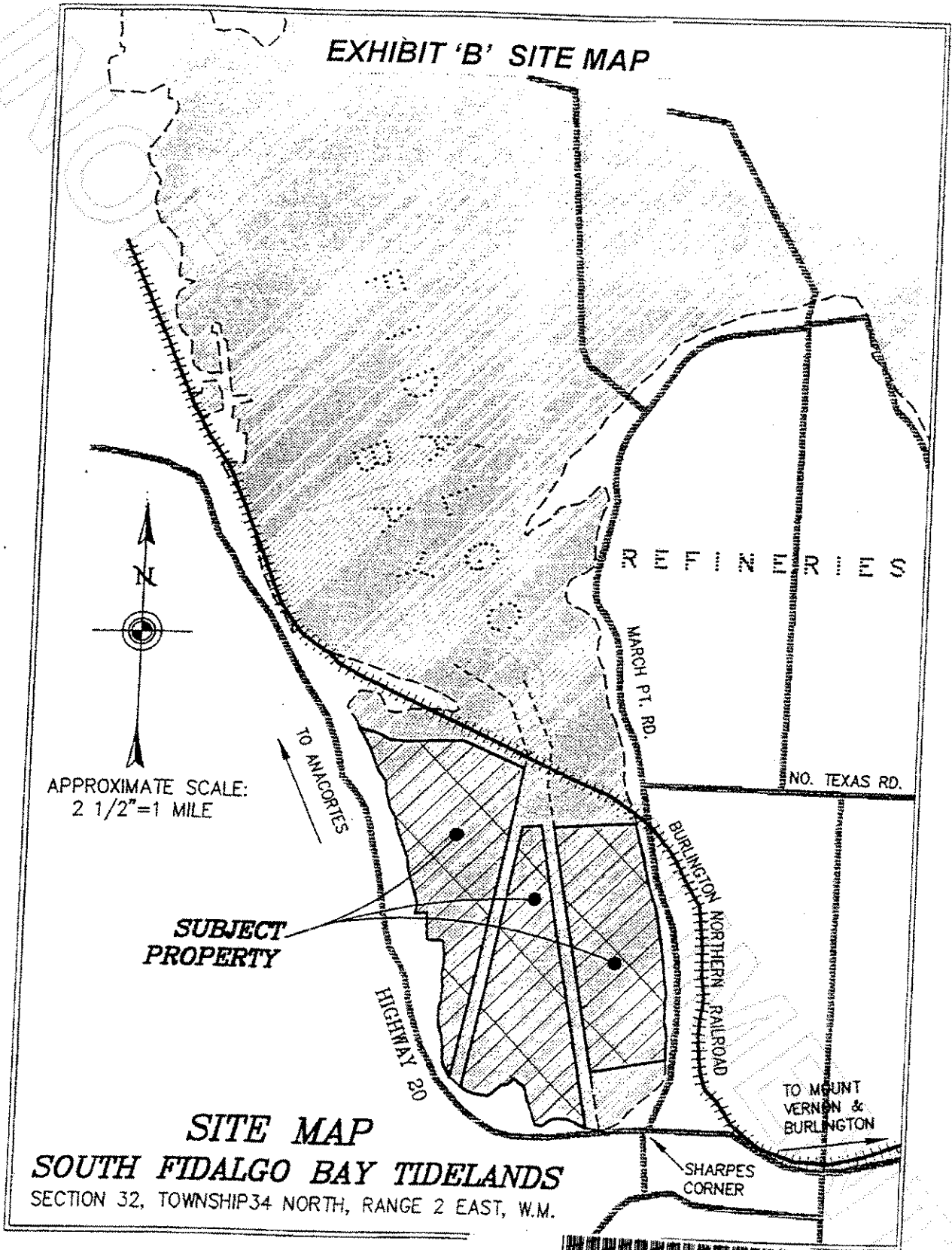
Second Class Tidelands in front of and abutting upon Government Lots 5 and 6, Section 32, Township 35 North, Range 2 East, W.M.

PARCEL "F":

Second Class Tidelands in front of and abutting upon Government Lot 4, Section 4, Township 34 North, Range 2 East, W.M.



**EXHIBIT 'B' SITE MAP**



APPROXIMATE SCALE:  
2 1/2" = 1 MILE

**SUBJECT  
PROPERTY**

**SITE MAP**  
**SOUTH FIDALGO BAY TIDELANDS**  
SECTION 32, TOWNSHIP 34 NORTH, RANGE 2 EAST, W.M.



**EXHIBIT C**  
**SKAGIT LAND TRUST**  
**CONSERVATION EASEMENT BASELINE DATA DOCUMENT**

**Donor Information:**

Name Department of Natural Resources, Aquatic Lands Division      Parcels: Tracts 1 through 9 in Township  
Address PO Box 47027      34N Range 2E Section 5 and Tracts 5  
City Olympia WA 98504      through 9 and 12 through 16 in Township  
35N Range 2E Section 32

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

Name(s) Martha Bray      Phone (360) 428-7878

**Property Information:**

Acres 450    Number of Buildings 0    Descriptions Attached      Yes XX No  
Percent Tidelands 100    Percent Forest 0    Percent Farmland 0    Percent Other 0  
Percent buildings and Grounds 0    County Zoning Light Manufacturing    Property ID No.       
Type of Ownership FEE    Mortgage      Yes X No    Mtg. Holder     

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 and salmon habitat.

**Special Features of Property:** The protected property consists of 450 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 south of a railroad trestle that bisects the bay from Weaverling Spit in the west to March's Point Road in the east.

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 baitfish 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,



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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.

Over half 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.

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 the northern half 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 bay contains 4.3 linear miles of surf smelt spawning habitat, most of which is outside the boundaries of the protected property (Penttila, 1995). One surf smelt spawning beach has been identified along the northeast edge of the protected property. 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.

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. This shell midden is located just north of the protected property. Native Americans continue to utilize the shellfish populations of Fidalgo Bay today, harvesting numerous species of clams, mussels, and Pacific oysters.



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Shellfish beds occur along the northern edge of the protected property, just south of the railroad trestle. 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. 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 has been affected by diking and riprapping. The entire east shore of the bay has been riprapped to protect March's Point Road and the southern edge of the bay has been diked to protect State Route 20 from erosion and high water flooding. Along the western shore, the highway is perched above the bay and the shoreline is composed of bedrock. There are no structures between the protected property and the roadways to the south and east. However, to the immediate north of the protected property there is a recreational vehicle park located on Weaverling Spit and a railroad trestle crosses the bay between Weaverling Spit and March's Point. There are a few residential homes to the west, between the protected property and State Route 20. 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). One event, a crude oil spill of up to 20,000 gallons in February 1991, required the replacement of beach material within the boundaries of the protected property. Nine sediment samples were collected from the property 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.

According to Skagit County records of drainage structures associated with the March's Point Road along the east side of Fidalgo Bay, there are 10 culverts that carry water under the road from the land to the east of the bay. Nine of these culverts are less than 60 feet long. The tenth culvert is 150 feet long. Three of the culverts have associated catch basins. In the early 1970s Skagit County, Washington state, and area businesses participated in a cost share



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program to facilitate the drainage of lands to the south of Fidalgo Bay. They installed a pump station on the south side of State Route 20 and an 18" culvert with a tide gate under the highway into Fidalgo Bay. This system removes water from the lands on the south side of State Route 20. In 1990 the pump station failed during a period of high water and the area south of State Route 20 flooded.

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 the protected property. 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.

*Prepared by Brenda Cunningham for Skagit Land Trust on November 15, 1999*



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**References**

City of Anacortes. August 1997. Fidalgo Bay-Wide Plan, Final EIS.

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.

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.

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

In compliance with Section 1.170A-14(g)(5) of the federal tax regulations, this natural resources inventory is an accurate representation of the property at the time of conservation easement donation.

*[Signature]*  
Grantor Date

12/09/99  
Grantor Date

*[Signature]*  
for Skagit Land Trust (Grantee)

December 9, 1999  
Date

- Attachments:     Aerial Photos/Map     On-site Photographs     Appraisal  
                    Assessor Printout         Title Search/Insurance     Vegetation Inventory



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