

**WHATCOM COUNTY COUNCIL AGENDA BILL**

NO. 2007-418

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Samya Lutz	SL	10/10/07	<b>RECEIVED</b>  <b>OCT 16 2007</b>  <b>WHATCOM COUNTY COUNCIL</b>	10/23/07	P&D/Council
Division Head: Linda Peterson	LP	10-10-07			
Dept. Head: Sam Ryan	SR	10-10-07			
Prosecutor: Royce Buckingham	RB	10-10-07			
Purchasing/Budget: Brad Bennett					
Executive: Pete Kremen	PK	10-16-07			

**TITLE OF DOCUMENT:**  
Resolution for authorization of the purchase of a conservation easement on the Ebe farm property

**ATTACHMENTS:**  
Memo, Resolution, Agreement Covering Terms of Sale, Regional property location map, and Purchase and Sale Agreement with Conservation Easement (and exhibits) as attachment

SEPA review required? ( ) Yes ( x ) NO	Should Clerk schedule a hearing? ( ) Yes ( x ) NO
SEPA review completed? ( ) Yes ( ) NO	Requested Date:

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Authorization of purchase of a conservation easement under WCC 3.25A – Purchase of Agricultural Development Rights program. The Ebe farm property is the eighth purchase under the PDR program. Matching funds have been authorized by USDA for 50% of the purchase price. A supplemental budget request will be included in Supplemental Budget #11, 2007.

**COMMITTEE ACTION:**  
10/23/2007: Forwarded to Council for approval

**COUNCIL ACTION:**  
10/23/2007: Council Approved 7-0  
Res. 2007-059

<b>Related County Contract #:</b>	<b>Related File Numbers:</b>	<b>Ordinance or Resolution Number:</b> Res. 2007-059
-----------------------------------	------------------------------	---

**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).

SPONSORED BY: Consent  
PROPOSED BY: Planning  
INTRODUCTION DATE: 10/23/2007

**RESOLUTION # 2007-059**

**AUTHORIZING WHATCOM COUNTY EXECUTIVE TO PURCHASE DEVELOPMENT RIGHTS ON THE EBE PROPERTY**

**WHEREAS**, Whatcom County government recognizes agriculture as a major contributor to the local economy and a high quality of life for Whatcom County citizens; and

**WHEREAS**, The Growth Management Act and the County Comprehensive Plan support the retention of agricultural lands of long term commercial significance and encourage the use of innovative techniques to do so; and

**WHEREAS**, Ordinance #92-002 enacted a property tax levy known as the Conservation Futures Tax as authorized by RCW 84.34.230 to provide a funding source to assist in acquiring open space, wetlands, farm and agricultural land, and timber land; and

**WHEREAS**, Ordinance #2002-054 authorized the creation of a Purchase of Development Rights program for agricultural land within Whatcom County; and

**WHEREAS**, Ordinance #2002-054 established a Purchase of Development Rights Oversight Committee to provide review and assistance to the PDR Administrator; and

**WHEREAS**, Resolution #2002-040 adopted the PDR Guidelines Document which includes specific direction for program administration and conservation easement acquisitions; and

**WHEREAS**, The PDR Oversight Committee reviewed this property, found the property complies with the PDR Guidelines, recommended this property for purchase, and authorized the PDR Administrator to proceed with the acquisition process on August 3, 2007; and

**WHEREAS**, The Ebe property has been appraised and a conservation easement has been drafted which meets the requirements of both the Whatcom County Agricultural Purchase of Development Rights Program and the Federal Farm and Ranch Land Protection Program; and

**WHEREAS**, Matching federal funds will be provided by the Natural Resource Conservation Service from the Farm and Ranch Land Protection Program to cover 50% of the purchase price; and

**WHEREAS**, The landowners have agreed to the offer price and conservation easement conditions.


**NOW, THEREFORE, BE IT RESOLVED** by the Whatcom County Council that:

1. The Executive is authorized to purchase the development rights of the property as identified in Exhibit 1 of this resolution (the Conservation Easement) for the full appraisal amount and to expend any additional funds necessary to cover other purchase related costs provided that all terms and conditions of the purchase are satisfied.

APPROVED this 23 day of October, 2007


ATTEST:  
  
Dana Brown-Davis, Council Clerk

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

  
\_\_\_\_\_  
Carl Weimer, Chairperson

APPROVED as to form:

  
\_\_\_\_\_  
Civil Deputy Prosecutor

  
\_\_\_\_\_  
Pete Kremen, Executive

Date: 10-25-07

Exhibit B

# Ebe Property

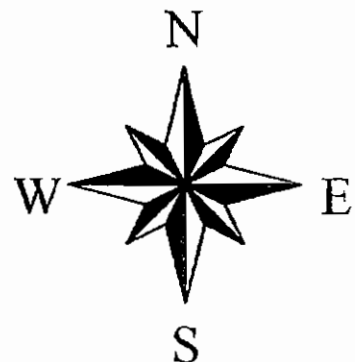


Total of Two Parcels: R5A Zone

West Parcel - 400231324070 (30.0 acres)

East Parcel - 400231370070 (10.38 acres)

\*Located on Harksell Road, east of I5



## AGREEMENT COVERING TERMS OF SALE

This AGREEMENT COVERING TERMS OF SALE OF A CONSERVATION EASEMENT ("Agreement") is entered into on Oct month/day 12, 2007 between **Whatcom County**, a municipal corporation ("Buyer"), and Greg Ebe ("Seller").

The purpose of this agreement is clarify the general terms of sale involved in the purchase of an agricultural protection conservation easement on the Ebe Farm Property, a property of approximately 40.38 acres within the SE corner of Section 31, Township 40, Range 2 East of unincorporated Whatcom County, WA.

The property is being purchased under the County's Purchase of Development Rights Program. This program includes matching funds from the United States Department of Agriculture's Farm and Ranchland Protection program and local "Conservation Futures" funds.

Whatcom County anticipates a decision regarding this purchase within 60 days. This agreement constitutes a commitment on the part of the Sellers to the following:

1. Real Property. Sellers agree to sell an Easement in perpetuity over the Property, consisting of certain rights and restrictions as defined in the Easement. This Agreement is contingent on Sellers and the Whatcom Land Trust agreeing on the Baseline Data as described in Section XI of the Easement, upon United States Department of Agriculture providing a portion of the purchase price in the amount of \$127,500 and upon Whatcom County Council allocating funds and authorizing purchase of the conservation easement on property.
2. Agreed Price. The price offered for the Conservation Easement ("Agreed Price") is **two hundred and fifty-five thousand DOLLARS (\$255,000.00)**. The Agreed Price, less the Sellers' share of closing costs, will be paid to Sellers at closing.
3. Title Policy. Sellers shall cause First American Title Company to issue to Grantees at closing a standard coverage owner's policy of title insurance insuring Grantees' title to the Conservation Easement in the full amount of the Offer Price subject only to the Permitted Encumbrances ("Title Policy"). The Title Policy must be dated as of the date of execution and delivery of the Conservation Easement (the "Closing Date").
4. Closing. The costs of closing, including but not limited to title insurance and fees of an escrow agent, shall be divided and borne equally by the parties except for excise tax which shall be paid by Sellers. The Sellers' share shall be deducted from the Purchase Price and the reduced amount shall be reflected in the final payment. Closing will occur within 60 days of the signing of this Agreement, unless the parties agree otherwise.

5. Amendments. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**BUYER:**

WHATCOM COUNTY, a municipal corporation

Kraig Olason Date: 10/10/07  
Kraig Olason,  
PDR Administrator

**SELLERS:**

Gregory A. Elia Date: 10-12-07

\_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to form:

[Signature] Date: 10-10-07  
Deputy Prosecuting Attorney, Whatcom County

**EBE**  
**CONSERVATION EASEMENT**  
**PURCHASE AND SALE AGREEMENT**

This CONSERVATION EASEMENT PURCHASE AND SALE AGREEMENT ("Agreement") is entered into on \_\_\_\_month/date\_\_\_\_, 2007 between **Whatcom County**, a municipal corporation ("Buyer"), and Leonard Ebe Real Estate, LLC, property owners ("Sellers").

**RECITALS:**

A. Sellers are fee simple owners of real property (the "Property") in Whatcom County, Washington. Exhibit A of Attachment # 1 is the legal description of the Property and is incorporated herein by reference.

B. The Buyer wishes to protect the Property from development and preserve its quality as productive farmland.

C. The Buyer desires to purchase and the Sellers desire to sell an agricultural protection conservation easement (Easement) under which Whatcom County and Whatcom Land Trust are grantees, a copy of which is attached as Attachment #1 and is incorporated herein by reference.

D. The Federal Farm and Ranchland Protection Program's purpose is to purchase conservation easements in land with prime, unique, or other productive soil for the purpose of protecting topsoil from conversion to nonagricultural uses (16 USC 3838h-I). Sellers acknowledge that \$127,500 is provided by the United States Department of Agriculture (United States), through the Farm and Ranchland Protection Program, and thus entitles such Secretary to the rights identified in the Easement.

E. The Property is approximately 40.38 acres and is currently farmed.

F. The Property has significant agricultural value to the Buyer and to the people of Whatcom County and the State of Washington.

G. Conveyance of rights and imposition of restrictions described in the Easement furthers the intent of Whatcom County Ordinance No. 2002-054, provided as Exhibit C of Attachment #1, to preserve land for agricultural purposes and has substantial public benefits.

H. As owners of the Property, Sellers have the right to convey the rights and restrictions contained in the Easement in perpetuity.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of

which are hereby acknowledged, Sellers and Buyer agree as follows:

### AGREEMENT

1. Real Property. Sellers agree to sell and Buyers agree to purchase an Easement in perpetuity over the Property, consisting of certain rights and restrictions as defined in the Easement. This Agreement is contingent on Sellers and the Whatcom Land Trust agreeing on the Baseline Data as described in Exhibit E of Attachment #1.

2. Purchase Price. The total purchase price for the Conservation Easement ("Purchase Price") is **two hundred and fifty-five thousand DOLLARS (\$255,000.00)**. The Purchase Price, less the Seller's share of closing costs, will be paid to Sellers at closing.

3. Title Policy. Sellers shall cause First American Title Company to issue to Grantees at closing a standard coverage owner's policy of title insurance insuring Grantees' title to the Conservation Easement in the full amount of the Purchase Price subject only to the Permitted Encumbrances ("Title Policy"). The Title Policy must be dated as of the date of execution and delivery of the Conservation Easement (the "Closing Date").

4. Closing. The costs of closing, including but not limited to fees of an escrow agent, if any, shall be divided and borne equally by the parties, except for excise tax and title insurance which shall be paid by Sellers. The Sellers' share shall be deducted from the Purchase Price and the reduced amount shall be reflected in the final payment. Closing will occur within 60 days of the signing of this Agreement, unless the parties agree otherwise.

5. Notices. Any notice under this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service, given by mail or via facsimile. E-mail transmission of notice shall not be effective. All notices must be addressed to the parties at the following addresses, or at such other addresses as the parties may from time to time direct in writing:

Buyer:

Whatcom County  
Attn: Kraig Olason  
5280 Northwest Drive  
Bellingham, WA 98226

With a copy to:

Whatcom County Prosecutor's Office  
Attn: Royce Buckingham  
311 Grand Ave.  
Bellingham, WA 98225  
Facsimile No.: 360-738-4561

Seller:

Greg Ebe  
2212 Birch Bay - Lynden Road  
Custer, WA 98240

Any notice will be deemed to have been given, when personally delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit in the U.S. mail, and if delivered by facsimile, the same day as verified.

6. Counterparts; Faxed Signatures. This Agreement may be executed in any number of counterparts and by different parties hereto, each of which counterpart when so executed shall have the same force and effect as if that party had signed all other counterparts. Facsimile transmitted signatures shall be fully binding and effective for all purposes.

7. Amendments. This Agreement may be amended or modified only by a written instrument executed by Sellers and Buyer.

8. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the state of Washington.

9. Time of the Essence. Time is of the essence of this Agreement and of all acts required to be done and performed by the parties hereto.

10. Nonmerger. The terms and provisions of this Agreement, including without limitation, all indemnification obligations, will not merge in, but will survive, the closing of the transaction contemplated under the Agreement.

11. Assignment. Buyer shall not assign this Agreement without Sellers' prior written consent. Sellers may not assign this Agreement, except in whole without the Buyer's prior written consent. As a condition to approving any assignment of this Agreement, Buyer may require that the assignee confirm its status as an institutional investor or otherwise confirm compliance with any securities laws. No assignee of this Agreement shall ever be permitted to certificate the payments to be made by the Buyer under this Agreement as part of a private placement or public securities offering.

12. Additional Acts. Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by any party hereto, the parties agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered, any and all such further acts, deeds and

assurances, which may reasonably be required to effect the Agreement contemplated herein.

13. Condition of Property. Sellers agree to deliver the property to the buyer in the condition that it was in on the date of this Agreement. Any activities undertaken by anyone, with or without the Sellers' permission and not permitted in Section VI of Attachment #1, or other activities that result in property waste or render the property unsuitable or unable to comply with the purpose of the conservation easement as contained in Section III of Attachment #1 are prohibited. Such shall make this agreement voidable by the County at its discretion.

14. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the purchase and sale of the Easement, and supersedes all prior agreements and understandings, oral or written, between the parties relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**BUYER:**

WHATCOM COUNTY, a municipal corporation

**SELLERS:**

Property Owners:

\_\_\_\_\_  
Greg Ebe,

Date: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Pete Kremen, Executive

Date: \_\_\_\_\_

Approved as to form:

  
\_\_\_\_\_  
Deputy Prosecuting Attorney, Whatcom County

Date: 10-10-07



After Recording Return To:

Whatcom Land Trust  
P.O. Box 6131  
Bellingham, WA 98227

DOCUMENT TITLE: **WHATCOM COUNTY AGRICULTURAL PROTECTION CONSERVATION EASEMENT**

GRANTORS: **LEONARD EBE REAL ESTATE**

GRANTEES: **WHATCOM LAND TRUST, WHATCOM COUNTY AND UNITED STATES OF AMERICA**

ABBR. LEGAL DESCRIPTION: **P# 400231 370070** – S 1321.54 ft m/l of W ½ SE – subj to esmt – exc W 30 acres of tr daf – S 1321.54 ft m/l of W ½ SE – less roads; and

**P# 400231 324070** – W 30 acres of tr daf – S 1321.54 ft m/l of W ½ SE – less roads

of SE. 31, TWP. 40N, RA. 2E of W.M.

## EBE AGRICULTURAL PROTECTION CONSERVATION EASEMENT

This grant of an agricultural protection conservation easement (“Easement”) is made this \_\_\_\_ day of \_\_\_\_\_ 2007, by \_\_\_\_\_ (referred to in this document as “Grantors”) to the WHATCOM LAND TRUST, WHATCOM COUNTY, and the UNITED STATES OF AMERICA (referred to in this easement as “Grantees.”)

### I. RECITALS.

The following recitals are a material part of this Easement.

- A. Grantors are fee simple owner of real property (the “Property”) in Whatcom County, Washington, that is the subject of this Easement. Exhibit A is the legal description and Exhibit B a site plan for that Property, both of which are attached and incorporated herein by reference.
- B. The federal Farm and Ranchland Protection Program's purpose is to purchase conservation easements in land with prime, unique, or other productive soil for the purpose of protecting topsoil from conversion to nonagricultural uses (16 USC 3838h-I). That Grantor acknowledges that \$127,500 was provided by the United States Department of Agriculture (United States), through the Farm and

Ranchland Protection Program, and thus entitles such Secretary to the rights identified herein.

- C. While "Grantees" include both the Whatcom Land Trust, Whatcom County, United States of America or its assigns, use of the term "Grantees" does not imply that joint approval is required to exercise Grantees' rights and responsibilities under this Easement. Those rights and responsibilities may be independently exercised by either Grantee.
- D. The Property is approximately 40.38 acres and is currently farmed.
- E. The Property has significant agricultural value to Grantees and to the people of Whatcom County and the State of Washington.
- F. Grantors and Grantees agree that the conveyance of rights and imposition of restrictions described in this Easement furthers the intent of Whatcom County Ordinance No. 2002-054, provided in Exhibit C, to preserve land for agricultural purposes and has substantial public benefits.
- G. As owners of the Property, Grantors have the right to convey the rights and restrictions contained in this Easement in perpetuity.

## II. CONVEYANCE AND CONSIDERATION.

- A. For the reasons stated above, in consideration of mutual covenants, terms, conditions, and restrictions contained in this Easement, and in consideration of payment of \$255,000 by Whatcom County and the United States to Grantors, Grantors hereby grant, convey and warrant to Grantees a Conservation Easement in perpetuity over the Property, consisting of certain rights and restrictions as defined in this Easement.
- B. This Easement is a conveyance of an interest in real property under the provisions of RCW 64.04.130.
- C. Grantors and Grantees intend that this Easement run with the land and that it shall be binding upon Grantor's personal representatives, heirs, successors and assigns in perpetuity.

### III. PURPOSE.

The purpose of this Easement is to: (1) protect the present and future ability to use the Property for agricultural purposes; (2) preserve the soil as a valuable resource and prevent activities that will impair the ability, now or in the future, to use the soil to produce food and fiber; (3) enable the Property to remain in agricultural use for the production of food and fiber by preserving and protecting in perpetuity its agricultural values, character, use and utility, and to prevent any use or condition of the Property that would significantly impair or interfere with its agricultural values, character, use or utility. The grant of this Easement will also serve the "conservation purpose" of farmland protection as identified in Section 170(h)(4)(A) of the Internal Revenue Code. This statement of purpose is intended as a substantive provision of the Easement. Any ambiguity or uncertainty regarding the application of the provisions of this Easement will be resolved so as to further this purpose.

### IV. RELATIONSHIP OF PARTIES.

- A. Unless noted otherwise, Whatcom County, the Whatcom Land Trust, and the United States of America share all rights and responsibilities of Grantees under this Easement. For purposes of administering, monitoring and enforcing the terms of the Easement, the Whatcom Land Trust is the lead Grantee, unless Grantors are notified otherwise. As the lead Grantee, the Whatcom Land Trust has authority to act alone and at its sole discretion in exercising all rights and responsibilities of Grantees under this Easement. Grantors shall treat the Whatcom Land Trust as their contact for all matters regarding this Easement. Whatcom County and the Whatcom Land Trust may jointly take enforcement action, or if the Whatcom Land Trust fails to enforce the terms of this Easement, Whatcom County may do so alone.
- B. The above section IV. A. does not pertain to monitoring and enforcement of a conservation plan, the responsibility for which rests with the Natural Resource Conservation Service and Whatcom County as described in section VII. A. below.

### V. RIGHTS OF THE UNITED STATES OF AMERICA.

- A. Under this Conservation Easement, the same rights are granted to the United States that is granted to Whatcom County and Whatcom Land Trust. However, the Secretary of the United States Department of Agriculture (Mike Johanns), on behalf of the United States, will only exercise these rights under the following circumstances: In the event that Whatcom County and Whatcom Land Trust fails to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary, the Secretary and his or her successors or assigns may exercise the United States' rights to enforce the terms of this Conservation

Easement through any and all authorities available under Federal or State law. In the event that Whatcom County and Whatcom Land Trust attempts to terminate, transfer or otherwise divest itself of any rights, title, or interest in this Conservation Easement without the prior consent of the Secretary and, if applicable, payment of consideration of the United States, then, at the option of the Secretary, all right, title, and interest in this Conservation Easement shall become vested solely in the United States of America.

## VI. PERMITTED USES AND ACTIVITIES.

Grantors may:

- A. Engage in uses and activities consistent with the purpose of this Easement so long as those uses or activities are not expressly prohibited in Section VII below.
- B. Continue any use or activity not permitted by this easement at the time this Easement is signed provided it is not contrary to the purposes of this easement and provided that it is agreed to in writing by the parties of this agreement.
- C. Existing agricultural structures may be removed, maintained, expanded or replaced and new agricultural structures and improvements used primarily for agricultural enterprises may be constructed by the Grantors on the Property within the "Farmstead", as defined in section XI of this agreement, so long as expansion or new construction does not exceed the area of impervious surfaces allowed in Section VII D. Agricultural structures may include, without limitation, offices, warehouses, temporary farm worker housing, livestock housing and related structures, equipment storage and maintenance facilities, facilities related to the processing and sale of farm products predominately grown on the Property, so long as the structures' primary use is to support the agricultural activities on the Property or agricultural activities on other parcels under the control of the Grantors.
- D. New agricultural buildings, structures or improvements proposed for locations outside of "Farmstead Area" may be built or placed only with the written permission of the Grantee. Permission shall be granted only if the agricultural productive capacity and open space character of the Property are not significantly impaired by the construction and use of such structures, disturbance to prime, unique and important soils is minimized and all structures individually and combined are consistent with the terms of this Easement.

## VII. PROHIBITED USES AND ACTIVITIES.

Unless specifically permitted by Section VI above, Grantors shall not engage in or permit any of the following activities on the Property:

- A. Use or activities inconsistent with the purpose of this easement;
- B. Legal or "*de facto*" division, subdivision, or partitioning of the land or the separate sale of any portion of the Property, even if that portion of the Property constitutes a separate legal parcel. This restriction does not prohibit minor boundary line adjustments with adjoining agricultural land, provided there is no net loss of land to the Property, and provided that no new parcel may be created by such boundary line adjustments, and such adjustments does not affect over two acres in total for the entire Property. Any new land gained through a boundary line adjustment is subject to the terms of this agreement;
- C. Place or construct any residential building, structures, or other residential improvements of any kind.
- D. Cover more than two percent (2%) of the area (approximately 35,179 square feet) of the Property with impervious surfaces, including, without limitation, asphalt, concrete, gravel, buildings, or ponds, except animal waste holding ponds;
- E. Construct or expand non-agricultural structures or facilities;
- F. Conduct any non-farm related commercial activity using over one percent (1%) or one acre of the Property, whichever is less, unless that non-farm related commercial activity utilizes buildings existing at the time the Conservation Easement is signed and does not involve installation of facilities or expenditure of capital that would hinder the future use of buildings for agricultural purposes;
- G. Conduct any use or activity that removes or degrades the soil or impairs the ability to farm the Property except for the construction of conservation facilities or implementation best management practices;
- H. Transfer, encumber, lease, sell or otherwise separate water rights from title to the Property;
- I. Mine or extract soil, sand, gravel, oil or other mineral, except that Grantors may extract soil, sand, and gravel soley for a permitted use on the Property in a manner consistent with the conservation purposes of this easement. Such alteration shall not exceed 2 acres. Land subject to such alteration shall be returned to pre-activity conditions in accordance with baseline data set forth in Exhibit E.

- J. Expand or intensify any use or activity existing at the time this Easement is signed that is contrary to the purpose of this Easement or prohibited in this section.

#### VIII. CONSERVATION PLAN.

- A. As required by section 12381 of the Food Security Act of 1985, as amended, the Grantors, their heirs, successors, or assigns, shall conduct all agricultural operations on the Protected Property in a manner consistent with a conservation plan prepared in consultation with NRCS and approved by the Conservation District. This conservation plan shall be developed using standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect on the date this easement is executed. However, the Grantors may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with NRCS Field Office Technical Guide standards and specifications. NRCS shall have the right to enter upon the Property, with advanced notice to the Grantors, in order to monitor compliance with the conservation plan.

In the event of noncompliance with the conservation plan, NRCS shall work with the Grantors to explore methods of compliance and give the Grantors a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantors do not comply with the conservation plan, NRCS will inform Grantee Whatcom County of the Grantors' noncompliance. Whatcom County shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantors to correct such noncompliance, and (c) Grantors have exhausted his appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for highly erodible land are revised after the date of this Grant based on an Act of Congress, NRCS will work cooperatively with the Grantors to develop and implement a revised conservation plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranchland Protection Program and are not intended to affect another other natural resources conservation requirements to which the Grantors may be or become subject.

- B. For the purpose of this Conservation Easement, references and requirements relating to highly erodible lands do not apply to land over which this Conservation Easement is granted. There are no highly erodible lands on the Property and none have been designated in Whatcom County.

## IX. RIGHTS CONVEYED TO GRANTEES.

To accomplish the purpose of this Easement, the following rights are conveyed to Grantees:

- A. To accomplish the purpose of this Easement and to enforce specific rights and restrictions contained in the Easement;
- B. (1) To enter the land at least once a year, at a mutually agreeable time and upon notice to the Grantors, for the purpose of inspection and monitoring compliance with this Easement;  
(2) To enter the land at such other times as necessary if Grantees have reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of the Easement. Such entry will be with prior notice as is reasonable under the circumstances.
- C. In the event of uses or activities inconsistent with the purpose and provisions of this Easement, Grantees may obtain damages, an injunction, abatement, rescission, restoration and any other remedies available in law or equity.
- D. Forbearance by Grantees to exercise any rights under this Easement in the event of a breach shall not be deemed to be a waiver of Grantees' rights under the Easement.

## X. NO PUBLIC ACCESS.

This Easement provides no right of access to the general public.

## XI. BASELINE DATA.

To establish the present condition of the Property so that Grantees are able to monitor future uses and assure compliance with the terms of this Easement, Grantees will, at their expense, by the date of this Easement prepare baseline data sufficient to establish the condition of the Property as of the signing of this Easement. The baseline data may consist of reports, maps, photographs, and other documentation. The baseline data will specifically establish the extent of the Farmstead, which includes that portion of the Property used for primary and secondary agricultural buildings, structures and improvements and those adjacent areas where future expansion of buildings, structures and improvements are contemplated. The area not included in the Farmstead will be depicted under the category of "Farmland". Farmland may include nonfarm areas such as critical areas and woodlands as well as cropland or grazing land. Grantors

and Grantees will execute a statement verifying that the baseline data accurately represents the condition of the Property as of this time. Baseline data is contained in Exhibit E.

## XII. INFORMAL DISPUTE RESOLUTION.

Grantors agree to notify Grantees of any intended action that a reasonable person might believe to violate the terms of this Easement. Should a dispute arise concerning compliance with this Easement, Grantors and Grantees will meet within 15 days to discuss the matter in dispute. By mutual agreement, the Grantor and Grantees may agree to refer the matter in dispute to mediation or arbitration under such rules as the parties may agree. If arbitration is pursued, the prevailing party will be entitled to such relief as may be granted, to a reasonable sum for its costs and expenses related to the arbitration, including fees and expenses of the arbitrator and attorneys. Grantees may, at their discretion, forgo these informal dispute resolution alternatives if continuation of the use or activity in dispute threatens the purpose of this Easement.

## XIII. GRANTEES' REMEDIES.

- A. If Grantees determine that the Grantors are in violation of the terms of this Easement or that a violation is threatened, Grantees shall give written notice to the Grantors of such violation and request corrective action sufficient to cure the violation and to restore the Property to its prior condition.
- B. If Grantors do not take immediate action to cure the violation and restore the Property, Grantees may institute legal proceedings for injunctive relief, abatement, restoration, rescission of contract, or damages, including costs and attorneys' fees reasonably incurred in prosecuting the action, and any other remedies available in law or equity.
- C. In the event Grantees take legal action to enforce the terms of this Easement, the cost of restoring the Property and Grantees' reasonable enforcement expenses, including attorneys' and consultants' fees, shall be borne by Grantors against whom a judgment is entered. In the event Grantees secure redress for an Easement violation without initiating or completing judicial proceedings, the cost of such restoration and reasonable expenses shall be borne by Grantors who are otherwise determined to be responsible for the unauthorized use or activity. If Grantor ultimately prevails in any judicial proceedings initiated by Grantees to enforce the terms of this Easement, each party shall bear its own costs.
- D. If Grantees, in their sole discretion, determine that circumstances require immediate action to prevent or mitigate significant damage in violation of this Easement, Grantees may immediately pursue their legal remedies without prior notice to Grantors as set forth in paragraph A.

- E. Grantees may not recover damages or require restoration for damage to the Property resulting from causes beyond Grantors' control, such as fire, flood, storm, or earth movement, that Grantors could not reasonably have anticipated or prevented.

#### XIV. RESPONSIBILITY FOR COST AND LIABILITIES.

Grantees assume no affirmative obligations for the management, supervision or control of the Property or any of the activities occurring on the Property. Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including maintenance of adequate liability insurance and payment of all taxes. Grantors shall indemnify Grantees and the United States, and hold Grantees and the United States harmless from all damages, costs (including, but not limited to, attorneys' fees and other costs of defense incurred by Grantees), and other expenses of every kind arising from or incident to any claim or action for damages including but not limited to, the release, use or deposit of any hazardous substance on the Property, injury or loss suffered or alleged to have been suffered on or with respect to the Property.

#### XV. EXTINGUISHMENT AND TRANSFER.

- A. If circumstances arise that render the purpose of this Easement impossible to accomplish, the Easement can be extinguished only by judicial proceedings and upon approval of the United States. In the event of such an extinguishment or the taking of the Property by the exercise of the power of eminent domain, Grantors shall pay to Whatcom County and the Commodity Credit Corporation in proportion to their contribution to the purchase price. At the time this easement was recorded the United States contribution was 50 percent and Whatcom County's contribution was 50 percent. The amount owed to the United States and Whatcom County shall be determined by subtracting the fair market value of the Property subject to this Easement from the fair market value of the property unrestricted by this Easement, at the time of extinguishment or condemnation
- B. Grantors agree to:
  - 1. Incorporate the terms of this Easement by reference in any deed, lease, executory contract or other legal instrument by which he divests himself, or intends to divest himself, of any permanent or temporary interest in the Property.
  - 2. Give written notice to the Grantees of the transfer of any interest in the Property no later than 45 days prior to the date of such transfer. Such notice shall include the name, address, and telephone number of the prospective recipient. Failure to provide such notice to the Grantees shall

not limit the legal obligations imposed by this Easement on any recipient of an interest in the Property.

- C. Grantees' rights and interest in this Easement are assignable only to an agency or organization that is approved by United States and Whatcom County and authorized to hold conservation easements under RCW 64.04.130 or RCW 84.34.250, or otherwise qualified at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended. As a condition of such transfer, Grantees shall require that the transferee exercise its rights under the assignment consistent with the purpose of this Easement. Grantees shall notify Grantor in writing in advance of such an assignment. The failure of Grantees to give such notice shall not affect the validity of such assignment, nor shall it impair the validity of this Easement or limit its enforceability.

#### XVI. AMENDMENT.

Upon approval of the United States, Grantors and Grantees may agree to amend this Easement provided that such an amendment does not diminish the effectiveness of this Easement in carrying out its purpose and that the result of the amendment is to strengthen the effectiveness of the Easement.

#### XVII. SUBORDINATION.

Any mortgage or lien arising after the date of the conservation easement shall be subordinated to the terms of this easement.

#### XVIII. GENERAL PROVISIONS

##### A. Controlling Law.

The interpretation or performance of this Easement shall be governed by the laws of the State of Washington. Any legal proceeding regarding this Easement shall be initiated in Whatcom County Superior Court.

##### 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 and Whatcom County Ordinance 2002-054. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render that provision valid shall be favored over an interpretation that would render it invalid.

C. Severability.

If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the Easement, or its application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected.

D. Entire Agreement.

This instrument sets forth the entire agreement of the parties with respect to the Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Property, all of which are merged into this Easement.

E. No Forfeiture.

Nothing contained in this Easement will result in a forfeiture or revision of Grantors' title in any respect.

B. Warranty of Good Title.

Grantor warrants that Grantor has good title to the Property; that the Grantor has the right to convey this conservation easement; and that the Property is free and clear of any encumbrances other than those listed below.

G. Grantors-Grantees.

The terms "Grantors" and "Grantees," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include respectively the above named Grantors, their personal representatives, heirs, successors, and assigns, and the above-named Grantees, their personal representatives, successors and assigns.

H. Successors and Assigns.

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

I. Federal Enforcement.

In the event that the Grantees fail to enforce the terms of this Easement as determined in the sole discretion of the Secretary of the United States Department of Agriculture ("Secretary"), the Secretary, his successors and assigns shall have the right to enforce the

terms of the Easement through any and all authorities available under Federal or State law. In the event that the Grantees attempt to terminate, transfer or otherwise divest itself of rights, title or interest in the Easement or extinguish the Easement without prior consent of the Secretary, all right, title, or interest in this Easement shall become vested in the United States of America.

J. Indemnification

The landowners shall indemnify, defend, and hold the United States harmless for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of Whatcom County and the Whatcom Land Trust in connection with its acquisition and management of the conservation easements acquired through the Farm and Ranch Lands Protection Program. This indemnification and hold harmless provision includes but is not limited to acts and omissions of Whatcom County and the Whatcom Land Trust agents, successors, assigns, employees, contractors, or lessees in connection with the acquisition and management of the conservation easements acquired through the Farm and Ranch Lands Protection Program, which result in violations of any laws and regulations which are now or which may in the future become applicable.

K. Hazardous Materials Warranty

Whatcom County, the Whatcom Land Trust and the United States of America are not responsible for the misuse of hazardous materials .

XIX. SCHEDULE OF EXHIBITS.

- A. Legal Description of Property Subject to Easement.
- B. Site Map.
- C. Ordinance # 2002-054
- D. Baseline Data

ACCEPTANCE OF PROPERTY INTEREST BY THE NATURAL RESOURCES CONSERVATION SERVICE

The Natural Resources Conservation Service, an agency of the United States Government, hereby accepts and approves the foregoing conservation easement deed, and the rights conveyed therein, on behalf of the United States of America.

\_\_\_\_\_  
Authorized Signatory for the NRCS

\_\_\_\_\_  
Date

State of \_\_\_\_\_  
County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 200\_, before me, the undersigned, a Notary Public in and for the State, personally appeared \_\_\_\_\_ known or proved to me to be the person whose signature appears above, and who being duly sworn by me, did say that he is the Contracting Officer of the Natural Resources Conservation Service, United States Department of Agriculture, is authorized to sign on behalf of the agency, and acknowledged and accepted the rights conveyed by the deed to be his voluntary act and deed.

In witness whereof, I have hereunto set my hand and official seal the day and year first above written.

\_\_\_\_\_  
Notary Public for the State of Washington  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

IN WITNESS WHEREOF, Grantor and Grantees have executed this Conservation Easement this \_\_\_\_ day of \_\_\_\_\_, 200\_.

GRANTOR(S): \_\_\_\_\_ AND \_\_\_\_\_  
By:

\_\_\_\_\_  
\_\_\_\_\_, Owner

STATE OF WASHINGTON )

) ss:

COUNTY OF WHATCOM )

On this \_\_\_\_ day of \_\_\_\_\_, 200\_, before me personally appeared \_\_\_\_\_ to me known to be the land owners and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

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

NOTARY PUBLIC

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

My Commission Expires: \_\_\_\_\_

GRANTEE:

WHATCOM COUNTY

By:

\_\_\_\_\_  
Pete Kremen, County Executive

APPROVED AS TO LEGAL FORM:

  
\_\_\_\_\_  
Senior Civil Deputy Prosecuting Attorney

STATE OF WASHINGTON )

) ss:

COUNTY OF WHATCOM )

On this \_\_\_\_ day of \_\_\_\_\_, 200\_, before me personally appeared PETE KREMEN to me known to be the County Executive of WHATCOM COUNTY and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

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

NOTARY PUBLIC

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

My Commission Expires: \_\_\_\_\_

GRANTEE:

THE LAND TRUST:

WHATCOM LAND TRUST

By: \_\_\_\_\_

STATE OF WASHINGTON )

) ss.

COUNTY OF WHATCOM )

On this \_\_\_\_ day of \_\_\_\_\_, 200\_, before me personally appeared \_\_\_\_\_  
\_\_\_\_\_ to me known to be \_\_\_\_\_ and who executed the  
above instrument and who acknowledged to me the act of signing and sealing thereof.

I certify that I know or have satisfactory evidence that \_\_\_\_\_ signed this  
instrument and acknowledged it as the \_\_\_\_\_ of WHATCOM LAND TRUST  
to be the free and voluntary act of such party for the uses and purposes mentioned in the  
instrument.

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

NOTARY PUBLIC

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

## EXHIBIT A

### LEGAL DESCRIPTION

PARCEL A:

THE SOUTH 1321.54 FEET MORE OR LESS OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 40 NORTH, RANGE 2, EAST OF W.M.;

EXCEPT THE WEST 30 ACRES;

EXCEPT COUNTY ROAD NO. 450.

EXCEPT THAT PORTION, IF ANY, LYING NORTH OF THE SOUTH LINE OF THE AMENDED CINCO SHORT PLAT, RECORDED UNDER RECORDING NO. 1340924.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL B:

THE WEST 30 ACRES OF THE FOLLOWING DESCRIBED PARCEL OF LAND:

THE SOUTH 1321.54 FEET, MORE OR LESS, OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 40 NORTH, RANGE 2 EAST W.M.

EXCEPT COUNTY ROAD NO. 450.

EXCEPT THAT PORTION, IF ANY, LYING NORTH OF THE SOUTH LINE OF THE AMENDED CINCO SHORT PLAT, RECORDED UNDER RECORDING NO. 1340924 AND ITS EXTENSION WEST.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

APN: 400231 370070 0000

APN: 400231 324070 0000



Exhibit B

# Ebe Property

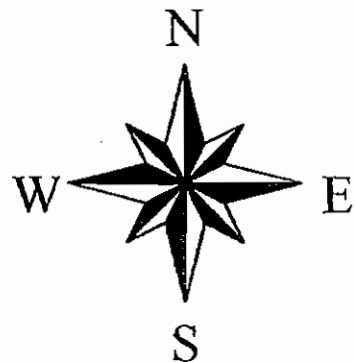


Total of Two Parcels: R5A Zone

West Parcel - 400231324070 (30.0 acres)

East Parcel - 400231370070 (10.38 acres)

\*Located on Harksell Road, east of I5







2. Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this 10 day of September, 2002.

**ATTEST:**



Dana Brown-Davis,  
Clerk of the Council

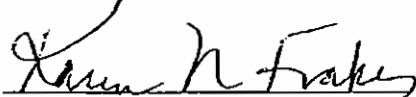
**WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON**



Ward Nelson, Council Chair

**APPROVED** as to form

Approved  Denied



Karen N. Frakes, Civil Deputy Prosecutor



Pete Kremen, Executive

Date: \_\_\_\_\_