

When Recorded Return to:
Whatcom Land Trust
P.O. Box 6131
Bellingham, WA 98227

DOCUMENT TITLE: **STEWART MOUNTAIN COMMUNITY FOREST PHASE I**

GRANTOR: WHATCOM LAND TRUST

GRANTEE: WHATCOM COUNTY

ABBREVIATED LEGAL DESCRIPTION:

ASSESSOR'S TAX PARCEL NUMBERS: ADD AFTER BLA IS FINISHED

STEWART MOUNTAIN COMMUNITY FOREST PHASE I
CONSERVATION EASEMENT

1. **Parties/Instrument.** The Grantor of this Conservation Easement (“Easement”) is WHATCOM LAND TRUST (“WLT”) and the Grantee is WHATCOM COUNTY (“County”). WLT and the County are hereinafter collectively referred to as the “Parties.”
2. **Facts and Objectives/Recitals.**
 - 2.1. The WLT is owner of that certain real property situated in Whatcom County, Washington, known as the Stewart Mountain Community Forest – Phase I (“Protected Property”), the legal description of which is attached as Exhibit A and incorporated herein by this reference.
 - 2.2. The Protected Property is a 550-acre property located in Whatcom County. The property abuts 2 miles of the South Fork Nooksack River and contains important forest and water resources. The public benefits associated with this property include addressing temperature and flow impairments in the South Fork Nooksack River, contributing to habitat improvements for Salmonids, protecting terrestrial wildlife habitat and migration corridor, sequestering carbon, and maintaining a forestry land base for the benefit of Whatcom County’s timber economy.
 - 2.3. This Easement is created pursuant to RCW 64.04.130 and 84.34.210. This Easement is also created pursuant to the Internal Revenue Code of 1986, as amended at 26 U.S.C. sections 170(h) 2055, and 2522.

- 2.4. To preserve and enhance the sensitive water resources on and abutting the Protected Property for the purposes of watershed health improvement and to maintain the uplands for the benefit of Whatcom County's timber economy, the County seeks to 1) contribute to the purchase of the Protected Property and 2) obtain a non-possessory property interest (conservation easement) in the Protected Property from WLT.

3. Purpose

The purpose of this Easement is to assure that the Protected Property will be conserved in perpetuity as forestland to enhance and protect aquatic and terrestrial wildlife habitat, conserve the site's natural and scenic resources, protect water quality and quantity, sequester carbon, build resilience to climate impacts, maintain Whatcom County's working forestland base, and prevent any use of the Protected Property that will significantly impair or interfere with its value as undeveloped forestland. The Protected Property is also intended to be integrated into a larger Community Forest on Stewart Mountain that will be managed for the purposes outlined above. WLT intends that this Easement will confine the use of and activity on the Protected Property to only those uses and activities that are consistent with the purpose described above.

4. Conveyance and Consideration

- 4.1 For the reasons stated above, in consideration of the mutual covenants, terms, conditions, and restrictions contained in this Easement WLT hereby grants to the County this Easement in perpetuity over the Protected Property.
- 4.2 This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130.

5. Allowed Uses and Activities

- 5.1. Forest Management Activities as follows:
 - 5.1.1. Ecosystem Management. Forest management to maintain and improve ecosystem health, including but not limited to the removal of invasive species, road maintenance and abandonment, and forest thinning, to promote natural ecological process, forest diversity and complexity, climate resilience, and watershed health.
 - 5.1.2. Commercial Use. Forest-related commercial use, including the harvesting of timber or other forest products. All revenue generated from the Protected Property must be used to benefit the Protected Property or larger the Community Forest or for implementing other permitted uses allowed under this easement, including but not limited to paying for pre-commercial, commercial, or forest health operations, any other costs of ownership or management of the Protected Property, and acquisitions of

forestland that support the larger Community Forest and the purposes of the Easement described in Section 3.

- 5.2. Forest Management Activities described above in Section 5.1 shall be consistent with a forest management plan approved by Grantee and Grantor which describes long term forest management objectives and strategies, and that will be added to this easement and incorporated herein when completed.
- 5.3. Recreation. Non-motorized public access along the South Fork Nooksack River or existing forest roadways and designated trails.
- 5.4. Cultural Use. Use of the Protected Property for tribal cultural use or practice, not inconsistent with purposes of this easement.

6. Prohibited Uses and Activities

- 6.1 General. Any use of, or activity on, the Protected Property inconsistent with the Purpose of this Easement is prohibited. Without limiting the generality of this subsection, the following uses of, or activities on, the Protected Property, though not an exhaustive list, are inconsistent with the Purpose of this Easement and shall be prohibited.
- 6.2 Subdivision and Development Rights. The legal or de facto division, subdivision, platting, partitioning or planned unit development of the Protected Property is prohibited.
- 6.3 Construction: The placement or construction of any buildings, structures, or other improvements of any kind is prohibited, except those consistent with and that serve the purpose of this Easement as described in Section 3 above.
- 6.4 Recreation: Recreation incompatible with the purpose of this easement, outlined in Section 3, except as expressly permitted by Section 5.3.
- 6.5 Commercial Use: Any non-forest product-related commercial use, including commercial signage, is prohibited.

7. Grant in Perpetuity.

- 7.1 This Easement shall run with the property in perpetuity and shall bind the Parties and their respective successors and assigns forever.
- 7.2 Subsequent Transfers. WLT agrees to:
 - 7.1.1 Incorporate the terms of this 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 Protected Property, including, without limitation, a leasehold interest; and

- 7.1.2 Describe this Easement in and append it to any executory contract for the transfer of any interest in the Protected Property; and
- 7.1.3. Obtain a certificate from the purchaser, leaseholder or other party gaining an interest in all or part of the Protected Property and any financier, acknowledging their awareness of this Easement and their intent to comply with it. Such certificate shall be appended to and recorded with any deed or other legal instrument by which WLT divests itself of any interest in all or a portion of the Protected Property; and
- 7.1.4. Give written notice to the County of the transfer of any interest in all or a portion of the Protected Property no later than forty-five (45) days prior to the date of such transfer. Such notice to the County shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

7.3 The failure of WLT to perform any act required by sub-section 6.2 herein shall not impair the validity of this Conservation Easement Deed or limit its enforceability in any way.

8. Rights of the County.

- 8.1. Should WLT, its successors or assigns, undertake any activity in violation of this Easement, the County shall have the right to compel the restoration of that portion of the Protected Property affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the cost of restoration shall be borne by WLT or those of its successors or assigns against whom judgement is entered.
- 8.2 Any forbearance by the County to exercise any rights under this agreement in the event of breach shall not be deemed to be a waiver of the County's rights under this Easement.

9. Miscellaneous.

- 9.1. The terms "WLT" and "County," wherever used in this Easement, shall include the above-named Whatcom Land Trust and its successors and assigns, and the above-named Whatcom County and its successors and assigns.
- 9.2. No term or provision of this Easement is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation not a party to this Easement, and

no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.

- 9.3. Nothing contained in this Easement shall be construed to entitle the County to bring any action against WLT to abate, correct, or restore any condition on the Protected Property resulting from activities and actions of prior owners of the Protected Property or from causes beyond WLT's control, including, without limitation, natural disasters such as fire, flood, storm, pest infestation or earth movement, or for acts of the public or of trespassers, or for any change resulting from any prudent action taken by WLT under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Party resulting from such causes.
- 9.4. This Easement sets forth the entire agreement of the Parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements between the Parties relating to this Easement and the Protected Party, all of which are merged herein.
- 9.5. In the event that any of the provisions contained in this Easement are declared invalid or unenforceable in the future by a court of competent jurisdiction, all remaining provisions shall remain in effect.

9.6. Notice to the County shall be to the registered agent of the County, who until further notice shall be:

Executive
Whatcom County
311 Grand Avenue, Suite 108
Bellingham WA 98225
Phone: (360) 778-5200

9.7. Notice to the County shall be to the registered agent of the Whatcom Land Trust, who until further notice shall be:

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

IN WITNESS WHEREOF, the Whatcom Land Trust has executed this Conservation Easement this ____ day of _____, 2022 and Whatcom County has executed this agreement this ____ day of _____, 2022.

Whatcom Land Trust

Whatcom County

Satpal Sidhu, County Executive

STATE OF WASHINGTON)

)ss.

COUNTY OF WHATCOM)

On this ____ day of _____, 2022, before me personally appeared _____ to me known to be the _____ of the Whatcom Land Trust and who executed the above Easement and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of
Washington residing at _____.

My commission expires _____

STATE OF WASHINGTON)

)ss.

COUNTY OF WHATCOM)

On this ____ day of _____, 2022, before me personally appeared Satpal Sidhu to me known to be the County Executive of Whatcom County and who executed the above Easement and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington residing at _____.

My commission expires _____

Michael McFarlane, Director

APPROVED AS TO LEGAL FORM

Senior Deputy Prosecuting Attorney

Exhibit A
Legal Description

DRAFT

Exhibit B
Map of Property

DRAFT