



Request of: WHATCOM LAND TRUST

When Recorded Return To:

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



*SK*  
*5-24-2000*

DOCUMENT TITLE: THE OVERBY FARM CONSERVATION EASEMENT

GRANTOR: WHATCOM COUNTY

GRANTEE: WHATCOM LAND TRUST

ABBREVIATED LEGAL DESCRIPTION: Portions of Sections 15 and 16, Township 37 North, Range 5 East, W.M., Whatcom County, Washington.

ASSESSOR'S TAX/PARCEL NUMBER: 370515-020321-0000  
370516-501082-0000

**THE OVERBY FARM CONSERVATION EASEMENT**

**I. PARTIES.**

This grant of a Conservation Easement is made by **WHATCOM COUNTY**, referred to hereafter as Grantor, to the **WHATCOM LAND TRUST**, a Washington nonprofit corporation, referred to hereafter as the Grantee.

**II. FACTS AND OBJECTIVES.**

Grantor is owner of real property in Whatcom County, Washington, referred to hereafter as the Overby Farm, the legal description of which is attached as Exhibit "A."

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 Overby Farm property is a former homestead located along the east bank of the South Fork of the Nooksack River between Acme and Saxon. This historic 235-acre

property was once a rural farmstead with a residence, outbuildings, and a small cleared pasture area. Today, the property is reforested with a diverse mix of mature Douglas fir, red cedar, western hemlock, big leaf maple, vine maple, and red alder. It is an excellent example of a diverse, mature, low elevation coniferous Western Washington forest. The forest is in generally good health except for a small area of root rot affecting Douglas fir in the southern portion. Several old logging roads and the bed of a 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. The creek rises out of a series of small, intact, and functioning forested wetlands along the eastern boundary of the property, flows through mature forest, under an abandoned bridge, and then over a series of small waterfalls into the South Fork. For over 6,000 feet along the western boundary of the Overby Farm, the South Fork of the Nooksack runs in its natural channel. The riparian zone of the river is forested in a natural condition here, supporting some of the best remaining salmon habitat in the South Fork. The property also provides excellent habitat for the South Fork elk herd, wintering bald eagle populations, as well as black bear, bobcat, and other plants and animals native to the area.

The property has substantial public value due to its habitat, recreational and aesthetic qualities. The intent of the Grantor and Grantee, through this Conservation Easement, is to preserve the habitat richness and beauty of the property, while at the same time providing public recreational opportunities which utilize and respect the natural attributes of this property.

### **III. GRANT OF CONSERVATION EASEMENT.**

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 Overby Farm. 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 Overby Farm, Grantor reserves the following rights:

1. Use as a public park or conservancy area.
2. Make improvements to facilitate use as a public park, such as picnic tables, shelters, foot trails, signs and toilets; provided that any improvement on the

property will be done in scale, color, design and materials compatible with the natural surroundings and the purposes of this Conservation Easement.

3. Cut and trim trees as necessary for public safety, for park use and development, and for disease control, so long as such cutting or trimming is compatible with protection of natural habitat and the environment; the Grantee must agree to the cutting of any living tree in excess of six inches in diameter four and a half feet from the ground, unless such cutting is for reasons of public safety.

4. Landscape with native plants.

5. Enhance and restore wildlife habitat, including installation of nesting boxes.

#### **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 Overby Farm property:

1. Subdivide the property in any manner.

2. Erect or permit placement of any building, structure or improvement unrelated to park and recreation uses.

3. Remove trees or other native vegetation.

4. Excavate or grade the property or otherwise materially alter the landscape or topography.

5. Explore for or extract minerals, hydrocarbons, soils or other materials.

6. Install, maintain or use mercury vapor light fixtures or other similar obtrusive, high intensity outdoor lighting.

7. Permit hunting or trapping, except as necessary for reasonable park use and public safety, with the consent of Grantee.

8. Make any commercial use of the property that is unrelated to park activity

9. Allow overnight camping.

10. Permit any use of motorized recreational vehicles.
11. Allow use of motorized vehicles for ingress and egress, without the consent of the Grantee.
12. Permit dwelling for human habitation, except for a park ranger or caretaker, without prior approval of location and design by the Grantee.
13. Drain wetlands, alter natural watercourses, or otherwise denigrate wildlife habitat.
14. Use forest chemicals for control of insects or plant disease, without the consent of the Grantee.
15. Otherwise use the property inconsistent with the reservation of rights and the purposes of this Conservation Easement.

#### **VI. RIGHTS AND RESPONSIBILITIES OF GRANTEE.**

Grantor grants and Grantee accepts the right and responsibility to preserve and protect in perpetuity the aesthetic, habitat and ecological and public access values of the Overby Farm consistent with the terms of this Easement. In connection with such rights and responsibilities:

1. Grantor grants to Grantee the right to enter the Overby Farm, 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 Overby Farm 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 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.

**VII. BASELINE DATA.**

In order to establish the present condition of the Overby Farm 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.

Grantor agrees to notify Grantee prior to exercising any right reserved in Part IV of this Conservation Easement, if such exercise may have an adverse impact on the conservation interests associated with the objectives of this Conservation Easement.

**IX. ASSIGNMENT OF GRANTEE'S INTERESTS.**

The Grantee may not assign its interests in this Easement except to a "qualified" organization within the meaning of Section 170(h) of the Internal Revenue Code of 1986, as amended, which organization has a concern for ecological and aesthetic considerations consistent with the terms of this Easement, and on condition that such organization as a condition of the assignment expressly agrees to continue to carry out the rights and responsibilities of Grantee in this Conservation Easement. Should the Grantee cease to exist, this Easement shall be assigned to such an organization.

**X. GRANT IN PERPETUITY.**

This Conservation Easement gives rise to a property right immediately vested in Grantee. This Easement shall run with the property in perpetuity and shall bind the Grantor, its successors and assigns forever.

**XI. 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.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Conservation Easement this 12 day of May, 2000.

**WHATCOM COUNTY**

By: [Signature]  
 Its: County Executive

STATE OF WASHINGTON )  
 ) ss.  
 COUNTY OF WHATCOM )

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

DATED this 12 day of May, 2000.

(SEAL)

[Signature]  
 NOTARY PUBLIC  
 Printed Name: Francine T. Kincaid  
 My commission expires: 7-18-01

**WHATCOM LAND TRUST**

By: [Signature]  
 Its: President



STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF WHATCOM )

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

DATED this 23rd day of May, 2000.

(SEAL)



*J. Lynne Goolsby*  
NOTARY PUBLIC  
Printed Name: J. LYNNE GOOLSBY  
My commission expires: 3-24-04

**EXHIBIT A**

**LEGAL DESCRIPTION**

Parcel A and Parcel 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 ¼ of Section 15, and the East ½ of the Northeast ¼, 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 712993 (should read 712293), situate in Whatcom County, Washington.