

San Juan County, WA
F. Milene Henley, Auditor
CEASE
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2016-0324011

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Total:\$97.00



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CHICAGO TITLE

Recorded by and Return to:

San Juan County Land Bank
350 Court Street, #6
Friday Harbor, WA 98250
(360) 378-4402

SAN JUAN COUNTY WASH.
REAL ESTATE EXCISE TAX
AMOUNT PAID \$
MAR 24 2016
077235
RHONDA PEDERSON
COUNTY TREASURER

2453 717DL

Document Title: DEED OF CONSERVATION EASEMENT

Reference Auditor File Number:

Grantor: Shawn A. Huntley

Grantee: San Juan County, through the San Juan County Land Bank

Legal Description:

Government Lot 1 and Government Lot 2, Section 1, Township 37 North, Range 3 West.
W.M., situate in San Juan County.

Assessor's Tax Parcel Number: 370134001000

Huntley 1-2016

Deed of Conservation Easement

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| Grantor: Shawn A. Huntley PO Box 12 Waldron Island, WA 98297 | Grantee: San Juan County Through the San Juan County Land Bank 350 Court Street, #6 Friday Harbor, WA 98250 |
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RECITALS

Conveyance

This perpetual Deed of Conservation Easement ("Conservation Easement") is granted on this 24th day of March 2016, by Shawn A. Huntley (the "Grantor"), to San Juan County, a political subdivision of the State of Washington, by and through the San Juan County Land Bank (the "Grantee"), for the purposes set out in this agreement.

Description of Property

The Grantor is the owner in fee simple of the property ("Property") legally described in Exhibit A which consists of approximately 34 acres of land, located on tax parcel 370134001000 Waldron Island, San Juan County, Washington. A map of the Property is attached hereto as Exhibit B and incorporated herein by this reference.

The Property has roughly 2,525 feet of undeveloped shoreline along Boundary Pass. The shoreline features both barrier beach and feeder bluffs. The interior of the property is largely undeveloped with several small cabins, a workshop and large garden. Most of the interior is forested with western red cedar and Douglas-fir as the predominant species.

The Grantee is a "qualified conservation organization," as defined by the Internal Revenue Code. The Grantor requires and the Grantee accepts the responsibility of enforcing the terms of this Conservation Easement and upholding its Conservation Values, as defined herein, forever. The Grantee is acquiring and will maintain this Conservation Easement using funds, in whole or in part, generated pursuant to Revised Code of Washington ("RCW") 82.46.070 to fund the work of the San Juan County Land Bank. State law requires these revenues to be used exclusively for the acquisition and maintenance of conservation areas as defined in the statute. The acquisition of this Easement is in fulfillment of the statute.

Holders of Liens or Mineral Rights

All holders of liens upon and mineral rights on or beneath, the Property have agreed to subordinate their interests in the Property to this Conservation Easement, and to refrain forever from any action that would be inconsistent with the Conservation Purposes, as defined herein, of this Conservation Easement.

Public Policies

The Conservation Purposes of this Conservation Easement will serve the following clearly delineated governmental conservation policies:

1. R.C.W. 82.46.070 in which the Washington State legislature has authorized the adoption by counties of a one percent real estate excise tax to be used solely for the purposes of acquisition and maintenance of conservation areas.
2. San Juan County Ordinances 142-1990 and 6-1999 in which San Juan County, with the approval of the voters, created the San Juan County Land Bank, and adopted and extended the collection of a one percent real estate excise tax for the acquisition and maintenance of conservation areas as authorized by state statute.
3. Chapter 2.120 San Juan County Code ("SJCC"), in which the citizens of San Juan County have charged the San Juan County Land Bank with preserving "in perpetuity areas in the County that have environmental, agricultural, aesthetic, cultural, scientific, historic, scenic, or low-intensity recreational value, and to protect existing and future sources of potable water."
4. RCW 64.04.130 which gives counties the power to acquire less than fee simple property interests in the form of easements, development rights, covenants, or restrictions for the purpose of limiting the future uses of the property.
5. The San Juan County Comprehensive Land Use Plan, the San Juan County Open Space and Conservation Plan, and the Unified Development Code which includes the Open Space Conservation Overlay District (SJCC 18.35.145), through which the County seeks to conserve its important open space areas.
6. R.C.W. 84.34.010, in which the Washington State Legislature has declared "that it is in the best interests of the state to maintain, preserve, conserve and otherwise continue in existence adequate open space lands for the production of food, fiber and forest crops, 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."

Laws and Ordinances

This Easement in no way overrides the laws of San Juan County as expressed in county ordinances. Uses of the property allowed under this agreement are contractual in nature. The uses may require permits or may be prohibited under county codes. Nothing in this agreement waives the obligation of the Grantor to comply with all provisions of county ordinances and state laws.

AGREEMENT

Now, Therefore, for the reasons stated in the above Recitals, which are incorporated into this Conservation Easement by this reference, and in consideration of the mutual promises and covenants, terms, conditions and restrictions in this Conservation Easement, and for \$10.00 in hand paid and other good and valuable consideration, hereby acknowledged by the Grantor as received, the Grantor grants, conveys and warrants to the Grantee, and the Grantee accepts, as permitted by RCW 64.04.130, a conservation easement in perpetuity over the Property as contained herein, together with all development rights associated with the Property not reserved by the Grantor in Section 4 below, of the nature and character described in this Conservation Easement. The Grantor expressly intends that this Conservation Easement run with the land and be binding upon the Grantor's personal representatives, heirs, successors, and assigns.

1. Conservation Values of the Property

It is agreed that the Property has ecological, environmental and scenic values of great importance to the Grantor, the Grantee and the public. These values are referred to as "Conservation Values" throughout this Conservation Easement. The Conservation Values of this Conservation Easement include the following:

- a. Undeveloped shoreline. The Property has roughly 2,525 feet of undeveloped shoreline including barrier beach and feeder bluff. The natural character of this shoreline is important for juvenile Chinook salmon, among other marine species, which frequent Boundary Pass.
- b. Forested shoreline buffer. The shoreline is flanked by a continuous buffer of native forest extending 200 feet inland from the top of bank. This buffer is important to maintaining ecological integrity and natural processes of the shoreline.
- c. Interior forest. The remainder of the property is also largely forested. Retaining a diverse and healthy forest cover in this area is important to maintaining overall ecological integrity of the property.

2. Conservation Purposes of the Conservation Easement; Intentions of Grantor and Grantee with respect to the Conservation Easement

It is the intent of both the Grantor and the Grantee that the "Conservation Purposes" of this Conservation Easement are:

- a. To preserve the Property in perpetuity to maintain the natural character including the undeveloped shoreline; and
- b. To retain a 200 foot Shoreline Forest Buffer (as indicated on San Juan county GIS maps and shown on Exhibit B) area and maintain its natural function and structure along the property's entire shoreline; and
- c. To retain a healthy, diverse forest stand on the interior portion of the property; and
- d. To assure that, under the Grantee's perpetual stewardship, any use of, or activity on, the Property that will impair or interfere with the Conservation Values of the Property is prevented.

The Grantor and the Grantee intend that this Conservation Easement will confine the use of, or activity on, the Property to such uses and activities that are consistent with these Conservation Purposes.

The Grantor, as owner in fee of the Property, has the right to protect and preserve the Conservation Values of the Property, and desires to transfer this right and responsibility to the Grantee in perpetuity. It is the intention of the Grantor that the Grantee act affirmatively to protect the Conservation Values of the Property through the enforcement of this agreement. The Grantee hereby accepts the responsibility of enforcing this agreement, in perpetuity, to assure that the Conservation Purposes of this Conservation Easement are fulfilled.

It is not the intent of the Grantor and the Grantee that this Conservation Easement provide the general public with any right of access to the Property, and no right of access to the Property is granted to the general public under this Conservation Easement.

3. Baseline Documentation

Specific Conservation Values of the Property have been documented in the *Present Conditions Report* which will be used by the Grantee to assure that any future changes in the uses of, or activities on, the Property will be consistent with the terms of this Conservation Easement. The report has been prepared by the Grantee with the cooperation of the Grantor, and acknowledged by both to be complete and accurate as of the date of this Conservation Easement. Both the Grantor and the Grantee have copies of this report. The report is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over the consistency of future uses and activities.

4. **Permitted and Reserved Uses and Activities**

- a. **General.** The Grantor reserves for himself and his 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 Conservation Purposes of this Conservation Easement and that is not otherwise prohibited by this Conservation Easement. Without limiting the generality of this subsection, Grantor specifically reserves for himself and his personal representatives, heirs, successors, and assigns, the following uses and activities.
- b. **Subdivision.** Two Residential Building Envelopes are allowed on the Property as depicted in Exhibit B and described in Section 4.c.(iii). The Property may be divided one time only, into two parcels. At the time of subdivision, one of the two allowed Residential Building Envelopes may be moved to the newly-created parcel. All structures must be removed from previous location of the moved Residential Building Envelope within three years of the subdivision. At no time may the Property have more than two occupied Residential Building Envelopes.
- c. **Construction of Buildings and Other Structures.** The construction or reconstruction of any structure is permitted only under the following circumstances:
 - (i) *Permission for Construction, Reconstruction or Remodeling*
Any construction, reconstruction or remodeling of buildings or structures on the Property shall require the written permission of the Grantee unless the construction or reconstruction affects only the interior of a building or structure. Permission shall be requested through the provisions of Section 6.b below. The Grantor shall notify the Grantee of the scope of the proposed action, including location, size, function and general design of any construction or reconstruction, and request written permission.
 - (ii) *Residential Building Envelopes*
Subject to the provisions of Section 4.b and as provided in this paragraph, allowed residences and appurtenant structures must be located within designated residential building envelopes as shown on Exhibit B. It is understood, at the time of this agreement, that the shoreline of the Property is an active feeder bluff and barrier beach which may, over time, require a shift in the location of residential building envelopes and allowed structures endangered by erosion. In that event, Residential Building Envelopes, maintaining an equal or smaller size, may be shifted to alternate locations agreed to by the Grantee and Grantor. All structures must be located to within any re-located Building Envelope within three years, and the

previous building envelope vacated. This adjustment in the locations of building envelopes may occur one time only.

(iii) *Single-Family Residential Dwellings*

There may be two single-family residential dwellings and appurtenant structures (including guest cabins, woodsheds, pump houses, outhouses, workshops, etc.) on the Property, located within the Residential Building Envelopes shown on Exhibit B. Residential buildings may not exceed 1500 square feet, including decks.

(iv) *Boathouse*

One boathouse of no more than 600 square feet is allowed at the site designated on Exhibit B.

(v) *Agricultural and Forestry Area*

Structures used to directly support gardening, agriculture, forestry, and cottage industry on the Property may be located in the "Ag-Forest Structures Area" shown on Exhibit B. Examples of this type of structure include but are not limited to; tool or equipment sheds, greenhouse, lumber drying shed, root cellar, workshop, saw mill, material staging, and storage.

(vi) *Utilities*

With the written permission of the Grantee, new utilities may be installed when necessary for access to buildings or structures allowed and approved through the provisions of this Section 4 and Section 6(b) below. All new utilities shall be installed underground, with the exception of solar panels and wind turbines. Future utility infrastructure technology may be allowed with written permission.

d. Forest Management.

- (i) **Shoreline Forest Buffer.** Non-commercial forest management activities such as removal of hazard trees, firewood cutting or selective harvest for on-site lumber will be permitted. Notwithstanding the above no trees exceeding 12" dbh (diameter breast height) may be removed or harvested from the Shoreline Forest Buffer. There shall be no clear cuts within the Shoreline Forest Buffer.
- (ii) **Interior forest.** Non-commercial forest management activities such as removal of hazard trees, firewood cutting or selective harvest for on-site lumber will be permitted, provided no harvest clears an area greater than ½ acre. There shall be no more than a single ½ acre clear cut sites without permission of the Grantee. A decision to grant permission for additional clear cuts will be in the sole discretion of the Grantee.

- (iii) Commercial timber harvest requires a forest management plan jointly agreed upon by the Grantor and Grantee. Such agreement shall not be unreasonably withheld so long as it does not negatively impact the conservation values of the Property. No commercial timber harvest will be allowed within the Shoreline Forest Buffer Area.
 - (iv) Notwithstanding the provisions of Section 4.d.(i), tree cutting will be allowed within Residential Building Envelopes and the Ag-Forest Structures Area to accommodate construction of residences or appurtenant structures as provided in section 4(b)
- e. Road Construction
- (i) Existing access roads, as shown on Exhibit B may be graded, maintained and graveled. Skid roads and trails, as shown on Exhibit B, used to access the forest for logging are to remain primitive.
 - (ii) No new roads may be constructed in the Shoreline zone.
 - (iii) Any new road siting and construction shall require the written permission of the Grantee.

5. Prohibited Uses and Activities

- a. General. Any use of, or activity on, the Property inconsistent with the Conservation Purposes of this Conservation Easement is prohibited, and the Grantor acknowledges and agrees that he will not conduct, engage in or permit any such use or activity. Without limiting the generality or enforceability of this subsection, the Grantor and Grantee acknowledge and agree that the following uses of or activities on, the Property are inconsistent with the Conservation Purposes of this Conservation Easement and shall be prohibited: except as have been expressly reserved in Section 4 above. The following list is not intended to be an exhaustive list of prohibited uses of, or activities, on the Property.
- b. Subdivision, Development Rights and Boundary Line Adjustments. The property may be divided into two parcels as described in Section 4.b. Further division of the Property is prohibited. A boundary line adjustment or modification which results in a change to the exterior boundaries of the Property requires the written permission of the Grantee. Permission will be granted or denied using the criteria set out in Section 16 (regarding Amendments).

The Grantor hereby grants to the Grantee all development rights, except those specifically reserved under Section 4 of this Conservation Easement, that are now or hereafter allocated to the Property. The parties, through this Conservation Easement, agree that such development rights are terminated and extinguished. The parties agree that these rights:

- (i) may not be used or transferred to any portion of the property as it is legally described now or in the future;
 - (ii) may not be used or transferred to any other adjacent property; and
 - (iii) may not be used to determine, augment, or change the allowable density of the Property or any other property.
- c. Construction of Buildings and Other Structures. The construction or reconstruction of any building or other structure is expressly prohibited except as permitted in Section 4 of this Conservation Easement.
- d. Construction and Placement of Docks and Shoreline Armoring. Construction or placement of docks is prohibited. Placement of material or structures to prevent shoreline erosion is prohibited.
- e. Timber Harvesting and Vegetation Clearing
 - (i) Shoreline Forest Buffer Area.
 - (a) The Shoreline Forest Buffer Area shall run parallel to the shoreline extending 200' inland as shown on Exhibit B and defined by San Juan County GIS data. Harvesting of trees larger than 12" in diameter at breast height (dbh) is prohibited. No commercial harvesting or clearcuts are allowed in this area.
 - (b) Clearing native groundcover and understory vegetation is prohibited, except for the maintenance of existing walking trails and skid roads.
 - (ii) Interior Forest. No timber harvest may clear an area greater than ½-acre in size.
- f. Mining. The exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Property is prohibited. The extraction of rock, dirt, sand and gravel shall be permitted only if removal of such material is necessary to carry out other uses of, and activities on, the Property expressly permitted under Section 4 and is done in a manner that will not adversely impact the Conservation Values of the Property.

- g. Waste Disposal. The dumping or disposal, of trash, garbage, refuse, debris, vehicles, abandoned equipment, parts thereof, or other hazardous waste or material on the Property is prohibited. This prohibition shall not prevent the storage of agricultural products, byproducts and usable equipment on the Property within the Ag-Forest Structures Area, provided it is stored in accordance with all applicable government laws and regulations.
- h. Recreational Uses. Use of the Property for any commercial public recreation including, but not limited to, commercial overnight camping and transient accommodation is prohibited. In addition, golf courses and the off-road operation of motorcycles, dune buggies, or other types of motorized vehicles for private or commercial recreational purposes are prohibited.
- i. Signs. Placement of commercial signs, billboards, or other commercial advertising material on the Property is prohibited. This prohibition does not extend to the placement of signs on the Property stating the conditions of access to the Property or acknowledging the existence of this Conservation Easement on the Property.
- j. Alteration of Wetlands and Watercourses. Nothing in this Conservation Easement shall exempt wetlands on the Property from all applicable local, regional and federal laws and regulations governing wetlands.
- k. Paving and Road Construction. Except as expressly permitted in Section 4(e) above, the paving of, or placement of concrete, asphalt, gravel or any other paving material on, any portion of the Property is prohibited. In addition, the construction of any road for access or other purposes is prohibited, except as expressly permitted in Section 4(e) above.

6. **Notice to Grantee by Grantor With Respect to Certain Permitted Uses and Activities**

a. Events Triggering Notice.

The following permitted uses and activities require the Grantor to notify the Grantee in writing prior to undertaking the use or activity:

- (i) construction of any buildings, structures or improvements including any associated excavation, grading or road work which requires a permit from San Juan County or is governed by Section 4 of this Conservation Easement;
- (ii) subdividing the property into two parcels;

- (iii) the placement of the property for sale;
- (iv) modification or adjustment of internal boundary lines within the Property where the legal description of the outer boundaries of the Property remains unchanged;
- (v) boundary line adjustment or modification which results in a change to the exterior boundaries of the Property, and;
- (vi) as otherwise noted in this Conservation Easement.

b. Permission.

The purpose of requiring the Grantor to notify the Grantee prior to undertaking these permitted uses and activities is to afford the Grantee an adequate opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the Conservation Purposes of this Conservation Easement. Whenever such notice is required, the Grantor shall notify the Grantee in writing not less than forty-five (45) days prior to the date the Grantor intends to undertake the use or activity in question. The Grantor may notify the Grantee at the time of permit application, for concurrent review, or may provide notice and initiate review prior to permit application, at the Grantor's discretion. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the Conservation Purposes of this Conservation Easement. If Grantee does not provide written objection within forty-five (45) days after receipt of the Grantor's notice, the Grantee shall be deemed to have approved of the proposed activity for purposes of this Conservation Easement only.

In the case of Section 6.a(ii) the purpose of the notice is to give the Grantee the opportunity to communicate with realtors and potential purchasers regarding the Grantee's interest in the Property under this Conservation Easement. Notice required under Section 6.a(ii) shall be given as soon as the Property is listed with a realtor or when the Grantor offers the Property for sale. No permission of the Grantee is required under Section 6.a(ii).

c. Optional Consultation.

If the Grantor is unsure whether a proposed use or activity is prohibited by this Easement, the Grantor may consult the Grantee by providing the 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 allow the Grantee to make an informed judgment as to the consistency with the Conservation Purposes of this Conservation Easement and to

provide comments thereon to the Grantor for the purposes of this Conservation Easement only.

d. Addresses.

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class certified mail, postage prepaid, addressed as follows:

To Grantor: Shawn A. Huntley
PO Box 12
Waldron Island, WA 98297

To Grantee: San Juan County Land Bank
350 Court Street, #6
Friday Harbor, WA 98250

or to such other address as either party designates by written notice to the other.

7. **Ownership Responsibilities of Grantor Not Affected**

Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligation of the Grantor as owner of fee title to the Property. Such responsibilities of the Grantor include, but are not limited to, the following:

- a. Taxes. The Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property.
- b. Upkeep and Maintenance. The Grantor shall continue to be solely responsible for the general upkeep and maintenance of the Property. The Grantee shall have no obligation for the general upkeep or maintenance of the Property
- c. Environmental. The Grantor shall continue to be solely responsible for environmental matters with respect to the Property. Nothing in this Conservation Easement shall be construed as giving rise to any right or ability in the Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of the Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of federal, state and local environmental laws.

- d. Liability and Indemnification. The Grantor shall indemnify and hold harmless the Grantee for any costs or damages which result from a claim of personal injury or property damage that occurs on the Property, unless the Grantee or any of its agents have committed a deliberate wrongful act or negligent act that is determined by a court or arbitrator to be the proximate cause of the injury or damage, in which case the reimbursement by the Grantor shall be reduced by the percentage of fault allocated by the court to the Grantee or others.
- e. Land Use. For any division of the Property, development on the Property, or other use of the Property allowed under this Conservation Easement, the Grantor shall comply with all applicable county, state and federal laws and regulations. This Conservation Easement does not extend any development rights to the Grantor which are inconsistent with governmental laws and regulations. The approval by the Grantee of any use or activity on the Property under this Conservation Easement is approval of such use or activity by the Grantee in its capacity as holder of this Conservation Easement only. Such approval shall not be deemed or construed to be an approval by the Grantee in its governmental or regulatory capacity, nor shall such approval be deemed or construed to be a waiver of any authority of the Grantee in its governmental or regulatory capacity.

8. **Grantee's Right to Monitor Compliance**

The Grantee has the right to enter the Property with seven (7) days notice for the purposes of monitoring compliance with the terms of this Conservation Easement. This right to monitor compliance is in addition to the right of inspection set forth in Section 10 below. The Grantee may not, however, unreasonably interfere with the Grantor's use and quiet enjoyment of the Property during such visits to the Property, nor may the Grantee permit others to enter the Property during such visits.

9. **Grantee's Right to Restore the Property**

In the event the Conservation Values of the Property are impaired by an Act of God, the Grantee shall have the right, but not the obligation, to restore all or portions of the Property, including, but not limited, to replanting vegetation. This right to restore the Property is in addition to Grantee's right to restore the Property under other provisions of this Conservation Easement.

10. **Grantee's Right to Enforce Compliance**

- a. Preventive Discussions. The Grantor and the Grantee will promptly give the other notice of problems or concerns arising in connection with the parties' actions under this Conservation Easement or the use of or activities or conditions on the Property, and will meet as needed, but not later than fifteen (15) days after receipt of a written request for a meeting, to resolve the problem.

- b. Grantee's Rights. The Grantee shall have the right and duty to prevent and correct violations of the terms of this Conservation Easement.

The Grantee may enter the Property without notice for the purpose of inspecting for violations if the Grantee has a reasonable belief that a violation of this Conservation Easement is or has occurred. If the Grantee finds what it believes is a violation, it may at its discretion take appropriate legal action under the terms of this Conservation Easement.

Except when an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values of the Property, the Grantee shall give the Grantor written notice of the violation and thirty (30) days to correct it before proceeding to mediation or arbitration under Section 10(c) below.

c. Arbitration

- (i) Any controversy or claim arising out of or relating to this Agreement that is not resolved through mediation, shall be resolved by final and binding arbitration pursuant to RCW 7.04A. Demand for arbitration shall be made in writing to the other party. The arbitration shall be held in San Juan County before a single arbitrator selected by the Agreement of the parties. If the parties cannot agree upon an arbitrator within fifteen (15) days after the demand for arbitration is made, the arbitrator shall be selected by a judge in the Superior Court of San Juan County in accordance with the procedures set out in RCW 7.04A.110.
- (ii) Unless the parties agree otherwise in writing, the arbitration hearing shall occur no later than sixty days after the date the arbitrator is appointed.
- (iii) The parties agree that, with the exception of the circumstances set out in RCW 7.04A.230, the arbitrator's decision shall be binding, final and not appealable to any court of law.
- (iv) Each party shall pay its own costs of arbitration including attorneys' fees. The arbitrator's fee and any administrative expenses imposed by the arbitrator shall be shared equally by the parties.
- (v) This Agreement shall be governed by laws of the state of Washington, both as to interpretation and performance.
- (vi) Nothing in this section shall prevent the grantee from seeking injunctive relief pursuant to Paragraph 10.e.

- d. Damages. The Grantee shall be entitled to recover damages for violation of the terms of this Conservation Easement or injury to any Conservation Values protected by this Conservation Easement, including, without limitation, damages for the loss of Conservation Values. The amount of recovery shall be determined by arbitration under Section 10(c). Without limiting the Grantor's liability in any way, the Grantee, in its sole discretion, may apply any damages it recovers to the cost of undertaking corrective or restoration action on the Property.
- e. Injunctive Relief. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, or if the Grantor does not agree upon notification from the Grantee to refrain from proceeding with a proposed use or activity that the Grantee believes may be inconsistent with the Conservation Purposes and/or terms of this Conservation Easement, the Grantee may petition the court, ex parte as necessary, for injunctive relief as provided by law.

If a court with jurisdiction determines that a violation could occur from the proposed use or activity, it may issue an injunction to stop the proposed action temporarily and order the parties to resolve the dispute by arbitration. If a court with jurisdiction determines that a violation may exist or has occurred, it may issue an injunction to stop the action, temporarily or permanently, and order the parties to resolve any dispute over damages by arbitration. The court may also issue an injunction to require the Grantor to restore the Property to its condition prior to the violation.

The Grantor agrees that the Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that the Grantee shall be entitled to the injunctive relieve described in this paragraph without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

- f. Grantee's Discretion. The Grantee acknowledges its commitment to protect the Conservation Values of this Conservation Easement and to fulfill its Conservation Purposes. The failure of the Grantee to discover a violation or to take prompt legal action shall not bar it from doing so at a later time. The approval by San Juan County of any building permit, grading permit, land use approval or other development approval is approval of such use or activity by the County in its governmental or regulatory capacity only. Such approval shall not be deemed or construed to be an approval by the Grantee in its capacity as holder of this Conservation Easement, nor shall such approval be deemed or construed to be a waiver of any of the terms of this Conservation Easement or of any of Grantee's rights under this Conservation Easement.

- g. Acts Beyond the Grantor's Control. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor to restore any condition or recover damages for any injury on the Property resulting from causes beyond the Grantor's reasonable control, including natural changes, acts of God, or acts of trespassers that the Grantor could not have reasonably anticipated or prevented.

11. **Grantee's Right of Assignment**

The Grantee shall have the right to transfer this Conservation Easement to any public agency or private nonprofit organization that, at the time of transfer, is a "qualified organization" under section 170(h) of the U.S. Internal Revenue Code, if the agency or organization expressly agrees to assume the responsibility imposed on the Grantee by this Conservation Easement. If the Grantee ever ceases to exist or no longer qualifies under section 170(h) or applicable state law, a court with jurisdiction shall transfer this Conservation Easement to another qualified organization having similar purposes that agrees to assume the responsibility of the Grantee under this Conservation Easement.

12. **Subsequent Transfer and Condemnation**

a. Subsequent Transfer by Grantor.

The Grantor agrees to:

- (i) Notify the Grantee in writing if the Grantor place the property on the real estate market for sale, or otherwise intend to transfer ownership of the Property. Realtors and prospective purchasers or successors in interest shall be provided with a copy of this Conservation Easement and the Grantee shall be given an opportunity before the sale or transfer of the Property is complete to communicate with the successor in interest regarding the property interests of the Grantee.
- (ii) Incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest;
- (iii) Describe this Conservation Easement in and append it to any executory contract for the transfer of any interest in the Property; and
- (iv) Give written notice to the Grantee of the transfer of any interest in all or a portion of the Property no later than forty-five (45) days prior to the date of such transfer.

Such notice to the Grantee shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

The failure of the 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.

- b. Eminent Domain. If the Property is taken, in whole or in part, by power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Conservation Easement, in whole or in part, the Grantee shall be entitled to an amount determined by subtracting the value of the Property from the fair market value of the unrestricted Property at the time of the termination. The Grantee shall use the proceeds consistently with the purposes of RCW 82.46.070.

13. **Interpretation**

This Conservation Easement is intended to preserve the Property in accordance with the public policies stated in the above Recitals and the Conservation Values and Conservation Purposes stated in Sections 1 and 2 of this Conservation Easement. The terms of this Conservation Easement shall be liberally construed under the laws of the State of Washington in favor of maintaining the Conservation Values of the Property and the Conservation Purposes of this Conservation Easement. The terms of this Conservation Easement shall not be construed against the drafter. Any ambiguities and questions as to the interpretation and validity of specific provisions of this Conservation Easement shall be interpreted so as to give maximum effect to its Conservation Purposes.

14. **Perpetual Duration**

The easement, covenants and servitudes created by this Conservation Easement shall run with the land in perpetuity. Every provision of this Conservation Easement that applies to the Grantor or the Grantee shall also apply to their respective agents, heirs, executors, personal representatives, administrators, assigns, and all other successors as their interests may appear.

15. **Severability**

If any provision of this Conservation Easement is found to be invalid, illegal or unenforceable, that finding shall not affect the validity, legality or enforceability of the remaining provisions.

16. **Amendment**

It is the policy of the Grantee to hold and enforce conservation easements as written. The Grantee will consider an amendment of a conservation easement only in very exceptional circumstances.

These circumstances include, for example, the correction of an obvious error or oversight (such as where a survey reveals an error in a boundary line location), settlement of a condemnation proceeding affecting the property encumbered by the conservation easement, or minor modifications where the modification is consistent with the original conservation purposes of the conservation easement and the conservation values of the property encumbered by the conservation easement.

If circumstances arise under which an amendment to or modification of this Conservation Easement would be appropriate, the Grantor and the Grantee may jointly amend this Conservation Easement; provided that any such amendment shall be consistent with the Conservation Purpose of this Conservation Easement, shall have a neutral or beneficial effect on the Conservation Values of the Property, shall not affect the perpetual duration of the Conservation Easement, and shall meet other procedural and substantive requirements of the most current policies of the Grantee governing modifications to conservation easements held by the Grantee. Any such amendment shall be recorded in the Auditor's Office of San Juan County.

17. **Entire Agreement**

This instrument sets forth the entire agreement of the Grantor and the Grantee with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 16 herein.


18. **Acceptance**

The Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Deed of Conservation Easement.

In Witness Whereof, the Grantor and the Grantee, intending to legally bind themselves, and their respective agents, heirs, executors, personal representatives, administrators, assigns, and all other successors as their interests may appear, have set their hands on the date first written above.

GRANTOR:

SHAWN A. HUNTLEY


Shawn A. Huntley

[INTENTIONAL PAGE BREAK]

GRANTEE:

SAN JUAN COUNTY THROUGH THE SAN JUAN COUNTY LAND BANK

This Conservation Easement has been accepted by the San Juan County Council by the adoption of Resolution No. 6-2014; 7-2014

APPROVED AS TO FORM ONLY


LAND BANK DIRECTOR

RANDALL K. GAYLORD

 3-17-16
Lincoln Bormann Date:

By: Karen Vedder
Date: 3/17/16

ATTEST: COUNTY MANAGER

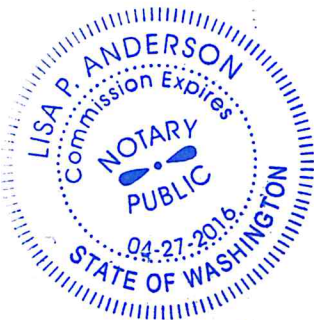
 3/18/16
Michael J. Thomas Date:

STATE OF WASHINGTON)

COUNTY OF San Juan) ss

I LISA P. ANDERSON certify that I know or have satisfactory evidence Shawn A. Huntley is the person who appeared before me, on oath stated that he was authorized to execute the instrument, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: 03-17-2016

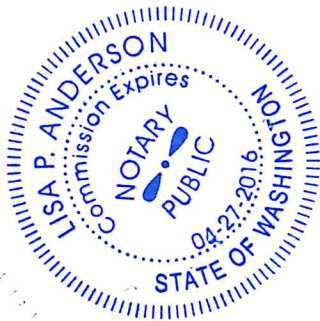


[Signature]
Notary Public in and for the State of
Washington residing at Friday Harbor
My appt. expires: 4-27-2016

STATE OF WASHINGTON)
) ss
COUNTY OF San Juan

I LISA P. ANDERSON certify that I know or have satisfactory evidence that Michael J. Thomas is the person who appeared before me, and said person acknowledged that he signed this instrument; on oath stated that he was authorized to execute the instrument; and acknowledged it, as Administrator of San Juan County, a municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 3-17-2016



[Signature]
Notary public in and for the state of
Washington residing at Friday Harbor
My appt. expires: 4-27-2016

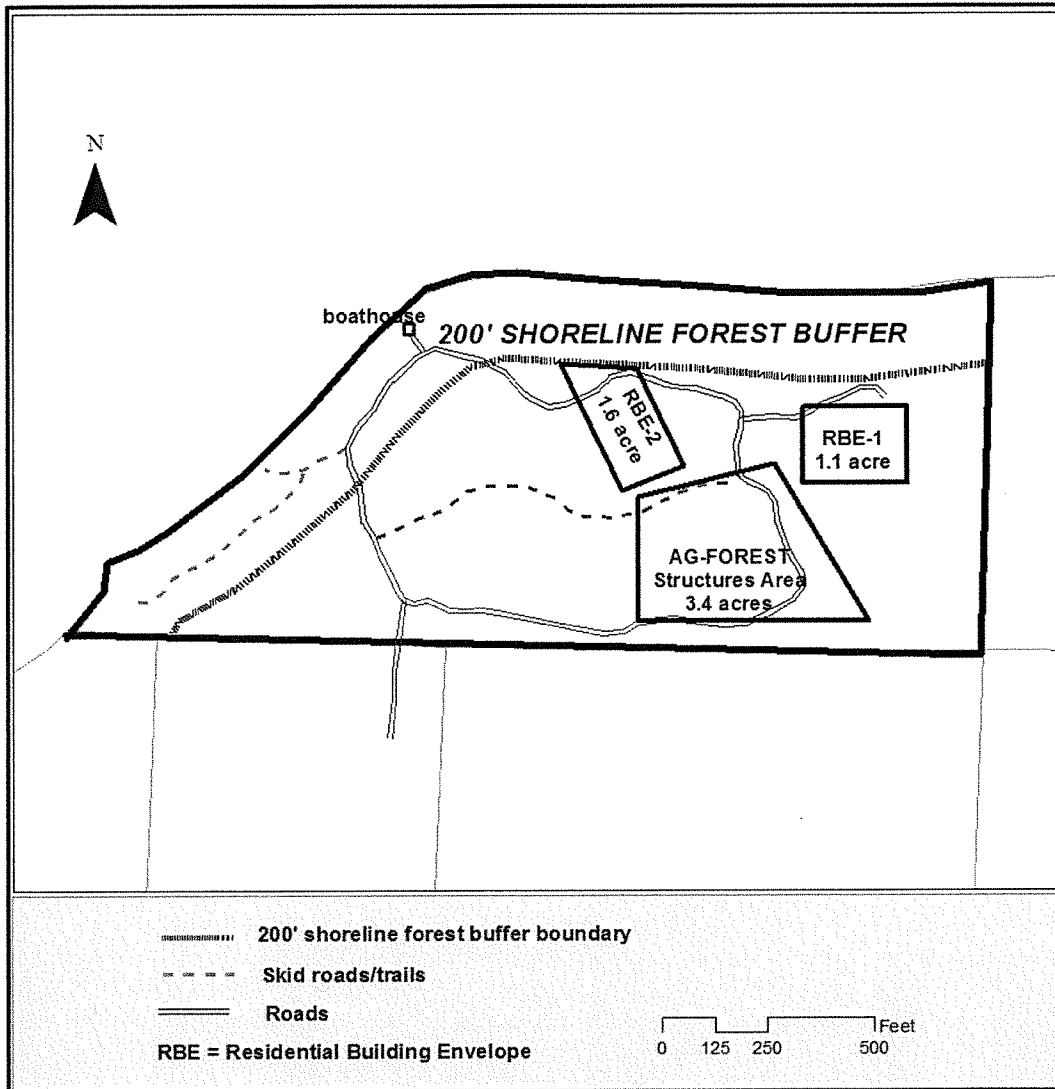
EXHIBIT A

LEGAL DESCRIPTION

Government Lot 1 and Government Lot 2, Section 1, Township 37 North, Range 3 West. W.M., situate in San Juan County

EXHIBIT "B"

**Huntley Conservation Easement
Waldron Island**



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