

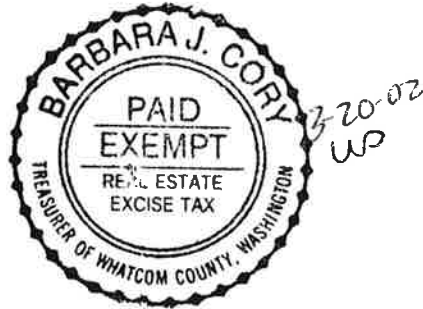


2020303170
 Page: 1 of 10
 3/20/2002 2:55 PM
 EASE \$10.00
 Whatcom County, WA

Request of: WHATCOM LAND TRUST

After Recording Return To:

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



DOCUMENT TITLE: EAST ACME FARM RIPARIAN CONSERVATION EASEMENT

GRANTOR: WHATCOM COUNTY

GRANTEE: WHATCOM LAND TRUST

ABBR. LEGAL DESCRIPTION: GOVT LOTS 1-2-6-7-E 1/2 NE SEC 8-EXC THAT PTN OF NW NE LY NLY OF MOSQUITO LAKE RD (CO RD 272)-LESS RD-SW NW-GOVT LOTS 3-5 SEC 9-EXC THAT PTN LY E-S OF LI DAF-BEG AT NE COR OF GOVT LOT 5 SEC 9-TH W ALG N LI OF GOVT LOT 5 385 FT-TH S PAR TO E LI OF GOVT LOTS 3-5 TO NOOKSACK RIVER-PT OF ENDING

ASSESSOR'S TAX PARCEL NUMBERS: 370508 415365 0000

EAST ACME FARM RIPARIAN CONSERVATION EASEMENT

I. PARTIES

This Grant of a Conservation Easement is made by Whatcom County, referred to hereafter as Grantor, to Whatcom Land Trust, a Washington nonprofit corporation, referred to hereafter as Grantee.

II. FACTS AND OBJECTIVES

Grantor owns real property in Whatcom County, Washington, referred to hereafter as the East Acme Farm, the legal description of which is attached as Exhibit 1. The approximately 262 acre East Acme Farm is the property burdened by this Riparian Conservation Easement. The portion of the East Acme Farm benefited by this Riparian Conservation Easement is referred to hereafter as the East Acme Farm River Corridor, or the Property, the legal description of which is attached as Exhibit 2.

The Grantee is a publicly supported, nonprofit corporation organized to preserve the ecological, wildlife habitat, scenic, agricultural, recreational and open space value of land. It qualifies under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt nonprofit organization.

The East Acme Farm River Corridor is a 500 foot wide buffer along Hutchinson Creek and the east bank of the South Fork of the Nooksack River lying between Mosquito Lake Road and the mouth of Hutchinson Creek. It also includes accreted shoreline, if any. The East Acme Farm Riparian Conservation Easement includes areas of mature forest, managed pasture, riparian restoration plantings, and a natural gas pipeline easement. The forested area is composed of black cottonwood, red alder, birch, big-leaf maple, red cedar, Douglas fir, spruce, and hemlock. Under-story vegetation is composed of salmon berry, vine maple, snowberry. Exotic plants such as blackberry, Japanese knotweed and reed canary grass are also present on the site. Grass is raised and harvested on the managed agricultural lands. On the southern portion of the Riparian Easement where the South Fork is eroding the river bank the Nooksack Tribe has installed and manages a riparian restoration site, which includes plantings of conifers, hardwoods and native shrubs. Whatcom County has cabled existing logs to the eroding bank at this same location. A portion of the riverbank in the East Acme Farm River Corridor has been hardened with rock riprap.

All five species of Northwest salmon, as well as rainbow trout, bull trout and steelhead utilize areas of the East Acme Farm River Corridor. Portions of the Property are particularly important for spawning South Fork Chinook salmon, a federally listed endangered species. Each winter Bald eagles feed on chum salmon that also spawn and die on portions of the Riparian Easement. The fields and forests protected by the Riparian Conservation Easement are used by the Nooksack Elk herd for hiding and feeding during winter.

The parties intend this Riparian Conservation Easement to protect riparian habitat; provide a wildlife migration corridor; protect water quality; and buffer the South Fork of the Nooksack from recreational activity. They also intend that the East Acme Farm River Corridor protected by this Conservation Easement will move with the river so that the 500 foot corridor will be subject to this Conservation Easement whatever the location of the River.

III. GRANT OF CONSERVATION EASEMENT

In consideration for the transfer of title in the Deming Homestead Eagle Park from the Grantee to the Grantor, the Grantor hereby conveys to Grantee, its successors and assigns, in perpetuity, a Conservation Easement pursuant to Revised Code of Washington RCW 84.34.210, over the East Acme Farm River Corridor. The Conservation Easement consists of mutual rights and obligations and is subject to the reservation of rights set forth below. Rights, obligations and reservations all operate as covenants running with the land in perpetuity.

IV. PERMITTED USES, PRACTICES AND RIGHTS RESERVED BY GRANTOR

With regard to the East Acme Farm River Corridor, Grantor reserves the right to:

1. Cut trees that present a hazard to safety of people or property.

2. Allow passive, non-motorized, pedestrian recreational use such as hiking and wildlife observation.
3. Clear and maintain trails or paths for public use.
4. Fulfill obligations created by existing easements.
5. Plant native trees and vegetation and conduct other activity to enhance wildlife habitat.
6. Control invasive, non-native species by means that create no significant danger to the natural environment.
7. Build a footbridge across Hutchinson Creek.

V. RESTRICTIONS ON USE

Except as provided above, and as may be necessary to carry out those rights reserved, the Grantor shall not on the East Acme Farm River Corridor do or permit any of the following:

1. Cut or remove trees or other vegetation.
2. Build structures or improvements of any type.
3. Explore for or extract minerals, hydrocarbons or other materials.
4. Hunt.
5. Excavate or grade the Property or otherwise materially alter the landscape or topography.
6. Subdivide the Property in any manner.
7. Make commercial use of the Property.
8. Operate motor vehicles, except as is necessary for the management of the Property or to exercise rights reserved in IV above.
9. Use the property contrary to the purposes of this conservation easement.

VI. RIGHTS AND RESPONSIBILITIES OF GRANTEE.

Grantor grants and Grantee accepts the right and shared responsibility to preserve and protect in perpetuity the aesthetic, habitat, historical and ecological values of the East Acme Farm River Corridor consistent with the terms of this Easement. In connection with such rights and responsibilities:

1. Grantor grants to Grantee the right to enter the East Acme Farm River Corridor, on reasonable notice, to observe and enforce compliance with the terms of this Conservation Easement.
2. Should Grantor, its successors or assigns, undertake any activity in violation of this Easement, Grantee shall have the right to recover damages or to compel the restoration of that portion of the Property affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the damages or cost of restoration and Grantee's expenses and costs of suit, including attorneys' fees, shall be borne by Grantor or those of its successors or assigns against whom judgment

2020303170

Page: 3 of 10

3/20/2002 2:55 PM

EASE \$18.00

Whatcom County, WA

Request of: WHATCOM LAND TRUST

is entered, or in the event that Grantee secures relief without a completed judicial proceeding, by Grantor or those of its successors or assigns who are otherwise determined to be responsible for the unauthorized activity.

3. Any forbearance by Grantee to exercise any rights under this Agreement in the event of a breach shall not be deemed to be a waiver of Grantee's rights under this Easement.
4. Grantor grants to Grantee the right to plant native trees and vegetation and conduct other activities to enhance wildlife habitat in the East Acme Farm River Corridor so long as such activity does not interfere with Grantor's rights reserved under this Conservation Easement.

VII. BASELINE DATA.

In order to establish the present condition of the East Acme Farm River Corridor's resources so as to be able to properly monitor future uses of the Property and assure compliance with the terms of this Agreement, Grantee shall, at its earliest possible convenience, prepare or cause to be prepared an inventory of the Property's relevant features and conditions, known as baseline data. The baseline data shall be used to establish the condition of the Property as of the date of this Easement.

VIII. GRANTOR'S RESPONSIBILITIES.

Grantor agrees to bear all costs of operation, upkeep and maintenance of the Property and to indemnify the Grantee therefrom; in addition, Grantor agrees to pay all real property taxes and assessments levied on the Property.

IX. ASSIGNMENT OF GRANTEE'S INTERESTS.

The Grantee may assign its interests in this Easement to a "qualified" organization within the meaning of Section 170(h) of the Internal Revenue Code of 1954, as amended, so long as that organization has a concern for ecological and aesthetic considerations consistent with the terms of this Easement. Should the Grantee cease to exist, this Easement would be assigned to such an organization.

X. GRANT IN PERPETUITY.

This Easement shall run with the Property in perpetuity and shall bind the Grantor, its successors and assigns forever.

2020303170
Page: 4 of 10
3/20/2002 2:55 PM
EASE \$18.00
Whatcom County, WA

XI. PROPERTY INTEREST.

Grantor and Grantee agree that this Conservation Easement gives rise to a property right immediately vested in the Grantee, which right has a fair market value that is at least equal to the proportionate value that the Conservation Easement bears to the value of the Property as a whole, upon the date of the execution of the Easement.

If all the conservation purposes of this Easement become impossible to accomplish because of a change of circumstances, this Easement can be extinguished only by judicial proceedings, and on subsequent disposal of the Property the Grantee is entitled to a portion of the proceeds at least equal to the proportionate value of the conservation easement. The Grantee must use the proceeds consistent with the conservation purposes of this easement. In the event of condemnation of the Property in whole or in part, Grantee shall be entitled to compensation proportionate to the loss of conservation values caused by the condemnation.

XII. MISCELLANEOUS.

1. The terms Grantor and Grantee, wherever used in this Easement, shall include the above-named Grantor and its successors and assigns, and the above-named Grantee and its successors and assigns.
2. In the event that any of the provisions contained in this Easement are declared invalid or unenforceable in the future, all remaining provisions shall remain in effect.
3. Notice to Grantee shall be to the registered agent of Grantee, who until further notice shall be:

J. Bruce Smith
 Brett & Daugert
 300 North Commercial
 P.O. Box 5008
 Bellingham, WA 98227-5008

IN WITNESS WHEREOF, Grantor has executed this Conservation Easement this 20th day of March, 2002.

GRANTOR:
 WHATCOM COUNTY

By: _____

Its: _____

GRANTEE:
 WHATCOM LAND TRUST

By: [Signature]

Its: Treasurer

2020303170
 Page: 5 of 10
 3/20/2002 2:55 PM
 EASE \$18.00
 Whatcom County, WA

STATE OF WASHINGTON)
) ss:
COUNTY OF WHATCOM)

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

DATE: _____

PLEASE AFFIX SEAL/STAMP WITHIN THIS BOX

NOTARY PUBLIC
Printed Name: _____
My Commission Expires: _____

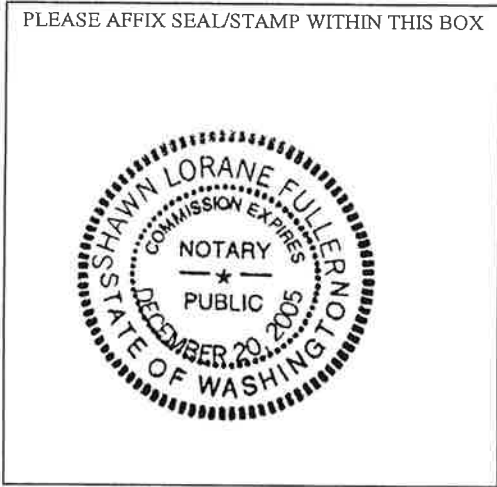
2020303170
Page: 6 of 10
3/20/2002 2:55 PM
EASE \$18.00
Whatcom County, WA

Request of: WHATCOM LAND TRUST

STATE OF WASHINGTON)
) ss:
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that Michael F. Ryan is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Treasurer of the WHATCOM LAND TRUST to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATE: March 20, 2002



Shawn Lorane Fuller
NOTARY PUBLIC
Printed Name: Shawn Lorane Fuller
My Commission Expires: 12-20-2005

2020303170
Page: 7 of 10
3/20/2002 2:55 PM
EASE \$18.00
Whatcom County, WA
Request of: WHATCOM LAND TRUST

Exhibit 1

East Acme Farm - Burdened Property

Government Lots 1, 2, 6, and 7, the East Half of the Northeast Quarter of Section 8, Township 37 North, Range 5 East of W.M., EXCEPT that portion of the Northwest Quarter of the Northeast Quarter lying northerly of the Mosquito Lake Road No. 272, and except right of way for Mosquito Lake Road No. 272, lying along the northerly line thereof, together with the Southwest Quarter of the Northwest Quarter, Section 9, Township 37 North, Range 5 East of W.M., Government Lot 3, and Government Lot 5 all in Section 9, said Township and Range; EXCEPT that portion lying east and south of a line defined as follows:

Beginning at the northeast corner of said Government Lot 5, said Section, Township and Range, Whatcom County, Washington; thence west along the north line of said Government Lot 5 a distance of 385.00 feet; thence south parallel to the east line of Government Lots 3 and 5 of said section to the Nooksack River and the point of ending.

Situate in Whatcom County, Washington.

2020303170

Page: 8 of 10

3/20/2002 2:55 PM

EASE \$18.00

Whatcom County, WA

Request of: WHATCOM LAND TRUST

EXHIBIT 2

Benefited Property – East Acme Farm River Corridor

That portion of the East Acme Farm (Burdened Property) lying 500 feet east of the mean annual high water line of the South Fork Nooksack River and Hutchinson Creek, and any accreted shorelines, gravel bars, side channels, sloughs and islands between the annual high water line and east side of the main channel of the South Fork Nooksack, fronting the East Acme Farm (Burdened Property).

2020303170

Page: 9 of 10

3/20/2002 2:55 PM

EASE \$18.00

Whatcom County, WA

Request of: WHATCOM LAND TRUST

Executed as of the date first written above.

WHATCOM COUNTY

Pete Kremen
Pete Kremen, County Executive

STATE OF WASHINGTON)

) ss.

COUNTY OF WHATCOM)

On this 20 day of March, 2002, 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.

Given under my hand and official seal this 20 day of March, 2002.



Suzanne P. Wendt
NOTARY PUBLIC in and for the State of Washington,
residing at Bellingham
My Commission expires: 06/15/2003

WHATCOM COUNTY PARKS & RECREATION
DEPARTMENT

Roger A. DeSpain
Roger A. DeSpain, Director

APPROVED AS TO FORM:

Richard Watts
Deputy Prosecuting Attorney

2020303170

Page: 10 of 10
3/20/2002 2:55 PM
EASE \$18.00
Whatcom County, WA

Request of: WHATCOM LAND TRUST