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 Whatcom County, WA

Request of: WHATCOM LAND TRUST

After recording please return to:
 Whatcom Land Trust
 P.O. Box 6131
 Bellingham, WA 98225

DOCUMENT TITLE: ASSIGNMENT OF RIGHTS

GRANTOR: WHATCOM LAND TRUST

GRANTEE: STATE OF WASHINGTON



CH
 10/1/02

ABBREVIATED LEGAL DESCRIPTION: PORTIONS OF SECTION 15 AND 16, TOWNSHIP 37 NORTH, RANGE 5 EAST, W.M., WHATCOM COUNTY WASHINGTON

ASSESSOR'S TAX/PARCEL NUMBER: 370515 020321, 370516 501082

ASSIGNMENT OF RIGHTS—SALMON RECOVERY FUNDING BOARD

This ASSIGNMENT OF RIGHTS (this "Assignment") is executed as of the 9th day of September, 2002, by Whatcom Land Trust, a Washington State Non-profit Corporation ("Assignor"), to and in favor of THE STATE OF WASHINGTON ("State"), through the Salmon Recovery Funding Board ("SRFB"), administered by the Interagency Committee for Outdoor Recreation ("IAC").

RECITALS

A. Assignor has entered into a conservation easement ("Conservation Easement") with a certain property owner (collectively "Owner") in the Southeast portion of the Nooksack River watershed (W.R.I.A. number # 1 under WAC 173-500-040) in Whatcom County, Washington. The name and address of the Owner and the recording number of the Conservation Easement are set forth in *Exhibit 1* attached hereto and incorporated herein. The legal description of the Property subject to the Conservation Easement are set forth in *Exhibit 2* attached hereto and incorporated herein.

B. The conservation purpose of the Conservation Easement is described in the Conservation Easement. That purpose is also described in the Project Agreement entered into between the recipient of SRFB funds ("Sponsor") and the State through the SRFB entitled South Fork Riparian Project Number #01-1268C dated May 13, 2002 and the application and supporting materials which are on file with the State in connection with the Project Agreement, which Project Agreement is incorporated herein by this reference. That purpose includes protection and restoration of habitat, as defined in the Conservation Easement.

C. Owner has authorized Assignor to assign to the State certain rights for access to and stewardship of the property covered by the Conservation Easement. Assignment of such rights is a necessary condition to receipt of grant funding under the Project Agreement and the policies of the Salmon Recovery Funding Board administered by the IAC. Such rights are valuable to the State in connection with ensuring protection of habitat under the terms of the Conservation Easement, and are particularly valuable because Assignor and Owner have agreed that Assignor will retain all responsibility for obligations of the Assignor under the Conservation Easement.

D. These recitals are incorporated herein by this reference.

Now, therefore, Assignor and the State agree as follows:

AGREEMENT

1. **Assignment.** For and in consideration of monies coming in whole or in part from the State of Washington and in fulfillment of terms of the Project Agreement identified herein, Assignor does hereby assign, transfer, set over, convey and deliver to the State individually, and as the representative of all the people of the State, the following rights (collectively referred to as "Rights") under the Conservation Easement the recording number of which is listed in *Exhibit 1* attached hereto and incorporated herein by this reference. The State hereby consents to the uses, practices and rights of Whatcom County, as described in Exhibit 1, where said uses, practices and rights are subject to consent by the Whatcom Land Trust:

a. **Access.** To enter the Property, as defined in the Conservation Easement, through the Property subject to the Conservation Easement at a reasonable time and upon prior arrangement with Assignor and Owner, in order to monitor and evaluate performance, compliance, and/or quality assurance under the Project Agreement.

b. **Injunction and Restoration.** In the event the Assignor fails to take reasonable measures to assure compliance with the terms of the Conservation Easement, to enjoin any use of, or activity in, the Property subject to the Conservation Easement which is inconsistent with the terms of the Conservation Easement, and undertake or cause to be undertaken the restoration of such areas or features of the Property as may be damaged by uses or activities contrary to the provisions of the Conservation Easement.

c. **Enforcement.** In the event Assignor fails to take reasonable measures of enforcement, to enforce the terms of the Conservation Easement, and thereby assume the Assignor's remedies under the Conservation Easement.

d. **Amendments.** To review and approve any proposed amendments to the Conservation Easement. Review and approval by IAC's Director will be for compliance with the terms of the Project Agreement.

e. **Termination For Reasons of Impracticability.** To review and approve any proposed agreements to terminate the Conservation Easement, or release a portion of the Property from the terms of the Conservation Easement, for the reason that circumstances have rendered the conservation purpose of the Conservation Easement impractical to achieve.

f. **Stewardship Plans.** To review any Stewardship Plans, including habitat restoration and enhancement plans, as defined in the Conservation Easement. Review by IAC's Director will be for compliance with the terms of the Project Agreement.

2. **State's Exercise of Rights.** The State hereby represents and warrants that its exercise of rights under this Assignment will be consistent with the conservation purpose defined in the Conservation Easement and the Project Agreement.

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3. **Representations and Warranties of Assignor.** Assignor hereby represents and warrants to the State that:

a. Owner, identified in *Exhibit 1* attached hereto and incorporated herein, has authorized and approved this Assignment.

b. Assignor shall enforce the terms of the Conservation Easement as provided in the Conservation Easement, provided that Assignor may make reasonable judgments as to what enforcement decisions and strategies will best achieve the purposes of the Conservation Easement

c. Assignor shall comply with, and the SRFB and IAC shall not be responsible for determining compliance with, all applicable federal, state, and local laws, regulations, and policies in its administration of the Conservation Easement or the undertaking of any of its rights under the Conservation Easement.

d. Neither Assignor nor Owner has any claims or causes of action, at law or in equity, with respect to any Conservation Easement as of the date provided above.

4. **Obligations.** It is expressly understood and agreed that, by the acceptance of this Assignment, the State has not assumed, and shall not become obligated to keep, fulfill, observe, perform or discharge, any duty or obligation of Assignor under the Conservation Easement.

5. **Indemnity.** Assignor shall defend, protect and hold harmless the State, the SRFB, the IAC, or any employees thereof, from and against any and all costs, claims, fees and expenses arising out of or in any way relating to Assignor's representations and warranties under this Assignment, Assignor's obligations under the Conservation Easement, or the acts by or omissions of Assignor or Owner, unless such costs, claims, fees and expenses arise out of the negligent actions of the State, the SRFB, the IAC, or any employees thereof.

6. **Replacement Property.** If the Conservation Easement is extinguished in whole or in part, Assignor may be entitled to compensation in such event. Assignor shall use all such proceeds for acquisition, restoration and/or enhancement of substantially equivalent property or property interests. Assignor hereby agrees to consult with, and receive the approval of, the SRFB and the IAC in the selection of any replacement property and to assign to the State the same or substantially equivalent rights for access to and stewardship of the replacement property as provided for in this Assignment.

7. **Restriction on Assignment.** Assignor shall not assign the Conservation Easement, or the performance of any obligations to the State under the Conservation Easement, without the express written consent of the IAC's Director.

8. **Assignment Term.** The term of this Assignment shall be the same as the term of the Conservation Easement.

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9. **Disputes.** Any disputes between Assignor and the State under this Assignment shall be governed by the terms of the Project Agreement.

10. **Governing Law/Venue.** The laws of the State of Washington shall govern this Assignment. In the event of a lawsuit between Assignor and the State involving this Assignment, venue shall be proper only in Thurston County. Assignor by executing this Assignment acknowledges the jurisdiction of the courts of the State of Washington in this matter.

11. **Severability.** If any provision of this Assignment or any provision of any document incorporated by reference herein shall be held invalid, such invalidity shall not affect the other provisions of this Assignment which can be given effect without the invalid provision and to this end the provisions of this Assignment are declared to be severable.

ASSIGNOR:

WHATCOM LAND TRUST,

By *Cynthia St. John*

Its VICE-PRESIDENT

STATE:

THE STATE OF WASHINGTON, through
its Salmon Recovery Funding Board,
administered by the IAC

By *Laura E. Johnson*
Its Director

OWNER:

Whatcom County,

By *Rosey A. Nelson*

Its Bank + Recreation Director

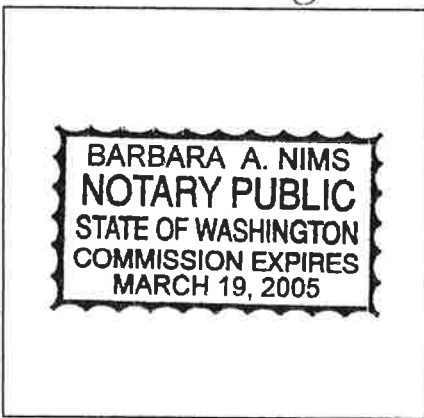
ATTACHMENTS:

- Exhibit 1 - Owner and Conservation Easement Recording Number
- Exhibit 2- Legal Description of Property Subject to Conservation Easement

STATE OF WASHINGTON)
) ss:
COUNTY OF Whatcom)

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

Dated: August 13, 2002



(Use this space for notarial stamp/seal)

Barbara A. Nims
Notary Public

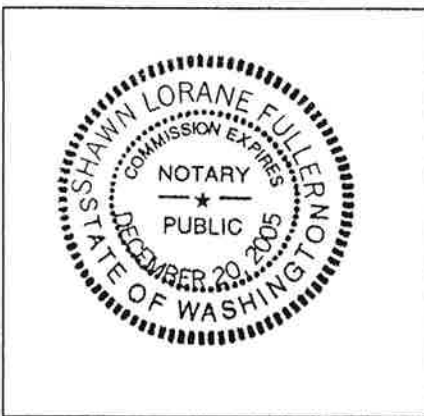
Barbara A. Nims
Print Name

3/19/05
My commission expires

STATE OF WASHINGTON)
) ss:
COUNTY OF Whatcom)

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

Dated: August 21, 2002



(Use this space for notarial stamp/seal)

Shawn Lorane Fuller
Notary Public

Shawn Lorane Fuller
Print Name

12-20-2005
My commission expires

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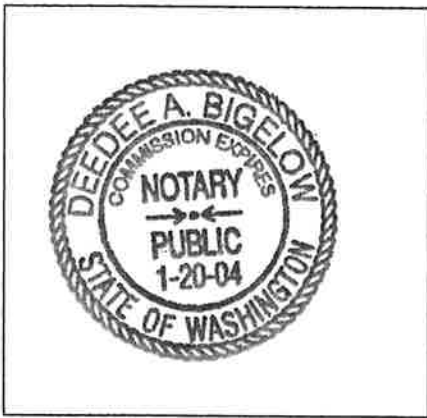
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STATE OF WASHINGTON)
) ss:
COUNTY OF THURSTON)

I certify that I know or have satisfactory evidence that Laura E. Johnson is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Director of the Salmon Recovery Funding Board, administered by the IAC of the State of Washington to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: September 23, 2002



(Use this space for notarial stamp/seal)

Dee Dee A. Bigelow
Notary Public
Dee Dee A. Bigelow
Print Name
January 20, 2004
My commission expires

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EXHIBIT 1

OWNER AND CONSERVATION EASEMENT RECORDING NUMBER

Name(s): Whatcom County

Address: Whatcom County Parks and Recreation Department
3373 Mt. Baker Highway
Bellingham, WA 98226-7500

Recording No. 2000503085

EXHIBIT 2

***LEGAL DESCRIPTION FOR PROPERTY
SUBJECT TO CONSERVATION EASEMENT***

Parcel A and B as described by document recorded December 31, 1997, under Auditor's File No. 1971204060, Whatcom County records, said Parcel A being described as The West 20 acres of the Northwest $\frac{1}{4}$ of Section 15, and the East $\frac{1}{2}$ of the Northeast $\frac{1}{4}$, Government Lots 1,6,7 and 10, Section 16, all in Township 37 North of Range 5 East, W.M., situate in Whatcom County, Washington, and said Parcel B being described as Easements for Road purposes/right of ways as described under Whatcom County Auditor's File No. 663311 and 712293 (should read 712293), situate in Whatcom County, Washington.

DESCRIPTION OF PROPERTY

The Overby Homestead property is located along the east bank of the South Fork Nooksack River between Acme and Saxon. This historic property was once a rural farmstead with a residence, out buildings and small cleared pasture area. Today the property is vacant but completed reforested with a diverse mix of mature Douglas fir, red cedar, western hemlock, big-leaf maple, and red alder. This forest is an excellent example of a diverse low elevation coniferous forest. The forest is generally in good health except for a pocket of root rot affecting Douglas fir in the southern portion of the property. Several old logging roads and the bed of former logging railroad cross the property from north to south. Pond Creek, a fish bearing tributary of the South Fork, bisects the property from east to west. Pond Creek rises out of a series of small, intact and functioning forested wetlands along the eastern boundary of the property, flows west through mature forest, under an abandoned road bridge and then over a small series of waterfalls and into the South Fork. The South Fork Nooksack runs in its natural channel for over 6,000 feet along the western boundary of the Overby Homestead. The riparian zone of the river is forested in a natural condition along the Overby property, supporting some of the best remaining salmon habitat in the South Fork. The property is also known for providing excellent habitat to the South Fork elk herd as well as valuable perching sites for the wintering bald eagle population.

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