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Recording Fee $83.00 Page 1 of 22
Deed
Island County Washington

4322295

When Recorded, Return to:

THE NATURE CONSERVANCY
1917 First Avenue
Seattle, WA 98101
ATTN: Regional Attorney

CT-99141
CTC-13143

DEED OF CONSERVATION EASEMENT

83-

Grantors:	1) EDWARD LAWRENCE STAY 2) AMY L. STAY
Grantee:	THE NATURE CONSERVANCY
Legal Description: (abbreviated)	Gov't Lot 1, Sec. 5, Twp. 31 N, R 3 E, W.M., Except W 40 Acres, together with 2nd Class Tidelands
Additional on:	EXHIBIT A
Assessor's Property Tax Parcel / Account No.	R33105-086-1670
Reference Nos.:	N/A

This Conservation Easement is made by Edward Lawrence Stay and Amy L. Stay, husband and wife ("**Landowner**"), and The Nature Conservancy, a District of Columbia nonprofit corporation ("**Grantee**" or "**Conservancy**"). The Landowner and the Grantee are referred to jointly as the "Parties."

RECITALS

A. PROPERTY. The Landowner is the owner in fee simple of the property legally described in **EXHIBIT A**, which consists of approximately 25.95 acres located in Island County, Washington ("Property"). The portion of the Property subject to the restrictions of this Conservation Easement shall be referred to herein as the "**Conservation Easement Area**," which term is defined below. The Property and Conservation Easement Area are depicted in the map attached as **EXHIBIT B**.

B. QUALIFIED ORGANIZATION. The mission of The Nature Conservancy is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. The Conservancy is a nonprofit corporation created to preserve and conserve natural areas for aesthetic, scientific, charitable and educational purposes and is a "qualified organization" as that term is defined in 26 U.S.C. 170(h)(3) and applicable regulations. The Conservancy is also a "nonprofit nature conservancy corporation" as that term is used in RCW 64.04.130.

C. CONSERVATION VALUES. The Conservation Easement Area is a natural area that consists of "a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,"

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as that phrase is used in 26 USC 170(h)(4)(A)(ii) and applicable regulations. The attributes of the Conservation Easement Area described in this section and in the Easement Documentation Report referenced below are collectively referred to in this Conservation Easement as the Conservation Values. Specifically, the Conservation Easement Area consists of bluff-backed cobble beach, sand-dominated tidelands, backshore, and a large and active coastal feeder bluff, which is a major sediment source in Port Susan Bay. The tidelands and beach provide aquatic habitat for shellfish, water birds, invertebrates, juvenile salmon, surf smelt, and other forage fish. The backshore and parts of the feeder bluff are vegetated with mature marine riparian forest vegetation, consisting primarily of Douglas fir and Pacific madrone, which provides habitat for wildlife and birds, primarily raptors and contributes organic matter to the shoreline.

D. AUTHORIZING STATUTE. The State of Washington has authorized the creation of conservation easements pursuant to RCW 64.04.130, and the Landowner and the Grantee wish to avail themselves of the provisions of that law without intending that the existence of this Conservation Easement be dependent on the continuing existence of such law.

CONSERVATION EASEMENT

NOW, THEREFORE, for and in consideration of the facts recited above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Landowner hereby grants and conveys to the Grantee a Conservation Easement in perpetuity over the Property of the nature and character as follows:

1. PURPOSE. The purpose of this Conservation Easement ("Conservation Purpose") is to preserve and protect in perpetuity the Conservation Values.

2. EASEMENT DOCUMENTATION REPORT. The parties acknowledge that an Easement Documentation Report of the Conservation Easement Area has been prepared and that the report has been approved in writing by the Grantee and the Landowner. A copy of the report has been retained by the Landowner and the Grantee at their respective addresses for notices set forth below. The Grantee agrees to provide a copy of the report to the Landowner's successors in title upon written request. The parties agree that the report contains an accurate description and representation of (i) the biological and physical condition of the Conservation Easement Area at the time of this conveyance, (ii) the current and historical uses of the Property, and (iii) the Conservation Values.

3. PROPERTY USES. To accomplish the Conservation Purpose of this Conservation Easement, the parties agree that any activity or use on the Property shall be consistent with the terms of this Conservation Easement, in general, and with the following express restrictions and limitations on the Property. The following restrictions and limitations on the Property; including, without limitation, restrictions on structures, roads, and trails; apply only to the Conservation Easement Area; which consists of that portion of the Property located waterward of the top of the bluff on the Property, including the associated tidelands. The location of the top of the bluff as of the Conservation Easement Date has been surveyed as depicted in Exhibit B. The parties hereby express their intent and agreement that, the survey of the bluff's current location is not intended to limit the scope of the Conservation Easement Area perpetually, but that the Conservation Easement Area will continue to be bounded by the top of the bluff as that location may change

over time as a result of the natural erosion processes to be protected by this Conservation Easement. The Landowner reserves for itself and its heirs, successors, and assigns all rights as owners of the Property to use the Property for all purposes that are not expressly prohibited herein and are not inconsistent with this Conservation Easement.

3.1. Commercial Activity. All commercial activity, including commercial shellfish harvest or aquaculture, is prohibited on the Conservation Easement Area. "Commercial" means any use or activity conducted by the Landowner or a third party for the purpose of generating income or other financial benefit to the Landowner, their designees, or third parties from the exchange of goods or services by sale, barter, or trade.

3.2. Structures. There shall be no construction or placing of any house, garage, barn, or other building; tennis or other recreational court; mobile home; swimming pool; pier, dock, or other overwater structure; billboard or other advertising display; antenna; utility or lighting pole or tower; conduit; line; or any other temporary or permanent structure or facility on the Conservation Easement Area. As an exception to the foregoing, the Landowner may use, maintain, repair, and replace the existing structures, including, without limitation, the existing home located at the base of the bluff ("**Shoreline Home**"), identified in the Easement Documentation Report, provided that the footprint of each existing structure is not enlarged.

3.3. Signs. The Landowner or the Grantee may place "no hunting," "no trespassing," or similar signs on the Conservation Easement Area. Any "no trespassing" signs shall contain language or shall be placed in a manner that avoids discouraging use of the public access rights granted herein. The Grantee may also place on the Conservation Easement Area signage as provided in Section 4.5.

3.4. Fences. The Landowner may repair, replace, maintain, or improve any fence located on the Conservation Easement Area as of the Conservation Easement Date. The Landowner, after consultation with the Grantee, may also install new fences (i) around the Shoreline Home and its parking area as the Landowner deems necessary, and (ii) in other locations on the Property as the Landowner deems necessary to restrict unauthorized access to the portions of the Property outside the Conservation Easement Area; provided in all cases that such fences shall not cross or otherwise materially interfere with the Pedestrian Access Easement granted herein or diminish or impair the Conservation Values.

3.5. Animals. There shall be no feedlots, kennels, aquaculture, or animal breeding or husbandry operations on the Conservation Easement Area. No livestock shall be grazed, pastured, or kept on the Conservation Easement Area. The Landowner may engage in non-exclusive recreational shellfish harvesting, subject to compliance with applicable federal, state, and local regulations.

3.6. Spraying. Except as may be performed by the Grantee as provided in Section 4, there shall be no indiscriminant broadcast spraying of herbicides or pesticides. Herbicides and pesticides may be used by spot applications (including by gun or boom nozzles) of government-approved chemicals to control state-designated noxious weeds, invasive

species or pest insect infestations, provided their use is designed to minimize the impact on the conservation values of the Conservation Easement Area.

3.7. Vegetation. There shall be no removal, destruction, cutting, trimming, or mowing of any trees or other vegetation, living or dead, in the Conservation Easement Area except as may be performed by the Grantee as provided in Section 4, and except for the maintenance of the existing or replacement landscaping, lawn, and garden around the Shoreline Home. There shall be no overseeding or interseeding to change the composition of the vegetation, except as may be performed by the Grantee as provided in Section 4 or as may be approved by the Grantee for purposes of restoring, maintaining, or improving the Conservation Values.

3.8. Mining. There shall be no mining, drilling, exploring for, or removal of sand, rock, gravel, minerals, natural gas, or oil from the Conservation Easement Area, except to the extent such activites are conducted by the holder of the mineral reservations to title existing as of the Conservation Easement Date.

3.9. Topography. Except as may be performed by the Grantee as provided in Section 4.6, there shall be no ditching; draining; diking; filling; excavating; removal or addition of topsoil, sand, gravel, rock, or other materials; or any change in the topography of the land in any manner; including, without limitation, any form of armoring or hardening that prevents erosion of the coastal bluff on the Property, except for such limited armoring in front of the existing Shoreline Home, where a bulwark may be constructed and maintained by the Landowner to protect the house and driveway.

3.10. Water. There shall be no manipulation or alteration of creeks, streams, surface or subsurface springs, or other bodies of water or the shorelines thereof or any activities on or uses of the Property detrimental to water purity, quantity, or quality, except as may be performed by the Grantee as provided in Section 4.6.

3.11. Dumping. There shall be no dumping or storage of trash, garbage, hazardous or toxic substances, agricultural chemicals, or other unsightly or offensive material, except that existing composting activities resulting from use and maintenance of the Shoreline Home may be continued.

3.12. Roads and Easements. There shall be no building of new roads or other rights-of-way. Existing roads, driveways, and parking areas may be maintained by the Landowner but shall not be widened or improved, except by the Grantee to the limited extent as the Grantee may deem necessary on that portion of the existing driveway that will serve as the location of public access from the top of the bluff on the Property to the shoreline. Grantee may rebuild or repair said road in the event it is destroyed or damaged by an act of nature.

3.13. Paths and Foot Trails. There shall be no building of or clearing for new paths or foot trails. Existing paths and foot trails that are documented in the Easement Documentation Report may be maintained by mowing or otherwise trimming vegetation, but shall not be surfaced with any impervious material, including gravel.

As an exception to the foregoing, the Pedestrian Access Easement granted and conveyed in this Conservation Easement may be improved and maintained by the Grantee to allow for public access to the shoreline and to comply with applicable legal requirements.

3.14. Listed or Protected Species and Cultural Resources. Landowner shall be responsible for compliance with all applicable state and federal laws and regulations pertaining to listed or otherwise protected plant or animal species. The Landowner shall comply with all state and federal laws related to "archeological objects," "archeological sites" and "cultural resources" as defined in applicable laws. Specifically, the Landowner shall not, by any act or omission, excavate, injure, destroy, remove, or alter any archaeological object, archaeological site, or cultural resources located on the Conservation Easement Area, unless that activity is authorized by a permit issued under applicable law.

3.15. Conveyance. Landowner may sell, give, mortgage, lease or otherwise convey the Property, provided that such conveyance, encumbrance, lien, or lease is subject to and subordinate to this Conservation Easement, and provided further that written notice is provided to the Grantee in accordance with Section 9 below.

4. GRANTEE'S RIGHTS. To accomplish the Conservation Purpose, the following rights are granted to the Grantee and the Grantee's agents, representatives, and invitees, but, except as provided in Paragraph 4.2.1 and 4.7, not the general public:

4.1. Enforcement. The right to preserve and protect the Conservation Values of the Conservation Easement Area and enforce the terms of this Conservation Easement.

4.2. Access. The right to enter the Property at reasonable times and over existing roads, paths, and trails for the purposes of:

(a) inspecting the Property to determine if there is compliance with the terms of this Conservation Easement;

(b) obtaining evidence for the purpose of seeking judicial enforcement of this Conservation Easement;

(c) performing monitoring of and research on the Conservation Easement Area;

(d) performing management of plants and animals on the Conservation Easement Area, including installation of fencing and taking other actions necessary to protect, enhance, or restore the Conservation Values; and

(e) posting signage as described herein.

The Grantee agrees that it will exercise its right of entry in a manner that does not interfere unreasonably with the Landowner's permitted uses of the Property. The Grantee also agrees to provide advance notice to the Landowner before entering the Property, except in any case where immediate entry is necessary or desirable to prevent, terminate, or mitigate damage to or destruction of the Conservation Values; or to prevent, terminate, or mitigate a violation of the terms of this Conservation Easement. In the event the Landowner elects to maintain

gated, locked access to and through the Property, the Landowner shall provide the Grantee with keys for all such locks as necessary to enable to Grantee to exercise its rights herein.

4.2.1. Grant of Pedestrian Access Across Property. Without limiting the generality of the grant of this Conservation Easement to the Grantee, and for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Landowner expressly grants and conveys to the Grantee a permanent non-exclusive pedestrian access easement over and across the Property owned by the Landowner in the location more particularly described on **EXHIBIT C**, for the purpose of providing ingress and egress across the Property for Recreation Purposes and all other purposes related to the rights granted in this Conservation Easement (the "Pedestrian Access Easement"). The Pedestrian Access Easement shall be an easement appurtenant to the Property and this Conservation Easement and shall exist in favor of the Grantee, its successors, assigns, and other transferees of this Conservation Easement. In the event the Conservation Easement is transferred to a public entity, including without limitation, Island County, the rights conferred by this Pedestrian Access Easement shall extend to the general public. The Landowner hereby binds itself and its assigns, to warrant and forever defend the Pedestrian Access Easement unto the Grantee, its successors and assigns.

4.3. Monitoring and Research. The right, but not the obligation, to engage in ecological monitoring, biological surveys, inventories and research of plant and wildlife populations, plant communities and natural habitats on the Conservation Easement Area. The Landowner shall cooperate with the Grantee in establishing, at no expense to the Landowner, a written Monitoring and Research Plan, if desired by the Grantee.

4.4. Management of Plants and Animals. The right, but not the obligation, to control, manage, or destroy plants and animals in order to enhance, preserve, protect, restore, or eliminate or mitigate threats to the Conservation Values of the Conservation Easement Area. Such activities shall be performed in accordance with the Grantee's management practices and may include, but shall not be limited to, application of pesticides, herbicides, mowing, and fencing. The Grantee will notify the Landowner prior to implementing management activities.

4.5. Signage. The right to install and maintain, at the Grantee's sole cost and expense, signage on the Conservation Easement Area indicating the Grantee's and any of the Grantee's public or private funding sources' participation in the acquisition and maintenance of the Conservation Easement; provided, however, that the Grantee will consult with the Landowner regarding the size, locations, text, design, and quantity of the signage and will make good faith efforts to balance the Landowner's preferences and interests with the Grantee's and with any preferences or requirements of any of the Grantee's funding sources for acquisition or maintenance of the Conservation Easement.

4.6. Restoration. The right to enhance and restore the natural conditions and Conservation Values of the Conservation Easement Area, including, without limitation, the right to remove armoring structures, revegetate, and, consistent with the rights reserved by the Landowner, alter the topography of the Conservation Easement Area.

4.7. Recreation Purposes. The right to engage in Recreation Purposes on the tideland portion of the Conservation Easement Area, but not on the upland portions of the Conservation Easement Area. "Recreation Purposes" shall mean typical daytime low-impact recreational waterfront activities that do not adversely affect the Conservation Values including, without limitation, walking, wading, wildlife viewing, recreational shellfish harvest in compliance with applicable regulations, and launching and landing non-motorized watercraft. In the event the Conservation Easement is transferred to a public entity, including without limitation, Island County, the rights conferred by this sub-paragraph shall extend to the general public.

5. REMEDIES, BREACH, AND RESTORATION. The provisions of this Conservation Easement are enforceable in law or equity by the Grantee and its successors or assigns as follows:

5.1. Notice of Violation; Corrective Action. If the Grantee determines that a violation of the terms of this Conservation Easement has occurred or is threatened, the Grantee shall give written notice to the Landowner of such violation and demand corrective action sufficient to (a) cure the violation, and (b) where the violation involves injury to the Conservation Easement Area resulting from any use or activity inconsistent with the Conservation Purpose, restore the portion of the Conservation Easement Area so injured to its condition before the violation occurred in accordance with a plan approved by the Grantee.

5.2. Injunctive Relief. If the Landowner fails to cure the violation or threatened violation of this Conservation Easement or fails to cause such other corrective action to be taken as requested by the Grantee within 30 days after receipt of notice thereof from the Grantee, or under circumstances where the violation cannot reasonably be cured within the 30-day period, fails to make good faith efforts to initiate and pursue the requested corrective action within the 30-day period, the Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, and to require the restoration of the Conservation Easement Area to the condition that existed prior to any such injury (regardless of whether the costs of restoration exceed the value of the Conservation Easement Area). The Landowner hereby expressly waives its right to require the Grantee to post a bond or other security in connection with obtaining injunctive relief under this section.

5.3. 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 environmental, ecologic, scenic, or aesthetic values.

5.4. Emergency Enforcement. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent, terminate, or mitigate significant damage to the Conservation Values; or to prevent, terminate, or mitigate a violation of this Conservation Easement; the Grantee may pursue its remedies under this Section 5 without prior notice to the Landowner and without waiting for the period provided for cure to expire.

5.5. Scope of Relief. The Grantee's rights under this Section 5 apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement. The Landowner agrees that the Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that the Grantee shall be entitled to the injunctive relief described above, both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including without limitation: (a) specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; and (b) the right to enter the Conservation Easement Area to undertake any corrective action the Grantee may elect to complete. The Grantee's remedies described in this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

5.6. Costs of Enforcement. In any action, suit or other proceeding undertaken to enforce any right or obligation under this Conservation Easement, or to interpret any of the provisions of this Conservation Easement, each party shall bear its own costs, including attorneys' fees and court costs, except that the costs of restoration and other relief shall be paid or reimbursed as ordered by the court or decision-making body.

5.7. Forbearance. Forbearance by the Grantee to exercise its rights under this Conservation Easement in the event of any violation of any term of this Conservation Easement by the Landowner shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of the Grantee's rights under this Conservation Easement. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by the Landowner shall impair such right or remedy or be construed as a waiver.

5.8. Waiver of Certain Defenses. The Landowner hereby waives any defense of laches, estoppel, and prescription with respect to any failure to act or any delay by the Grantee in enforcing any restriction or exercising any rights under this Conservation Easement.

5.9. Acts Beyond the Landowner's Control. Nothing contained in this Conservation Easement shall be construed to entitle the Grantee to bring any action against the Landowner for any injury to or change in the Conservation Easement Area resulting from causes beyond the Landowner's control, including, without limitation: fire; flood; storm; infestations; natural deterioration; earth movement; sea level rise; acts of third parties legally authorized to act by recorded instrument or other legally established rights; the wrongful acts of third parties other than Landowner's agents, employees, invitees, or contractors; or from any prudent action taken by the Landowner under emergency conditions to prevent, abate, or mitigate significant injury to the Conservation Easement Area resulting from such causes. With respect to acts of third parties, the limitation provided in this Section 5.9 shall apply only when the Landowner has not consented to or participated in the acts of such third parties. The Landowner shall notify the Grantee of any occurrence that would adversely affect or interfere with the Conservation Purpose, whether caused by the Landowner's acts or omissions or by a third party or parties. In the event of violations of this Conservation Easement caused by the wrongful acts of a third party, the Landowner shall cooperate fully with the Grantee in enforcement of this Conservation Easement, including but not limited to: gathering facts and information relevant to the violation, assigning its right of action to the

Grantee, joining in any claim or legal action, and/or appointing the Grantee as its attorney-in-fact for purposes of enforcement.

6. ENFORCEMENT RIGHTS OF OTHERS. Nothing in this Conservation Easement is intended to create any right to enforce this Conservation Easement in any third party where no such right otherwise exists under this Conservation Easement or under law. In the event that the Conservancy transfers its rights in this Conservation Easement to a third party, including, without limitation, Island County, the Conservancy shall retain the rights set forth in Sections 4.1, 4.2, 4.3, and 5, and any subsections within those Sections, and may exercise such rights independently of the Conservancy's successors and assigns.

7. COSTS AND LIABILITIES. The Landowner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, excepting such costs as are necessary for operation, upkeep, and maintenance of the Pedestrian Access Easement. The Landowner shall maintain adequate comprehensive general liability insurance coverage on the Property. The Landowner shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by the Landowner. The Landowner shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish the Grantee with satisfactory evidence of payment upon request. The Grantee may, at its discretion, pay any outstanding taxes or assessments and shall then be entitled to reimbursement by the Landowner.

8. TRANSFER OF EASEMENT.

8.1. This Conservation Easement shall run with and burden the Property in perpetuity and shall bind the Landowner and the Grantee, and their heirs, successors and assigns. The parties recognize and agree that the benefits of this Conservation Easement are in gross and assignable. The Grantee shall have the right to transfer or assign this Conservation Easement to Island County or another entity that: (a) satisfies the requirements of Section 170(h)(3) of the U.S. Internal Revenue Code (or successor provisions thereof) and is qualified to hold the Conservation Easement under applicable state law, and (b) as a condition of transfer, agrees to uphold the Conservation Purpose of this Conservation Easement, as required in Treasury Regulations Section 1.170A-14, as amended. 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.

8.2. The Landowner hereby acknowledges its authorization and approval of the assignment of certain rights in this Conservation Easement to the State of Washington through the Recreation and Conservation Office, which rights shall be co-held by the Grantee and the State of Washington through the Recreation and Conservation Office. This assignment of rights shall be substantially in the form attached to this Conservation Easement as **EXHIBIT D**.

9. TRANSFER OF PROPERTY. As set forth below, the Landowner agrees that a reference to this Conservation Easement will be inserted by the Landowner in any subsequent deed or other legal instrument by which the Landowner divests either the fee simple title or possessory interest in the Property, including without limitation a leasehold or mortgage interest. The Landowner further agrees to notify the Grantee and the Conservancy of any pending transfer at least 30 days in advance of transfer and to provide the Grantee and the Conservancy with a copy of any legal instrument effecting such transfer within 30 days following its execution. The failure of the Landowner to comply with this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any successor in interest of the Landowner, by acceptance of a deed or other document purporting to convey an interest in the Property, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions and conditions of this Conservation Easement.

10. TERMINATION OF EASEMENT; EMINENT DOMAIN.

10.1. Judicial Termination. If circumstances arise in the future that render the Conservation Purpose impossible or impractical to accomplish, this Conservation Easement can be terminated or extinguished, whether with respect to all or part of the Property, only by judicial proceeding in a court of competent jurisdiction. Each party shall promptly notify the other when it first learns of such circumstances.

10.2. Termination Proceeds. At the time of the conveyance of this Conservation Easement to the Grantee, this Conservation Easement gives rise to a real property right, immediately vested in the Grantee. If the Conservation Easement is terminated or if 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, then the Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award (minus any amount attributable to new improvements made after the date of this conveyance, which amount shall be reserved to Landowner) equal to the ratio of the fair market value of this Conservation Easement to the unrestricted fair market value of the Property, as these values are determined on the Conservation Easement Date. The Grantee shall use the proceeds consistently with the Conservation Purpose.

10.3. Economic Hardship. In making this grant, the Landowner has considered the possibility that uses prohibited by the terms of this Conservation Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. In addition, the unprofitability of conducting or implementing any or all of the uses permitted under the terms of this Conservation Easement shall not impair the validity of this Conservation Easement or be considered grounds for its termination, amendment, or extinguishment. It is the intent of both the Landowner and the Grantee that any such economic changes shall not be deemed to be changed conditions or a change of circumstances justifying the judicial termination, extinguishment, or amendment of this Conservation Easement.

11. INTERPRETATION. This Conservation Easement shall be interpreted under the laws of the State of Washington, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its Conservation Purpose. No remedy or election given by any provision in this Conservation Easement shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity. The parties acknowledge that each party has reviewed and revised this Conservation Easement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Conservation Easement. In the event of any conflict between the provisions of this Conservation Easement and the provisions of any use and zoning restrictions of the state or county in which the Property is located, or any other governmental entity with jurisdiction, the more restrictive provisions shall apply.

12. INDEMNIFICATION. The Conservation Easement Area and Pedestrian Access Easement contain numerous hazards and potential hazards including cliffs, steep slopes, the risk of falling rocks and other debris, obstacles, and water. The Landowner has no duty to the Grantee, or its successors or assigns, or the public, for the safety of any individual who uses the Pedestrian Access Easement or visits the Conservation Easement Area as a result of the rights granted under this Conservation Easement. The Grantee, or its successors and assigns, but not the State of Washington Recreation and Conservation Office, shall defend (with counsel approved by the Grantee, which approval will not be unreasonably withheld), indemnify and hold Landowner and the State of Washington Recreation and Conservation Office harmless from all claims, costs, liabilities, penalties, damages, injuries to persons or property, or expenses of any kind or nature whatsoever (collectively "Liability"), in any way related to or arising out of the use of the Pedestrian Access Easement and Conservation Easement by persons other than the Landowner and its agents and invitees, except to the extent said Liability is the result of the Landowner's negligent, reckless, or intentional acts or omissions. The obligation to defend, indemnify, and hold Landowner and the State of Washington Recreation and Conservation Office harmless shall include the obligation to reimburse Landowner and the State of Washington Recreation and Conservation Office for all legal fees and costs reasonably incurred in the event the Grantee fails to timely honor its obligations herein.

13. TITLE. The Landowner covenants, represents, and warrants that the Landowner is the sole owner and is seized of the Property in fee simple and has good right to grant and convey this Conservation Easement, subject only to the encumbrances and other matters recorded against the title in the Island County records as of the Conservation Easement Date. The Grantee shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement, and that there is no pending or threatened litigation in any way affecting, involving or relating to the Property. If a successful title claim directly or indirectly affects the Conservation Easement title, the Landowner hereby assigns to the Grantee a portion of the title insurance proceeds awarded to the Landowner in equal to the value of the Conservation Easement in proportion to the Property as a whole. The Landowner agrees that this Conservation Easement shall be recorded against the title to the Property in the records of Island County, Washington.

14. NOTICES. Any notices required by this Conservation Easement shall be in writing and shall be personally delivered, sent by first class mail, postage prepaid, or by a reputable overnight courier, to the Landowner and the Grantee, respectively, at the following addresses, unless a party has been notified by the other of a change of address. Notices required under Section 4

regarding the routine exercise of the Grantee's rights under this Conservation Easement may be given by the methods above or by electronic means, including e-mail, using an address and means specified below or otherwise identified as acceptable by the Landowner.

To the Landowner:

Edward L. Stay
Stay Appraisal
P.O. Box 1436
Bothell, WA 98041-1436
sasdsl@nwlink.com

To the Grantee:

The Nature Conservancy
1917 First Avenue
Seattle, Washington 98101

15. ENVIRONMENTAL LIABILITY. The Landowner covenants, represents, and warrants that, after investigation and to the best of its knowledge:

(i) The Landowner is in compliance with, and shall remain in compliance with, all applicable Environmental Law (as defined below). The Landowner has received no notices from any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under any Environmental Law relating to the operations or conditions on the Property.

(ii) The term "Environmental Law" means any and all federal, state, local, or administrative agency statutes, regulations, rules, codes, ordinances or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) regarding air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, radioactive material, resource protection, wetlands and watercourses, health protection and similar environmental health, safety, building, and land use laws and regulations as may now or at any time hereafter be in effect.

(iii) No material defined, listed, or otherwise classified pursuant to any Environmental Law as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment; including, but not limited to, petroleum products, explosive materials, reactive materials, ignitable materials, corrosive materials, and hazardous chemicals, wastes, and substances (collectively referred to herein as a Hazardous Material); exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, from, or across the Property.

(iv) There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements; or if there have been or are any such tanks located on the Property, their location has been identified to the Grantee in writing, they have been properly registered with all appropriate authorities, they are in full compliance with all applicable statutes, ordinances, and regulations, and they have not resulted in the release of any Hazardous Material into the environment.

(v) If at any time there occurs or has occurred a release in, on, or about the Property of any Hazardous Material, the Landowner shall take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by the Grantee, in which case the Grantee shall be responsible therefor.

Without limiting any other indemnity or release set forth in this Conservation Easement, the Landowner releases and shall indemnify, defend, and hold the Grantee and its directors, officers, and employees harmless from any liability related to the Landowner's representations and warranties in this Conservation Easement or related to the use, deposit, or release of any Hazardous Material on the Property.

Nothing in this Conservation Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability to the Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of the Landowner's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or any successor or related law, or any corresponding state statute.

16. COMPLIANCE WITH APPLICABLE LAWS. The Landowner shall comply with all statutes, laws, ordinances, rules, regulations, codes, orders, guidelines, or other restrictions, or requirements applicable to the Property. Nothing herein shall be construed to allow the Landowner to engage in any activity which is restricted or prohibited by law, restrictions, or other requirements applicable to the Property.

17. SEVERABILITY. If any provision of this Conservation Easement is found to be invalid, the remaining provisions shall not be altered thereby.

18. PARTIES. Every provision of this Conservation Easement that applies to the Landowner or the Grantee shall also apply to their respective heirs, executors, administrators, assigns, and all other successors as their interest may appear. A person's or entity's obligation hereunder as the Landowner, or successor owner of the Property, shall be joint and several, and will cease if and when such person or entity ceases to have any present, partial, contingent, collateral, or future interest in the Property (or pertinent portion thereof), but only to the extent that the Property (or relevant portion thereof) is then in compliance herewith. Responsibility of owners for breaches of this Conservation Easement that occur prior to transfer of title will survive such transfer, provided that the new owner shall also be responsible for bringing the Property into compliance.

19. MERGER. The parties agree and intend that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Property.

20. SUBSEQUENT LIENS ON PROPERTY. No provision of this Conservation Easement should be construed as impairing the Landowner's ability to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such borrowing is fully subordinate to this Conservation Easement and does not violate the restrictions on subdivision of the Property.

21. ENTIRE AGREEMENT. This instrument sets forth the entire agreement of the parties 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 a written amendment signed by the parties that complies with the terms of this Conservation Easement.

22. CAPTIONS, RECITALS, AND EXHIBITS. The captions and different typefaces have been inserted and used solely for convenience of reference and shall have no effect upon its construction or interpretation. The recitals set forth above and all exhibits referred to in this Conservation Easement are an integral part of this Conservation Easement and are incorporated herein by reference.

23. DISCLAIMER. The Grantee does not represent the interests of the Landowner and makes no representation as to whether this Conservation Easement is in the proper form to assure the Landowner a charitable deduction in the event the Landowner claims a charitable gift deduction on its federal or state income tax returns. The Grantee has advised the Landowner to have the document reviewed by the Landowner's attorney, and the Landowner has had ample opportunity to do so.

24. SUBSEQUENT ACTIVITIES. Permission to carry out any proposed use or activity will not constitute consent to any subsequent use or activity of the same or any different nature, unless explicitly included in said permission. Likewise, permission by the Grantee to carry out, or failure by the Grantee to object to, or any language in this Conservation Easement that allows any proposed use or activity or designates a specific area of the Property where the use or activity is to be conducted, will not be deemed to constitute any representation or warranty by the Grantee regarding the use or activity, including, without limitation, the fitness of the Property for the use or activity or the legality of the use or activity.

IN WITNESS WHEREOF, the Landowner has executed this Conservation Easement this 28 day of August, 2012 ("Conservation Easement Date").

LANDOWNER

Edward Lawrence Stay
Edward Lawrence Stay

Amy L. Stay
Amy L. Stay

STATE OF WASHINGTON
COUNTY OF Snohomish } ss.

On this day personally appeared before me, Edward Lawrence Stay and Amy L. Stay, husband and wife, known to me to be the individuals that executed the foregoing instrument, and acknowledged such instrument to be their free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 28 day of August 2012.

BRANDI K. JENSEN
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
NOVEMBER 10, 2012

Printed Name: Brandi K Jensen
NOTARY PUBLIC in and for the State of Washington,
residing at Camano Island
My Commission Expires 11-10-12

ACCEPTANCE

The foregoing Conservation Easement is hereby accepted by The Nature Conservancy this 23rd day of August 2012.

THE NATURE CONSERVANCY
By: Len Barson
Title: Acting State Director

STATE OF WASHINGTON } ss.
COUNTY OF KING

On this day personally appeared before me, Len Barson, known to me to be the Interim State Director of The Nature Conservancy, the District of Columbia nonprofit corporation that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such corporation for the uses and purposes therein mentioned, and on oath stated that she/he was duly authorized to execute such instrument on behalf of such corporation.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 23rd day of August 2012.

MARLO J. MYTTY
STATE OF WASHINGTON
NOTARY PUBLIC
MY COMMISSION EXPIRES
05-05-14

Printed Name: MARLO J. MYTTY
NOTARY PUBLIC in and for the State of Washington,
residing at SEATTLE.
My Commission Expires 05-05-14

Exhibit A
Legal Description of Property

All that certain real estate situated in Island County, Washington, more particularly described as follows:

Government Lot 1, Section 5, Township 31 North, Range 3 East, W.M.; EXCEPT the West 40 acres thereof, (Tax Parcel No. R33105-086-1670);

TOGETHER WITH Second Class tidelands, as conveyed by the State of Washington located in front of, adjacent to and abutting thereon and lying between the meander line and a line parallel with and 600 feet Easterly of said meander line, the North boundary of this tidelands tract being the projection Easterly of the North line of said Government Lot 1 and the south line of said tract being the projection Easterly of the South line of said Government Lot 1.

Exhibit B
Depiction of Property

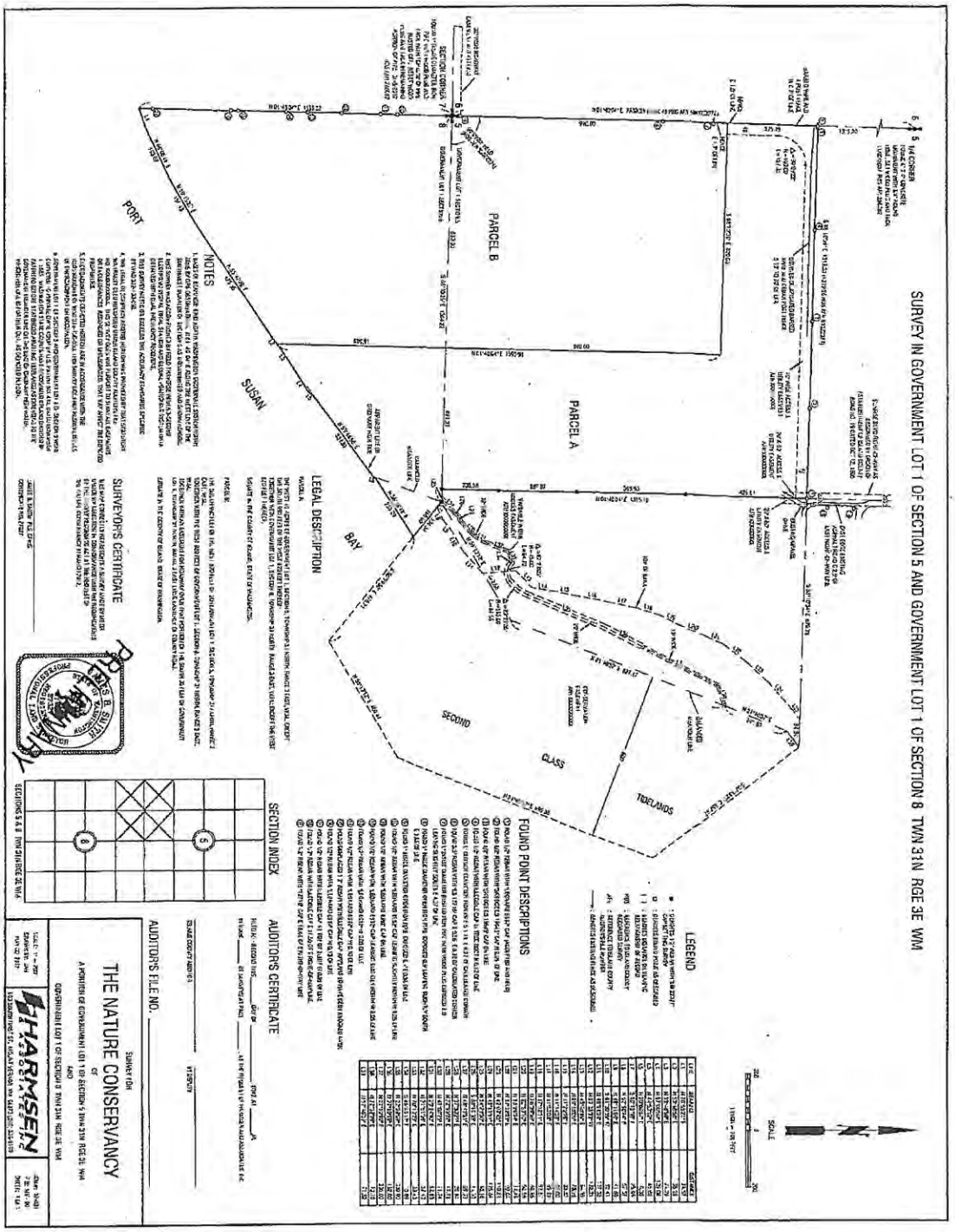

Exhibit B

Exhibit C

All that portion of Government Lot 1, Section 5, Township 31 North, Range 3 East, W.M., described as follows:

A strip of land of varying width, lying on each side of the following described centerline;
COMMENCING at the Government Meander Corner common to said Government Lot 1, Section 5, Township 31 North, Range 3 East, W.M., and Government Lot 1, Section 8, Township 31 North, Range 3 East, W.M., said corner being South 88° 10' 36" East 1364.22 feet from the Section Corner common to said Sections 5 and 8;
thence North 88° 10' 36" West 14.33 feet to the center of a 5-foot wide trail as existed on March 21, 2012 and the POINT OF BEGINNING of a 12-foot wide strip of land, lying 6 feet on each side of the following described centerline;
thence North 48° 42' 31" East 69.33 feet; thence North 37° 30' 21" East 20.84 feet;
thence North 72° 55' 27" East 17.78 feet; thence North 47° 08' 25" East 71.74 feet;
thence North 29° 24' 40" East 52.69 feet; thence North 21° 51' 36" East 87.40 feet;
thence North 70° 13' 29" East 39.43 feet, to a point on a gravel road as existed on March 22, 2012, and the point of width transition to a 20-foot wide strip of land, lying 10 feet on each side of the following described centerline;
thence South 45° 46' 12" East 10.09 feet to the beginning of a curve concave to the north, having a radius of 45.00 feet;
thence southeasterly, easterly, and northeasterly along said curve, through a central angle of 82°23'03" for an arc length of 64.70 feet to the beginning of a compound curve concave to the northwest, having a radius of 165.00 feet;
thence northeasterly along said curve, through a central angle of 29°21'36" for an arc length of 84.55 feet;
thence North 22° 29' 09" East 300.00 feet;
thence North 27° 10' 16" East 152.00 feet to the northerly edge of said gravel road, and the point of width transition to a 12-foot wide strip of land, lying 6 feet on each side of the following described centerline;
thence continuing North 27° 10' 16" East, departing said gravel road, for a distance of 305.00 feet;
thence North 72° 32' 26" East 73.79 feet to the balanced Government Meander Line of said Government Lot 1, Section 5, and the TERMINUS of the centerline of said strip of land;
thence South 21° 40' 52" West along said balanced meander line for a distance of 827.47 feet;
thence South 59° 13' 12" West and continuing along said balanced meander line for a distance of 489.60 feet to the POINT OF COMMENCEMENT.

The sidelines of said strip being shortened or lengthened to the point of intersection with sidelines of the adjoining portions thereof of varying width, with the south line of said Government Lot 1, Section 5, and with said balanced meander line.

Situate in the County of Island, State of Washington.

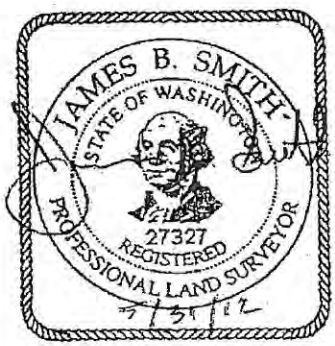

Exhibit D
Form of Assignment of Rights

Upon Recording, Please Return To:
Washington Recreation and Conservation Office
PO Box 40917
Olympia, WA 98504-0917
Attn: *[insert grant manager's name]*

Document Title: Assignment of Rights
Reference No. of Related Document:
Assignor: The Nature Conservancy
Assignee: The State of Washington, through the Recreation and Conservation Office, including any successor agencies
Abbreviated Legal Description:
Assessor's Parcel Nos:

ASSIGNMENT OF RIGHTS
WASHINGTON STATE RECREATION AND CONSERVATION OFFICE

This ASSIGNMENT OF RIGHTS ("Assignment") is executed as of the _____ day of _____, 2012, by The Nature Conservancy, a District of Columbia nonprofit corporation ("Assignor"), to and in favor of THE STATE OF WASHINGTON through the Recreation and Conservation Office ("Assignee"), including any successor agencies.

RECITALS

A. Assignor has entered into a Conservation Easement ("Easement") with certain property owners (collectively "Owner") in Island County, Washington. The names and address of the Owner and the recording number of the Easement are set forth in Exhibit 1 attached hereto and incorporated herein. The legal description of the Property subject to the Easement is set forth in Exhibit 2 attached hereto and incorporated herein.

B. The purpose of the Easement is described in the Easement. That purpose is also described in the Project Agreement entered into between the recipient of RCO funds ("Sponsor") and the Assignee through the RCO entitled _____ Project Number _____ dated _____, 20__ and the supporting materials which are on file with the Assignee 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 Easement.

C. Owner has authorized Assignor to assign to the Assignee certain rights for access to and stewardship of the property covered by the Easement. Assignment of such rights is a necessary condition to receipt of grant funding under the Project Agreement and the policies of the [*Recreation and Conservation Funding Board or Salmon Recovery Funding Board]* administered by the Assignee. Such rights are valuable to the Assignee in connection with ensuring [*protection of habitat] [protection of public rights]* under the terms of the Easement.

The assignment of such rights to the Assignee, however, does not in any way relieve the Assignor of such duties to enforce the Easement as may be imposed on it under the Easement and the Project Agreement.

D. These recitals are incorporated herein by this reference.

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

AGREEMENT

1. **Assignment.** For and in consideration of monies coming in whole or in part from the _____ *[insert funding source]* and in fulfillment of terms of the Project Agreement identified herein, Assignor does hereby assign, transfer, set over, convey and deliver to the Assignee individually, and as the representative of all the people of the State, the following joint rights (collectively referred to as "joint rights") under the 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 and Assignee may independently enforce under the Easement. The grant of these joint rights does not in any way relieve the Assignor of its duties to enforce the terms of the Easement, whether under those agreements or under the Project Agreement.

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

B. **Enforcement.** A right to enforce the terms and conditions of the 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 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 Easement, or release a portion of the Conservation Easement Area from the terms of the Easement, before expiration of the term of the Easement for the reason that circumstances have rendered the conservation purpose of the Easement impractical to achieve. Absent approval of the Assignee acting through the RCO or entry of an order of the Superior Court in which the property subject to the Easement is located, the Assignor shall not enter into any termination or release agreement.

E. **Stewardship and Management Plans.** A right to review any Stewardship and/or Management Plans, [including habitat restoration and enhancement plans], as defined in the 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 under the Easement, the rights assigned herein shall not be construed to displace

those rights. These Rights shall be held in common with Assignor or Assignor's successors and assigns.

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

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

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

B. Assignor shall enforce the terms of the Easement as provided in the Easement.

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

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

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

5. **Indemnity**. Assignor shall defend, protect and hold harmless the Assignee, 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 and/or its employees, relating to the Easement in any way relating to Assignor's representations and warranties under this Assignment.

6. **Replacement Property.** The Easement may be extinguished in whole or in part before expiration of its term (if any) under certain circumstances identified in the Easement. Assignor may be entitled to compensation in such event. Assignor shall use all such proceeds for acquisition, restoration and/or enhancement of substantially equivalent property or property interests. Assignor hereby agrees to consult with, and receive the approval of, the RCO in the selection of any replacement property and to assign to the Assignee the same or substantially equivalent rights for access to and stewardship of the replacement property as provided for in this Assignment.

7. **Restriction on Assignment.** Assignor shall not assign the Easement or the performance of any obligations to the Assignee under the 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 Easement, and shall expire upon the expiration date of the Easement (if any).

9. **Disputes.** Any disputes between Assignor and the Assignee 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 and the Assignee involving this Assignment, venue shall be proper only in Thurston County. Assignor by executing this Assignment acknowledges the jurisdiction of the courts of the State of Washington in this matter.

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

12. **SCHEDULE OF EXHIBITS:**
Exhibit 1 - Owner and Easement Recording Number
Exhibit 2- Legal Description of Property Subject to Easement

ASSIGNOR:
The Nature Conservancy,
A District of Columbia nonprofit corporation

_____

By _____
Its _____