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12/26/14

DOCUMENT TITLE: **GRANT DEED OF CONSERVATION EASEMENT**
GRANTOR: **CHRISTOPHER TERRIGAL BURN**
GRANTEE: **THE SAN JUAN PRESERVATION TRUST**
ABBREVIATED LEGAL DESCRIPTION: **PRTN of Gov. Lot 5, Section 11, Township 37N Range 3W W.M.**
FULL LEGAL DESCRIPTION: **EXHIBIT A, PAGE #25**
ASSESSOR'S TAX PARCEL NUMBERS: **371112001; 371112002**

GRANT DEED OF CONSERVATION EASEMENT

This Grant Deed of Conservation Easement (hereinafter, the "Conservation Easement"), by and between **CHRISTOPHER TERRIGAL BURN**, a married person as to his separate property (hereinafter referred to as "Grantor"), and **THE SAN JUAN PRESERVATION TRUST**, a Washington non-profit corporation (hereinafter referred to as "Grantee"), is made with reference to the following facts:

1 RECITALS.

- 1.1 Owner.** Grantor is the owner in fee of that certain real property (hereinafter the "Property") inclusive of all standing and downed timber, situated on Waldron Island in San Juan County, State of Washington, more particularly described in Exhibit "A" and shown on Exhibit "B" and Exhibit "C", all of which are attached and made a part hereof by this reference. The Property includes a cabin as of the Effective Date of this Conservation Easement.

- 1.2 Protected Property.** The Property is part of a significant coastal ecosystem, the San Juan Islands, which is relatively intact and undeveloped. The Property includes approximately 814 linear feet of natural shoreline and 10.36 acres, for protection under this neighborhood conservation easement. The Property supports rearing and feeding nearshore habitat for salmon and forage fish, wooded shorelands that provide wildlife habitat for native birds including Bald Eagle, pileated woodpecker, great horned owl, Pacific oystercatcher and kingfisher, and river otters, and possesses natural and open space values. Prominent attributes of the Property include the marine riparian vegetation, wetlands and spring, and mature mixed conifer/deciduous forest that contribute to the natural shoreline. The Property is in a predominantly natural and undisturbed state, with a northern aspect.
- 1.3 Conservation Values.** The Property's natural shoreline, wetlands, and forest (ecological) and open-space (including scenic) values (hereinafter, the "Conservation Values") are of major importance to Grantor, Grantee, and the people Waldron Island, San Juan County, and the State of Washington. The Property sustains the dynamic nearshore processes necessary to maintain natural shoreforms, is part of the accretion beach system of northern Waldron Island which has Point Hammond as its feeder bluff, and enhances the quiet, solitude, rural character and wildlife habitat of Waldron Island. The Property can be viewed by the public from the waters of Boundary Pass.
- 1.4 County Conservation Intent.** The goals and policies of the San Juan County Comprehensive Plan provide for the protection of the natural beauty and visual open space resources of the islands, the maintenance of the present rural and open space character, and respect for the natural environment. The Plan encourages the preservation of scenic resources and renewable natural resources for the benefit of existing and future generations through voluntary mechanisms such as conservation easements. San Juan County has a tax-supported program to purchase land and conservation easements to help preserve land similar to the Property. The Property is also governed by the Waldron Island Limited Development District Subarea Plan the purpose of which is to recognize and preserve Waldron Island in its present condition as an irreplaceable resource that nurtures its life forms, including human beings.
- 1.5 State Conservation Intent.** The legislatively declared policies of the State of Washington, in Chapter 84.34 Revised Code of Washington (hereinafter "RCW"), provide that it is in the best interest of the State to maintain, preserve, conserve, and otherwise continue in existence, adequate open-

space lands and to assure the use and enjoyment of natural resources, and scenic beauty for the economic and social well-being of the state and its citizens. The State has also recognized the importance of private efforts to preserve the natural systems in the State by enacting RCW 64.04.130, the statute authorizing conservation easements. The Property is officially designated by San Juan County as "Timber Open Space" land, pursuant to Ch. 84.34 RCW and Ch. 16.50 San Juan County Code.

- 1.6 **Conservation Threat.** The Property would also be extremely desirable property for substantial residential and other development because of its location and orientation. In the absence of this Conservation Easement, the Property could be developed in the future for additional residential and other uses in a manner which would destroy its Conservation Values.
- 1.7 **Grantor Conservation Intent.** Grantor, as the owner of the Property, possesses the affirmative right to identify, preserve, and protect in perpetuity the natural elements and processes and the Conservation Values of the Property, and desires to transfer such rights to the Grantee.
- 1.8 **Qualified Conservation Organization.** Grantee is a "non-profit nature conservancy corporation" as defined by RCW 64.04.130 and RCW 84.34.250, and described in Section 170(b)(1)(A)(vi) of the Internal Revenue Code of 1986 (hereinafter "IRC"), and Grantee is authorized to accept the Conservation Easement.
- 1.9 **Recitals Incorporated By Reference.** The above Recitals are incorporated into this Conservation Easement by this reference.

2 CONVEYANCE AND CONSIDERATION.

- 2.1 **Charitable Donation.** For the reasons stated above, and in consideration of the mutual covenants contained herein, the Grantor does hereby grant, convey, and warrant to Grantee, and Grantee hereby accepts, a perpetual Conservation Easement, consisting of the rights in the Property hereinafter enumerated, subject only to the restrictions set forth in this Conservation Easement.
- 2.2 **Gift of Real Property.** This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130, and is made as an absolute, unconditional, unqualified, and completed gift subject only to the mutual covenants and restrictions hereinafter set forth and title matters of record as of the Effective Date, and for no other consideration whatsoever.

2.3 Water Rights. This Conservation Easement does not transfer any water or water rights to Grantee.

2.4 Grantor Intent. Grantor expressly intends that this Conservation Easement runs with the land and that this Conservation Easement shall be binding upon Grantor's personal representatives, heirs, successors, and assigns.

3 PURPOSE.

3.1 Conservation Purpose. The exclusive purpose of this Conservation Easement is to implement the mutual intentions of Grantor and Grantee as expressed in the above Recitals and in the provisions that follow, to preserve and protect the Conservation Values of the Property in perpetuity; to limit the residential use of the Property to one (1) single family residence and appurtenant and accessory structures within a designated "Structures Area" in .54 acre of the Property as provided herein (and shown in Exhibit "B2" and described in Exhibit "B3") and to protect the land in perpetuity (the "Purpose").

Grantor intends that this Conservation Easement will confine the use of, or activity, on the Property to those uses and activities consistent with the Purpose to assure, under IRC Section 170(h)(4)(A)(iii), the preservation of natural shoreline, wetland and forested open space that yields a significant public benefit pursuant to a clearly delineated governmental conservation policy as provided for in RCW 84.34.210 and 64.03.130.

3.2 Grantor Intent. Grantor intends that the Property shall not be converted or directed to any uses other than those provided in this Conservation Easement.

3.3 Baseline Data. In furtherance of the foregoing Purpose, Grantor and Grantee agree that the baseline data consisting of maps, photographs, and other documentation on file at the offices of Grantee and provided to Grantee by Grantor (hereinafter the "Baseline Present Conditions Report") provide, collectively, an accurate representation of the Property at the time of this Grant and are hereby incorporated by this reference. Grantor and Grantee have acknowledged in a signed statement, a copy of which is attached to this Conservation Easement as Exhibit "D", that the Baseline Present Conditions Report accurately represents the currently available baseline data regarding the condition of the Property as of the Effective Date. The Baseline Present Conditions Report shall be relied upon by Grantor and Grantee as the descriptive base to establish the present condition and guide in the future uses of the Property.

3.4 Public Access. Nothing contained in this Conservation Easement shall be construed as affording to the general public physical access to any portion of the Property subject to this Conservation Easement.

3.5 Visual Access. Preservation of the Property will protect the general public's visual access from the water to open space and natural shoreline along Fishery Point.

4 GRANTEE'S RIGHTS. The rights conveyed to Grantee by this Conservation Easement are the following:

4.1 Protection in Perpetuity. The Grantee shall have the right to identify, preserve, and protect, in perpetuity, the Conservation Values of the Property for public benefit by the general public and for its natural and open-space values.

4.2 Grantee's Access.

4.2.1 Annual Inspection. The Grantee shall have the right to enter upon the land of the Property annually, upon prior written notice to the Grantor, for the purpose of making a general inspection of the land to assure compliance with this Conservation Easement.

4.2.2 Educational and Scientific Purposes. The Grantee and other persons approved by the Grantor may enter upon the Property, upon prior arrangement with Grantor, for educational and scientific purposes to observe and study the Property, or for other purposes allowed by Grantor consistent with this Conservation Easement.

4.2.3 Enforcement. The Grantee shall have the right to enter upon the Property, at such other times as are necessary if there is reason to believe that a violation of this Conservation Easement is occurring, for the purposes of enforcing the provisions of this Conservation Easement.

4.3 Injunction and Restoration. The Grantee shall have the right to enjoin any activity on, or use of, the Property that is inconsistent with this Conservation Easement, and undertake, cause to be undertaken, or enjoin the restoration of such areas or features of the Property as may be damaged by activities contrary to the provisions hereof all in accordance with Section 7 below.

- 4.4 **Markers.** The Grantee shall have the right, during the annual inspection, to place and replace small markers to identify the boundaries and corners of the Property.
- 4.5 **Advance Written Notice.** The Grantee shall be notified by Grantor, in accordance with the procedures of Section 17 below, before Grantor exercises any reserved right, the exercise of which may have an adverse impact on the Conservation Values of the Property.
- 4.6 **Transfer of Easement.** Grantee shall have the right to assign, convey or transfer Grantee's interest in the Property in accordance with Section 8 below.
- 4.7 **Development Rights.** The Grantor hereby grants to Grantee all development rights, except as reserved in Section 5 below, that are now or hereafter allocated to, implied, reserved, or inherent in the Property; and Grantor and Grantee agree that such development rights on the Property are terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lot yield of the Property or any other property.
- 4.8 **Enforcement.** Enforcement of the terms and conditions of this Conservation Easement shall be at the discretion of the Grantee, in accordance with Section 7 below. Any forbearance on the Grantee's part to exercise its rights hereunder in the event of any breach of this Conservation Easement by Grantor, its heirs, successors or assigns, or any other person or entity, shall not be deemed or construed to be a waiver of the Grantee's rights hereunder in the event of any subsequent breach.
- 4.9 **Invasive Species Management.** If there is reasonable evidence of the uncontrolled encroachment of invasive species of tree, shrub or weed, Grantee shall have the right to enter upon the Property at the Grantee's option and expense and upon thirty (30) days prior written notice to the Grantor, to eradicate invasive plants. The failure of the Grantee to exercise this right at any time shall not bar it from doing so at a later time.
- 5 **PERMITTED AND RESERVED USES AND ACTIVITIES.** Grantor reserves for itself and its personal representatives, heirs, successors, and assigns, all rights accruing from ownership of the Property, including the right to engage in, or permit or invite others to engage in, any use of, or activity on, the Property that is consistent with the Purpose of the Conservation Easement and that is not otherwise prohibited by this Conservation Easement. Without limiting the generality of this

section, Grantor specifically reserves for itself and its personal representatives, heirs, successors, and assigns, the following uses and activities:

- 5.1 **Land Conservation.** To maintain the Property as a natural reserve for native plants and animals consistent with the terms of this Conservation Easement.
- 5.2 **Residential Use.** To construct, use, maintain, repair, expand, reconstruct, relocate, or replace one (1) single-family residence and its appurtenant structures within a .54 acre Structures Area as shown in Exhibit B2 and described in Exhibit B3 and documented in the Baseline Present Conditions Report, subject to compliance with federal, state, and local regulations. Grantor shall provide written notice to Grantee before submission of plans to San Juan County for building permits for construction, re-construction or replacement of any structures on the Property so that Grantee may ensure that such structures are located within the Structures Area.
- 5.3 **Forest Management - Noncommercial Purposes.** To manage forested land within 200 feet of the shoreline on the Property for conservation of ecological processes using noncommercial methods, which may include forest management for safety of users of the Property; for control of active fires, prevention of fire and disease including exotic intrusion, and promotion of fire resilience; for restoration or enhancement of plant and wildlife habitat; and to create and maintain walking trails and paths on the Property; provided that forest activities must be conducted in a manner and intensity that do not adversely and materially affect the Conservation Values on the Property including maintenance of marine riparian vegetation (mature trees, shrub understory and overhanging vegetation along the shoreline). The prohibition against commercial vegetation management should not be construed to prohibit the occasional harvesting of forest products for personal use by Grantor on the Property, such as lumber and firewood. No new openings in the forest are permitted for such noncommercial purposes, unless approved in advance and in writing by Grantee as necessary to safeguard the ecological health of forested acreage, to prevent or mitigate greater harm to the Conservation Values of the Property or to enhance plant and wildlife habitat.
- 5.4 **Forest Management - Commercial Purposes.** To manage selected portions of the Property as "Designated Forest Land" for the commercial production and harvest of timber pursuant to chapter 84.33 RCW or as "Timber Land" for the commercial growth and harvest of forest crops pursuant to chapter 84.34 RCW, consistent with and in accordance with a *forest management plan* prepared and updated by a professional forester

and approved by the Grantee, a copy of which shall be provided to Grantee when completed. The Grantor, its heirs and assigns, agrees that any *forest management plan* for the Property will be in accord with the following objectives:

- 5.4.1 To maintain a healthy stand of trees on the forested acreage;
- 5.4.2 To maintain a continuous growth of desirable tree species natural to the Property, including a reasonable proportion of old-growth trees (100 years or older);
- 5.4.3 To maintain the suitability of the Property as wildlife habitat; and
- 5.4.4 To allow periodic selective harvesting of a portion of the timber stand in a manner which will have a minimal impact on the soils, surrounding trees and vegetation, and wildlife habitat.

The *forest management plan* shall include provisions addressing the circumstances under which trees within "Designated Forest Land" or "Timber Land" areas on the Property may be cut to control insects or disease and to prevent personal injury or property damage, temporary skid roads for removal of trees, and the circumstances under which blow-downs may be removed. The *forest management plan* shall also include provisions requiring the Grantor to implement reasonable methods to control and eradicate non-native species within the "Designated Forest Land" or "Timber Land" areas on the Property.

The Grantor, its heirs and assigns, agrees that the silvicultural systems applied and any harvesting of the forest crop will be in accordance with accepted forest practices. Prior to timber harvest, the Grantor shall obtain review and approval of timber harvest layout by a professional forester and notify Grantee of harvest plans. In the event the Property is no longer "Designated Forest Land" or "Timber Land," then it shall be managed in accordance with Section 5.3 above.

- 5.5 **Tent Platform.** To construct, use and maintain a seasonal tent platform for family use on the Property to be located more than 200' horizontal distance inland from the Ordinary High Water Mark. Prior to construction of the tent platform, Grantor will notify Grantee in writing in accordance with Section 17 so that Grantor may determine that it is consistent with maintenance of the Conservation Values of the Property and terms of the Conservation Easement.

- 5.6 Trails/Paths.** To use, construct and maintain existing pedestrian trails on the Property, each of which trails shall be 4 feet or less in width and used for non-motorized access as documented in the Baseline Present Conditions Report. Non-motorized trail use may include incidental horseback (or other animal) riding that is consistent with the maintenance of the Conservation Values of this Conservation Easement.
- 5.7 Roads.** To construct, use, maintain, repair, reconstruct or replace a driveway over the Property for access to the Structures Area within a 20-foot wide corridor as documented in the Baseline Present Conditions Report.
- 5.8 Utilities.** To install, use, maintain, repair, reconstruct, relocate or replace utilities to serve the Structures Area, including but not limited to solar panels; wind power; water wells; water pipes, including access to spring or well water for residential use; water storage tanks; pump houses; well house; composting toilets, outhouses, and septic systems. All utilities to serve structures in the Structures Area will be located within the Structures Area or along the 20-foot wide driveway corridor except that water systems may extend from source to Structures Area consistent with maintenance of the Conservation Values of the Property and terms of the Conservation Easement. Also, Grantor may propose and Grantee may approve alternative siting if Grantee determines that the impact upon the Conservation Values is not materially greater than locating a utility within the Structures Area or along the 20-foot wide driveway corridor.
- 5.9 Noxious Weeds/Introduced Species.** To remove noxious, invasive and introduced weeds and introduced animal species from the Property using methods consistent with maintenance of Conservation Values which may include controlled use of goats and sheep (using a tether or moveable fence allowing access to up to .25 acre at a time) to selectively remove invasive plant species.
- 5.10 Archaeological Investigations.** To undertake legally permitted archaeological investigations on the Property with the oversight of a professional archaeologist, provided that any such activity shall be conducted so that interference with the Conservation Values of the Property is avoided.
- 5.11 Public Health and Safety.** To undertake other activities necessary to protect public health or safety on the 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 so that interference with the Conservation Values of the Property is avoided to the greatest extent possible.

- 6 PROHIBITED USES AND ACTIVITIES.** Any use of or activity on, the Property inconsistent with the Purpose of this Conservation Easement is prohibited, and the Grantor acknowledges and agrees that it will not conduct, engage in or permit any such use or activity. The following uses and practices on the Property are inconsistent with the Purpose of this Conservation Easement and shall be prohibited; except to the extent a use or practice is specifically reserved in Section 4, Section 5 or this section; and provided that this is not an exhaustive recital of all of those uses and practices which are prohibited as inconsistent with the Purpose of the Conservation Easement:

- 6.1 Structures.** The construction or placement of any buildings or structures, including docks and fences, on the Property.
- 6.2 Subdivision.** The division, subdivision or de facto subdivision of the Property, which includes, but is not limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Property is divided into more than the two (2) parcels existing as of the Effective Date of this Conservation Easement or which title to different portions of the Property are held by more than two (2) different owners. This restriction shall not be interpreted to prohibit lot line revisions of tax parcels within the Property or conventional leases of a permitted residence on the Property (for example, a lease with a short duration and without automatic renewal).
- 6.3 Alteration of Land.** Change in the topography of the land or shoreline alteration, including tidelands and bedlands, through the excavation or placing of soil, dredging spoils, shoreline armoring, filling, bulkheads, hardening of the shore, other material, or alteration of the coastal sediment input/transport/deposition regime; pond construction; or archaeological excavation on the Property.
- 6.4 Alteration of Wetlands/Watershed Resources.** The manipulation or alteration of any marshes, wetlands, or surface drainage patterns by filling or draining, or the pollution or degradation of surface or subsurface waters on or under the Property, including the alteration of the upland hydrological regime and creation of impervious surfaces.
- 6.5 Stormwater Runoff.** Channelized stormwater outflow and/or pollutants on the beach and/or nearshore waters.

- 6.6 **Roads/Trails.** Construction of any roads, trails, or paths for vehicular use on the Property.
- 6.7 **Docks/Boat Ramps/Beach Access Structures.** The construction or placement of pilings, docks, boat ramps, or beach access structures on the shoreline of the Property.
- 6.8 **Utilities.** The placement of utility lines, pipes, wires, fuel tanks, septic tanks, septic drainfields, or desalinization intake/effluent lines, whether above- or underground, on the Property.
- 6.9 **Mining.** The exploration for or extraction of minerals, hydrocarbons, soils, rock, gravel or other materials, including water, on or below the surface of the Property.
- 6.10 **Signs.** The construction or placement of commercial signs, billboards, or other commercial advertising material on the Property. This provision shall not be interpreted to prohibit Grantor from placing small signs that advise "no hunting", "private" or other small signs indicating the protected conservation status of the Property; provided that such signs are designed and located to avoid or minimize impact on the Conservation Values of the Property.
- 6.11 **Dumping.** The dumping or disposal of used vehicles, old machinery, rubbish, garbage, debris, hazardous materials or other unsightly or offensive material on the Property or the storage of any such objects on the Property.
- 6.12 **Tree Harvest or Vegetation Removal.** Removal or destruction of trees, including clear-cutting or any other form of commercial logging, or gathering of wood or other vegetation on the Property including large woody debris and marine vegetation. The cutting of snags or overmature trees, unless dangerously close to permitted structures, driveways or trails on the Property.
- 6.13 **Natural Shoreline Vegetation.** The removal of marine riparian vegetation on the Property, including herbaceous understory and plant material overhanging the beach.
- 6.14 **Introduced Vegetation.** The intentional introduction of invasive plant species on the Property.
- 6.15 **Grazing.** The grazing, browsing or pasturing of domestic animals on the Property.

- 6.16 Development Rights.** The use or transfer of any development rights that are now or hereafter allocated to, implied, reserved, or inherent in the Property to any other property.
- 6.17 Commercial Recreation.** Other than de minimis use of the Property for commercial recreational activities, as such terms are defined by Section 2031(c)(8)(B) of the IRC and the applicable Treasury Regulations. By prohibiting more than a de minimis use of the Property for commercial outdoor recreational activities, it is the intent of the parties to prevent the Property from becoming the site of a commercial recreational enterprise, such as a commercial campground, a golf course, an exclusive hunting grounds or club, a commercial site for an all-terrain vehicle, motocross or other racetrack, a dressage field or other similar intensive or predominantly commercial use.
- 6.18 Industrial and Commercial Uses.** The use of the Property for any industrial or non-recreational commercial purpose.
- 6.19 Off-Road Vehicles and Excessive Noise.** The operation of motorcycles, ATV's, dune buggies, snowmobiles, or any other type of motorized recreational vehicles, or the operation of other sources of compaction or erosion that could adversely and materially impact the Conservation Values of the Property except that motorized recreational vehicles are allowed on the driveway and within the Structures Area.
- 6.20 Camping.** Public or commercial camping on the Property or development of permanent campsites. This restriction does not prohibit temporary recreational camping on the Property by the Grantor and Grantor's guests.
- 6.21 Night Lighting.** The use of any continuous type of night lighting on the Property. This restriction does not prohibit downward directed night illumination for safety.

7 REMEDIES.

- 7.1 Dispute Resolution.** If a dispute arises between the Grantor and the Grantee concerning the consistency of any proposed action, activity, or use with the Purpose of this Conservation Easement or any circumstances not provided for in Subsection 7.2 below (other than extinguishment of this Conservation Easement which shall occur only in accordance with Section 10 below), the parties shall meet together to discuss the dispute and attempt resolution. Thereafter, the parties may mutually agree to refer the dispute to arbitration. Within thirty (30) days of mutual agreement to resolve said dispute by arbitration, the parties shall select a single arbitrator to hear the

matter. If the parties are unable to agree on the selection of the arbitrator, then the presiding judge of the San Juan County Superior Court shall appoint one. The matter shall be settled in accordance with chapter 7.04 RCW or the state arbitration statute then in effect, and a judgment on the arbitration award may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for all its costs and expenses, not including attorneys' fees, related to such arbitration which shall be determined by the arbitrator and any court of competent jurisdiction that may be called upon to enforce or review the award. Each party shall be responsible for its own legal fees. The parties agree not to proceed with the proposed action, activity, or use pending resolution of the dispute. Under no circumstances may extinguishment of this Conservation Easement occur, except by judicial proceedings in accordance with Section 10 hereof.

7.2 Grantee's Action.

7.2.1 Injunctive Relief. Irrespective of any other remedies provided for Grantee, Grantee may, following reasonable written notice to Grantor, institute suits or actions to enjoin any violation by Grantor of this Conservation Easement by injunction, including prohibitory and/or mandatory injunctive relief, and to require the restoration of the premises to the condition and appearance required under this Conservation Easement.

7.2.2 Restoration. Should any person or entity, including Grantor, its heirs, successors or assigns, undertake any activity in violation of the terms of this Conservation Easement, Grantee shall have the right to force 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 costs of such restoration and the Grantee's expenses shall be borne by Grantor or those of its heirs, successors, or assigns against whom a judgment is entered, or, in the event that the Grantee secures redress without initiating or completing a judicial proceeding, by Grantor or those of its heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized activity.

7.2.3 Damages. Grantee shall be entitled to recover damages for violation of the terms of this Conservation Easement or injury to the Conservation Values, including, without limitation, damages for the loss of environmental, aesthetic or scenic values. Without limiting Grantor's liability in any way, Grantee, in its sole discretion, may

apply any damages it recovers to the cost of undertaking corrective or restorative action on the Property.

7.2.4 Immediate Action Required. If Grantee, in its sole and absolute discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, Grantee may pursue its remedies under this Section 7 without prior notice to Grantor.

7.3 Acts Beyond Grantor's Control. Notwithstanding any other provisions in this Conservation Easement, nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct or restore any condition on the Property or to recover damages for any injury to or change in the Property resulting from causes beyond Grantor's control, including, but not limited to, fire, flood, storm, insect infestation, or earth movement; actions taken by third parties not connected to Grantor (such as trespassers); or from prudent actions taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

8 ASSIGNMENT AND SUCCESSION.

8.1 Assignment. The benefits of this Conservation Easement shall be assignable but only to a qualified organization within the meaning of Section 170(h)(3) of the IRC which is organized or operated primarily or substantially for one of the conservation purposes specified in Section 170(h)(4)(A) of the IRC. Any assignment of benefits by the Grantee (or successors) must require the transferee to carry out the Purpose of this Conservation Easement. The Grantee shall notify the Grantor, in writing, at the Grantor's last known address, in advance of such assignment. The failure of the Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the Conservation Easement or limit its enforceability in any way.

8.2 Assignment of Rights to the State of Washington. The Grantor hereby authorizes and approves the assignment of certain rights in this Conservation Easement to the State of Washington through the Salmon Recovery Funding Board administered by the Recreation and Conservation Office, which rights shall be co-held by the Grantee and the State of Washington acting by and through the Salmon Recovery Funding Board administered by the Recreation and Conservation Office. This Assignment of Rights shall be substantially in the form as attached hereto as Exhibit "E" and incorporated herein by this reference. The Grantor acknowledges

receipt of a copy of the instrument by which such rights are assigned to the State of Washington and co-held with the Grantee, and having had the opportunity, prior to signing this instrument, to read and discuss with the Grantor's legal counsel the contents of such instrument.

- 8.3 Succession.** If at any time it becomes impossible for the Grantee to ensure compliance with the covenants contained in this Conservation Easement and the Grantee has not named a successor or successor organization, or the Grantee shall cease to exist, then its rights and duties hereunder shall become vested in and fall upon the following-named entities provided that such entities accept this Conservation Easement and are then organizations meeting the requirements of Section 170(h)(3) of the IRC (or its successor statute), in the following order:

(1) The Nature Conservancy, a District of Columbia non-profit corporation, having its principal office at 4245 North Fairfax Drive, Suite 100, Arlington, VA 22203;

(2) Such other entity as may have been formed for purposes similar to The San Juan Preservation Trust, constituting a "qualified organization" within the meaning of the Internal Revenue Code of 1986 (or its successor provision).

Provided that if such vesting in the entities named above is deemed to be void under the Rule against Perpetuities, then the rights and obligations under this Conservation Easement shall vest in such organization as a court of competent jurisdiction shall direct, pursuant to the applicable Washington law and the IRC (or corresponding provision of any future statute) and with due regard to the Purpose of this Conservation Easement, including, but not limited to, the Conservation Values of the Property.

9 TAXES AND EXPENSES.

- 9.1 Property Taxes.** Grantor agrees to pay any and all real property taxes and/or assessments levied by competent authority on the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor shall reimburse Grantee for the same.
- 9.2 Cost of Maintenance.** Grantor shall bear all the costs of maintenance of the Property, and does hereby indemnify the Grantee therefrom.

10 PROPORTIONATE VALUE; EMINENT DOMAIN.

10.1 Valuation. The Grantor and the Grantee agree that the donation of the Conservation Easement gives rise, for purposes of this Section 10, to a property right immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that the Conservation Easement, determined as of the Effective Date, bears to the value of the Property (excluding the value of buildings and other improvements) at that time. The proportionate value of Grantee's property rights shall remain constant. If the Grantor obtains an appraisal for federal income or other tax purposes, Grantor shall provide the Grantee with a copy of that appraisal. If a change in conditions surrounding the Property makes impossible or impracticable the continued use of the Property for conservation purposes, and gives rise to extinguishment of this Conservation Easement by judicial proceedings, the Grantee, on a subsequent sale, exchange or involuntary conversion of the Property, shall be entitled to a portion of the proceeds at least equal to that proportionate value of the Conservation Easement. The Grantee shall use its share of the proceeds in a manner consistent with the Purpose set forth in this Conservation Easement or for the "protection of a relatively natural habitat of fish, wildlife, or plants or similar ecosystem," or the "preservation of open space" as those phrases are used in IRC Section 170(h)(4)(a), as amended, and in regulations promulgated thereunder.

10.2 Eminent Domain. If ever all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. All expenses reasonably incurred by the Grantor and the Grantee in this action shall be paid out of the recovered proceeds and the proceeds remaining after the payment of such expenses shall be allocated in accordance with section 10.1 above.

11 HOLD HARMLESS. Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except to the extent caused by the willful or negligent acts of any of the Indemnified Parties; (2) the obligations

specified in paragraphs 9.1 and 9.2; (3) the violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulation or requirement, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USCA §§9601 *et seq.*) ("CERCLA"), the Washington State Model Toxics Control Act, chapter 70.105D RCW ("MTCA") or any successor or related law, by any person other than any of the Indemnified Parties; (4) the presence or release in, on, or from the Property, at any time, of any substance now or hereafter defined, listed or otherwise classified pursuant to any federal, state or local law, regulation or requirement as hazardous, toxic or polluting to the air, water or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties; and (5) the existence or administration of this Conservation Easement.

- 12 **ENVIRONMENTAL LIABILITY.** Grantor is solely responsible and Grantee has no responsibility whatsoever for the operation of the Property or the monitoring of hazardous and other conditions thereon. Notwithstanding any other provision of this Conservation Easement to the contrary, the parties do not intend, and this Conservation Easement shall not be construed, such that: (1) it creates in the Grantee the obligations or liabilities of an "owner" or "operator" as those words are defined and used in the environmental laws, including without limitations the CERCLA, MTCA or any successor or related law; or (2) it creates in the Grantee obligations or liabilities of a person described in 42 U.S. Code §9607(a)(3), RCW 70.105D.040 or any successor or related law. The term "environmental laws" includes, without limitation, any federal, state, local, or administrative agency statute, regulation, rule, ordinance, order, or requirement relating to environmental conditions or hazardous substances.
- 13 **COVENANTS.** It is the express intent of the Grantor and Grantee that the provisions of this Conservation Easement shall run with the land and burden title to the Property in perpetuity, and shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the parties hereto.
- 14 **"GRANTOR" - "GRANTEE".** The terms "Grantor" and "Grantee", wherever used in this Conservation Easement, and any pronouns used in place thereof, shall be held to mean and to include, respectively the above-named Grantor, and heirs, successors, personal representatives, and assignees of said Grantor, and each of them, and the above-named Grantee, its successors and assigns.
- 15 **SEVERABILITY.** In the event that any provision of this grant or the application thereof to any person or circumstance shall be determined to be invalid or unenforceable, the remainder of the provisions hereof, and the application of such

provisions to persons or circumstances other than those as to which it is determined to be invalid, shall not be affected thereby.

16 SUBSEQUENT TRANSFERS; NO MERGER.

16.1 Binding Effect. Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including without limitation, a leasehold interest, and shall notify Grantee in writing of any transfer within five business days after closing. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

16.2 Merger of Title. In the event that Grantee acquires the fee title to the real estate covered by this Conservation Easement, it is the intent of the parties, both Grantor and Grantee, that no merger of title shall take place which would merge the restrictions of the Conservation Easement with fee title to the Property and thereby eliminate them, as the parties intend that no such merger take place and that the restrictions on the use of the real estate, as embodied in this Conservation Easement shall, in the event title becomes vested in Grantee, become and remain permanent and perpetual restrictions on the use of the Property and that merger, which would eliminate such restrictions, shall not take place.

17 NOTICES.

17.1 Means of Notice. All notices required or permitted to be given under the terms of this Conservation Easement shall be in writing, sent as registered or certified mail or other courier providing reliable proof of delivery, and addressed as set forth below:

To Grantor:

Christopher Terrigal Burn
190 Lucero Way
Portola Valley, CA 94028-7428

To the Grantee:

The San Juan Preservation Trust
Box 327
Lopez Island WA 98261

Either Grantor or Grantee may, by proper notice to the other, designate another address for the giving of notices. All notices shall be deemed given on the third day following the day the notice is mailed in accordance with this Section 17.

17.2 Prior Notice and Approval. The purpose of notice and approval is to afford Grantee an opportunity to ensure that the activities or uses in question are designed and carried out in a manner consistent with the Purpose and terms of this Conservation Easement. Where notice to Grantee is required, Grantor shall describe in such notice the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the terms of this Conservation Easement and the Purpose thereof. Where Grantee's approval is required as provided in Section 5 above, Grantee shall have twenty (20) days from receipt of the notice to request additional information to evaluate the proposed activity. Where no additional information is requested, Grantee shall grant or withhold its approval in writing within forty-five (45) days of receipt of Grantor's written request for approval. Where additional information is requested, Grantee shall grant or withhold its approval in writing within thirty (30) days from receipt of the additional information. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the Purpose and terms of this Conservation Easement. If Grantee determines that the activity or use as contemplated by Grantor in its notice is not consistent with the Purpose and/or terms of the Conservation Easement, Grantee shall inform Grantor in writing of its determination and of any reasonable conditions that would make the activity or use in question consistent with the Purpose and terms of this Conservation Easement. When Grantee's approval is required, and when Grantee does not grant or withhold its approval in the time period and manner set forth herein, Grantor shall resubmit its notice. If Grantee fails thereafter to act on Grantor's request within thirty (30) days after receipt of the resubmitted notice, Grantor may conclusively assume Grantee's approval of the permitted use or activity in question, as described in Grantor's notice thereof.

17.3 Optional Notice and Consultation. If Grantor is unsure whether a proposed use or activity is prohibited by this Conservation Easement, Grantor may consult Grantee by providing Grantee a written notice describing the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose and to provide comments thereon to Grantor. This subsection does not itself impose a requirement of prior approval of the activity described in

any such notice; however, if Grantee does not provide written objections within forty-five (45) days after receipt of Grantor's notice, and Grantor resubmits its notice, and Grantee thereafter does not provide written objections within thirty (30) days after receipt of Grantor's resubmission notice, Grantee will be deemed to have approved of the proposed use or activity.

- 18 **LIBERAL CONSTRUCTION.** Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to effect the Purpose of this Conservation 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 Purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 19 **AMENDMENTS.** Grantor and Grantee recognize that circumstances could arise that justify amendment of certain of the terms, covenants, or restrictions contained in this Conservation Easement, and that some activities may require the discretionary consent of the Grantee. To this end, the Grantor and Grantee have the right to agree to amendments and discretionary consents to this Conservation Easement provided that in the sole and exclusive judgment of the Grantee, such amendment or discretionary consent furthers or is not inconsistent with the Purpose of this Conservation Easement and is in accordance with the Assignment of Rights referred to in Section 8.2 of this Conservation Easement. This Conservation Easement shall not be amended, modified, or terminated except in writing in a document signed by the Grantor and Grantee. Should the Property be owned by separate parties, the Conservation Easement as it pertains to one of the legal parcels may be amended without the consent of the owner of the other legal parcel. No amendment shall be allowed that would adversely affect the qualifications of this Conservation Easement as a charitable gift or the status of the Grantee under any applicable laws. Any such amendment shall be consistent with the Purpose of this Conservation Easement, shall not affect its perpetual duration, shall not permit additional development other than development permitted by this Conservation Easement on its Effective Date, shall not permit any impairment of the significant Conservation Values of the Property, and shall be in accordance with the Assignment of Rights referred to in Section 8.2 of this Conservation Easement. Any amendment shall be consistent with the Grantee's then current Conservation Easement Amendment Policy. Any such amendment shall be recorded in the land records of San Juan County of Washington. Nothing in this section shall require Grantor or Grantee to agree to any amendment.
- 20 **RECORDATION.** Grantee shall record this instrument in a timely fashion, in the Official Records of San Juan County, Washington, and other appropriate

jurisdictions, and Grantee may re-record it at any time as may be required to preserve its rights in this Conservation Easement.

- 21 **GOVERNING LAW.** The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Washington.
- 22 **NO FORFEITURE.** Nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.
- 23 **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 Conservation Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 19 above.
- 24 **TERMINATION OF RIGHTS AND OBLIGATIONS.** Notwithstanding anything contained in this Conservation Easement to the contrary, upon transfer of a party's interest in all or a portion of the Property, that party's rights and obligations under this Conservation Easement terminate to the portion transferred, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- 25 **COUNTERPARTS.** This instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same document, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- 26 **CAPTIONS.** The captions in this instrument have been inserted solely for convenience of reference and are not part of this instrument and shall have no effect upon construction or interpretation.
- 27 **EFFECTIVE DATE.** This Conservation Easement shall be effective as of the date of recording ("Effective Date").

{Signature Pages Follow}

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument
this 20 day of December, 2014

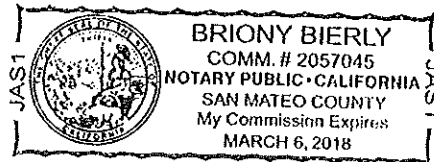

CHRISTOPHER TERRIGAL BURN

State of California)
County of San Mateo) ss

On this day, personally appeared before me CHRISTOPHER TERRIGAL BURN,
known to me to be the individual described in and who executed the within and foregoing
instrument, and acknowledged that he signed the same as his free and voluntary act and
deed, for the uses and purposes therein mentioned.


Notary Signature

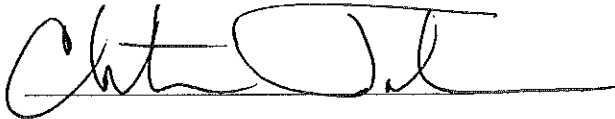
Given under my hand and official seal this 20th day of December, 2014
Notary Public in and for said state, residing at Portola Valley California
My commission expires: March 6th 2018



Acknowledgment of Separate Property by

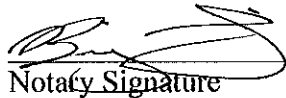
Christine Johnson, wife of Christopher Terrigal Burn, acknowledges that the interest of her husband, Christopher Terrigal Burn, in the Property is separate and not community property.

Dated: December 20, 2014



STATE OF CALIFORNIA)
) ss
COUNTY OF San Mateo)

On this day, personally appeared before me Christine Johnson known to me to be the individual described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

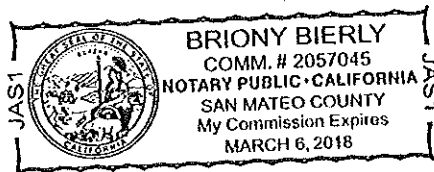


Notary Signature

Given under my hand and official seal this 20th day of December, 2014

Notary Public in and for said state, residing at Portola Valley Ct.

My commission expires: March 6th 2018



THE SAN JUAN PRESERVATION TRUST does hereby accept the above Conservation Easement.

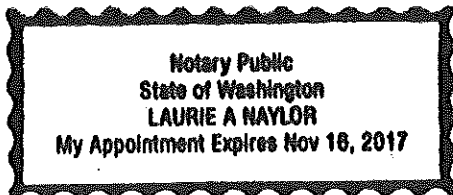
THE SAN JUAN PRESERVATION
TRUST

By Alice A. Hurd
Its Vice President

State of Washington)
) ss
County of SAN JUAN)

I certify that I know or have satisfactory evidence ALICE A. HURD 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 The San Juan Preservation Trust to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Given under my hand and official seal this 23RD day of DECEMBER, 2014.



Laurie A. Naylor
Notary Public in and for said state,
residing at LOPEZ ISLAND
My commission expires: NOV 16, 2017

EXHIBIT "A"

Legal Description of the Property

Parcel "A" 371112001000

The East 500 feet of Government Lot 5, Section 11, Township 37 North, Range 3 West
W.M.

EXCEPT the South 40 feet therefrom

EXCEPT any portion lying or situate within County Road No. 140

Situate in San Juan County, Washington

Parcel "B" 371112002000

The West 300 feet of the East 800 feet (as measured on the South line) of Government Lot
5, Section 11, Township 37 North, Range 3 West, W.M.

Situate in San Juan County, Washington

SUBJECT TO easements and restrictions of record.

EXHIBIT "B"

Map of Property Protected by the Conservation Easement

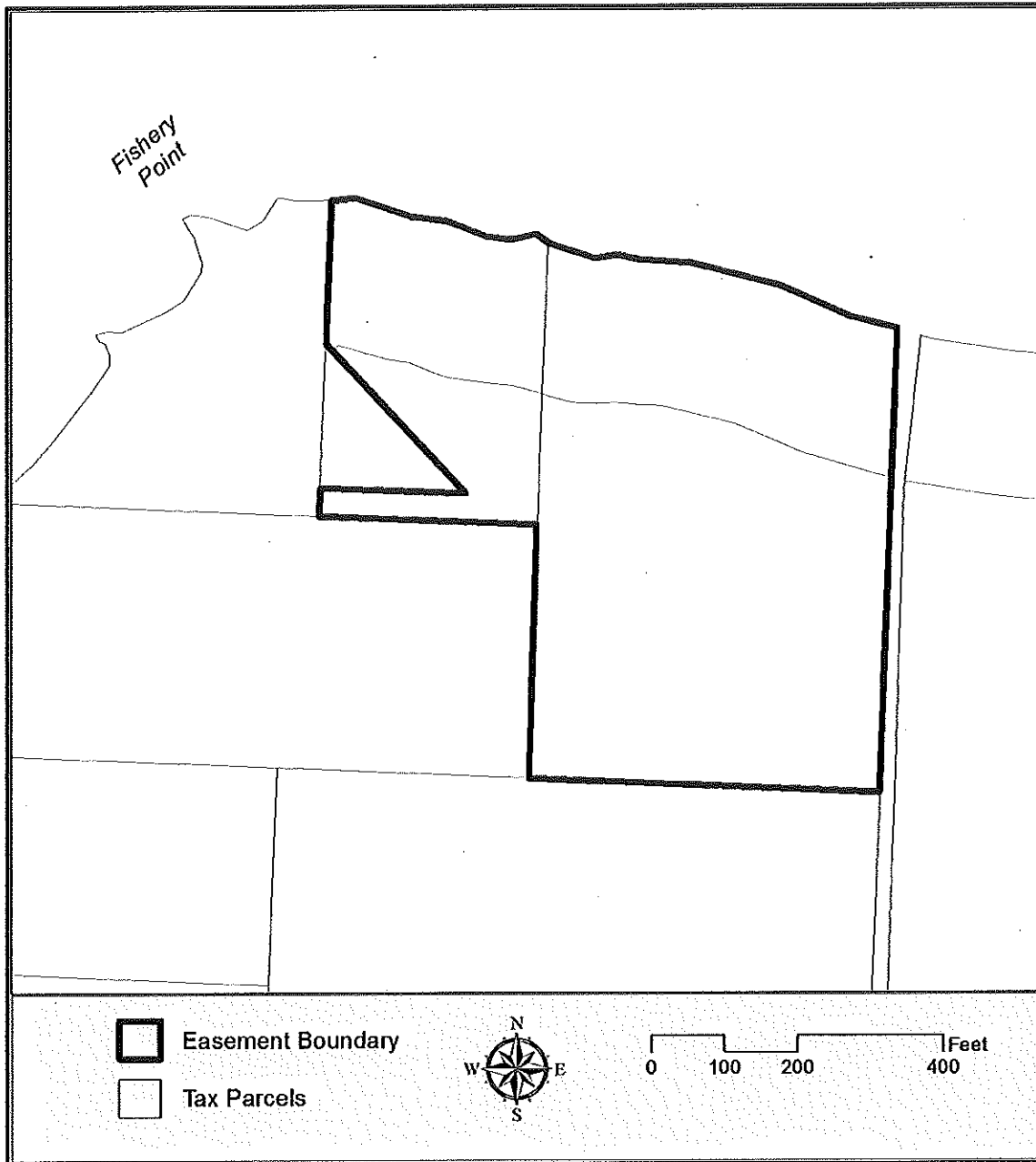


EXHIBIT "B2"

Survey Map of Structures Area

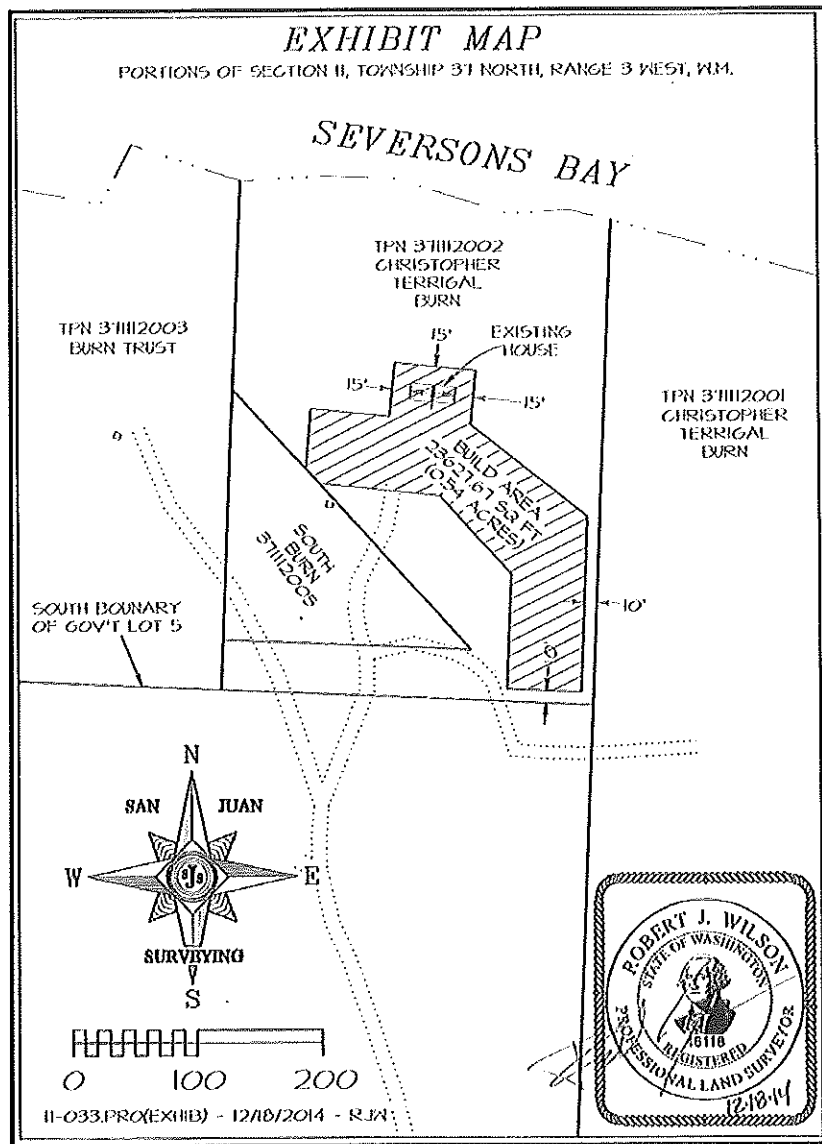


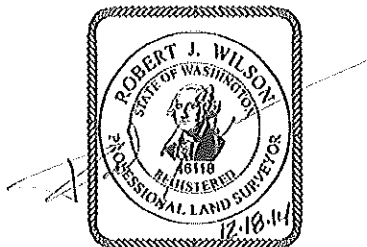
EXHIBIT "B3"

Legal Description of Structures Area

EASEMENT DESCRIPTION
Build Area

That portion of Government Lot 5, Section 11, Township 37 North, Range 3 West, W.M., San Juan County, Washington described as follows;

Commencing at the east Quarter corner of said Section 11, from which bears the meander corner common to Sections 11 and 12, said Township and Range North 2°22'10" East 1819.79 feet; thence North 45°04'21" West, 2476.16 feet to the True Point of Beginning; thence North 87°28'07" West, 59.93 feet; thence North 2°24'47" East 91.94 feet; thence North 42°31'58" West 84.78 feet; thence North 84°01'57" West 98.09 feet; thence North 42°31'58" West 15.99 feet; thence North 05°01'43" East 48.15 feet; thence South 84°01'57" East 64.38 feet; thence North 05°58'03" East 43.40 feet; thence South 84°01'57" East 66.00 feet; thence South 05°58'03" West 43.40 feet; thence South 51°57'04" East 118.95 feet; thence South 2°24'10" West 140.18 feet to the True Point of Beginning.



San Juan Surveying, LLC

P.O. Box 611 Elders Harbor, WA 98152
(360) 378-1360 www.sanjuanurveying.com

EXHIBIT "C"

Aerial Photo of the Property Protected by the Conservation Easement

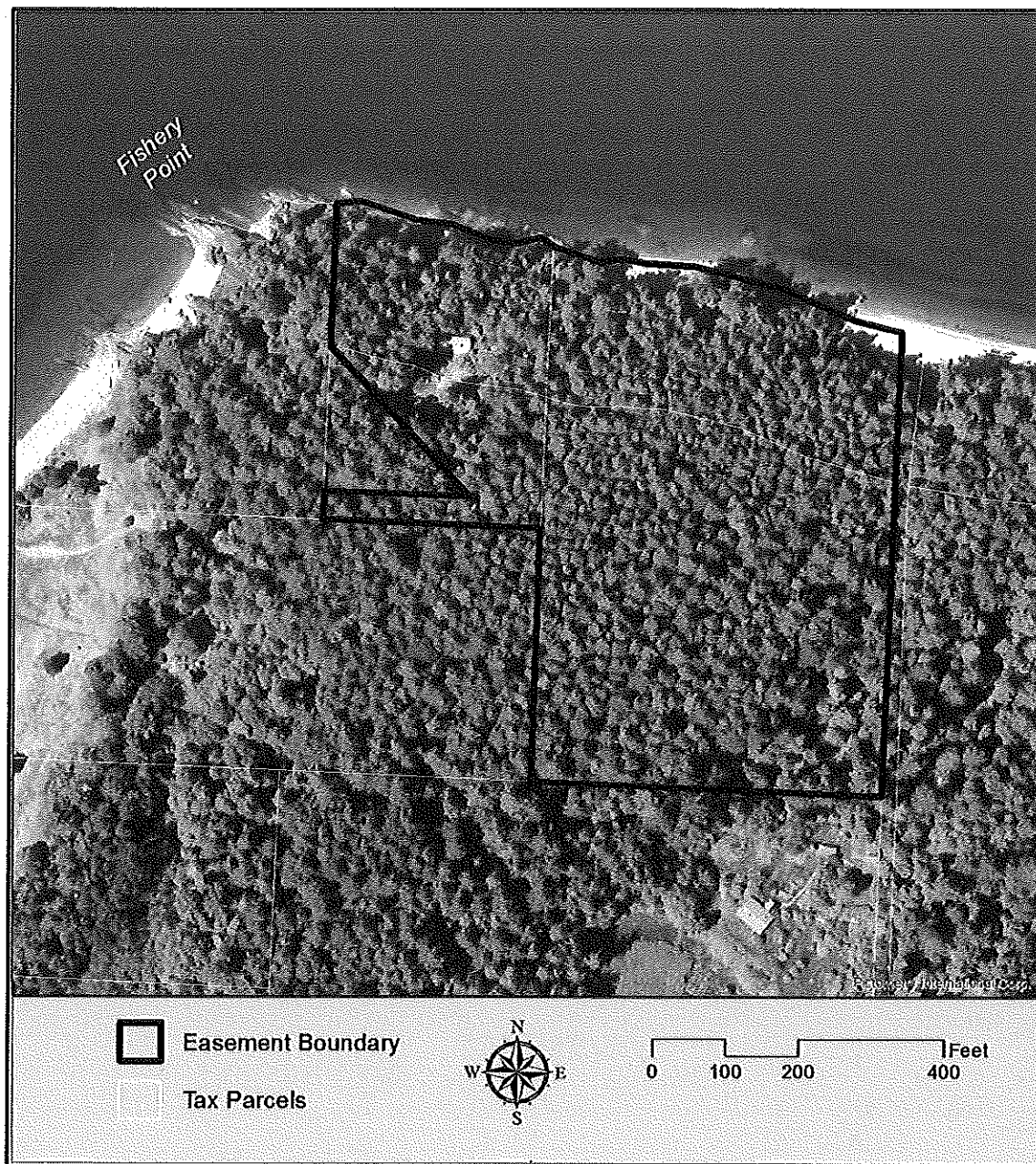


EXHIBIT "D"

Acknowledgement of Baseline Present Conditions Report

Grantor and Grantee acknowledge that each has read the Baseline Present Conditions Report, dated December 2014, and that the report accurately reflects the currently available baseline data regarding the condition of the Property subject to the Conservation Easement as of the Effective Date of the Conservation Easement.

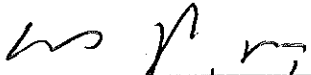
CHRISTOPHER TERRIGAL BURN	THE SAN JUAN PRESERVATION TRUST
 Date: <u>12/20/14</u>	By: <u>Alice A. Hurd</u> Its <u>Vice President</u> Date: <u>12/23/14</u>

EXHIBIT "E"

Assignment of Rights – Washington State Recreation and Conservation Office

**ASSIGNMENT OF RIGHTS
WASHINGTON STATE RECREATION AND CONSERVATION OFFICE**

This ASSIGNMENT OF RIGHTS (this "Assignment") is executed as of the _____ day of December 2014, by The San Juan Preservation Trust, a Washington nonprofit corporation ("Assignor SJPT"), to and in favor of THE STATE OF WASHINGTON through the Recreation and Conservation Office ("Assignee State"), including any successor agencies.

RECITALS

A. Assignor SJPT has entered into a conservation easement ("Conservation Easement") with Christopher Terrigal Burn ("Owner") in San Juan 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 is set forth in *Exhibit 2* attached hereto and incorporated herein.

B. The purpose of the Conservation Easement is described in the Conservation Easement. That purpose is also described in the Project Agreement entered into between Assignor SJPT, the recipient of Recreation and Conservation Office ("RCO") funds, and the Assignee State through the RCO entitled Fishery Pt. Neighborhood Shoreline CE Acquisition Project Number 14-1933A dated December 18, 2014 and the supporting materials which are on file with the Assignee State in connection with the Project Agreement, which Project Agreement is incorporated herein by this reference. That purpose includes protection of habitat, as defined in the Conservation Easement.

C. Owner has authorized Assignor SJPT to assign to the Assignee 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 Assignee State. Such rights are valuable to the Assignee State in connection with ensuring protection of habitat under the terms of the Conservation Easement. The assignment of such rights to the Assignee State, however, does not in any way relieve the Assignor SJPT of such duties to enforce the Conservation Easement as may be imposed on it under the Conservation Easement and the Project Agreement.

D. These recitals are incorporated herein by this reference.

Now, therefore, Assignor SJPT and the Assignee 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 SJPT does hereby assign, transfer, set over, convey and deliver to the Assignee State individually, and as the representative of all the people of the State, the following joint rights (collectively referred to as "joint rights") under the Conservation Easement, the recording number of which is listed in *Exhibit 1* attached hereto and incorporated herein by this reference and as described in *Exhibit 2* attached hereto. The term "joint right" means a right that both the Assignor SJPT and Assignee State may independently enforce under the Conservation Easement. The grant of these joint rights does not in any way relieve the Assignor SJPT of its duties to enforce the terms of the Conservation Easement or the Project Agreement.

a. **Access.** A right to enter the Property subject to the Conservation Easement at a reasonable time and upon prior arrangement with Assignor SJPT and Owner in the manner provided for in the Conservation Easement, in order to monitor and evaluate performance, compliance, and/or quality assurance under the Project Agreement.

b. **Enforcement.** A right to enforce the terms and conditions of the Conservation Easement and to seek injunctive relief, including restoration, and/or damages for any breach thereof.

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

d. **Termination For Reasons of Impracticability.** A right 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, before expiration of the term of the Conservation Easement for the reason that circumstances have rendered the conservation purpose of the Conservation Easement impractical to achieve. Absent approval of the Assignee State acting through the RCO or entry of an order of the Superior Court in which the Property subject to the Conservation Easement is located, the Assignor SJPT shall not enter into any termination or release agreement.

e. **Stewardship and Management Plans.** A right to review any Stewardship and/or Management Plans, as defined in the Conservation Easement. Review by RCO's Director will be for compliance with the terms of the Project Agreement.

To the extent the rights assigned herein overlap with the rights granted to the Assignor SJPT under the Conservation Easement, the rights assigned herein shall not be construed to displace those rights. These Rights shall be held in common with Assignor SJPT or Assignor SJPT's successors and assigns.

2. **Assignee's Exercise of Rights.** The rights assigned to the Assignee State under this Assignment shall not exceed those granted by Owner to the Assignor SJPT under the Conservation Easement. The Assignee 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.

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

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

b. Assignor SJPT shall enforce the terms of the Conservation Easement as provided in the Conservation Easement.

c. Assignor SJPT shall comply with, and the Assignee State 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 SJPT nor Owner has any claims or causes of action, at law or in equity, with respect to the Conservation Easement as of the date provided above.

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

5. **Indemnity.** Assignor SJPT shall defend, protect and hold harmless the Assignee State, or any officers or employees thereof, from and against any and all costs, claims, fees and expenses arising out of in part or whole the acts or omissions of Assignor SJPT and/or its employees, relating to the Conservation Easement or in any way relating to Assignor SJPT's representations and warranties under this Assignment.

6. **Replacement Property.** The Conservation Easement may be extinguished in whole or in part before expiration of its term (if any) under certain circumstances

identified in the Conservation Easement. Assignor SJPT may be entitled to compensation in such event. Assignor SJPT shall use all such proceeds for acquisition, restoration and/or enhancement of substantially equivalent property or property interests. Assignor SJPT hereby agrees to consult with, and receive the approval of, the RCO in the selection of any replacement property and to assign to the Assignee 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 SJPT shall not assign the Conservation Easement or the performance of any obligations to the Assignee State under the Conservation Easement, without the express written consent of the RCO's Director, which shall not unreasonably be withheld.

8. **Assignment Term.** The term of this Assignment shall be the same as the term of the Conservation Easement, and shall expire upon the expiration date of the Conservation Easement (if any).

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

10. **Governing Law/Venue.** This Assignment shall be governed by the laws of the State of Washington. In the event of a lawsuit between Assignor SJPT and the Assignee State involving this Assignment, venue shall be proper only in Thurston County. Assignor SJPT 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.

12. **SCHEDULE OF EXHIBITS:**

Exhibit 1 - Owner and Conservation Easement Recording Number

Exhibit 2 - Legal Description of Property Subject to Conservation Easement

REMAINDER OF PAGE IS INTENTIONALLY BLANK: SIGNATURE PAGES FOLLOW

ASSIGNOR:

The San Juan Preservation Trust

By: _____

Tim Seifert, Its Executive Director

Date: _____

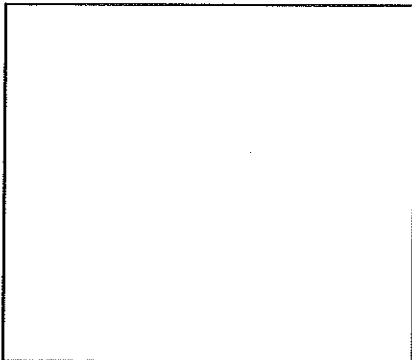
STATE OF WASHINGTON)

) ss:

COUNTY OF _____)

I certify that I know or have satisfactory evidence that Tim Seifert 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 Executive Director of The San Juan Preservation Trust to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public

Print Name

My commission expires

ASSIGNEE:

THE STATE OF WASHINGTON, through its Recreation and Conservation Office

By _____

Typed/Printed Name _____

Its: _____

Date: _____

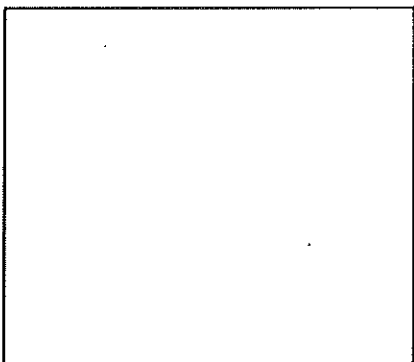
STATE OF WASHINGTON)

) ss:

COUNTY OF THURSTON)

I certify that I know or have satisfactory evidence that _____ 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 _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public

Print Name

My commission expires

EXHIBIT 1

OWNER AND CONSERVATION EASEMENT RECORDING NUMBER

Name(s): Christopher Terrigal Burn

Address: 190 Lucero Way Portola Valley, CA 94028-7428

Recording No.: _____

EXHIBIT 2

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

Parcel "A" 371112001000

The East 500 feet of Government Lot 5, Section 11, Township 37 North, Range 3 West
W.M.

EXCEPT the South 40 feet therefrom

EXCEPT any portion lying or situate within County Road No. 140

Situate in San Juan County, Washington

Parcel "B" 371112002000

The West 300 feet of the East 800 feet (as measured on the South line) of Government Lot
5, Section 11, Township 37 North, Range 3 West, W.M.

Situate in San Juan County, Washington

SUBJECT TO easements and restrictions of record.