

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

**DOCUMENT TITLE: UPPER SKOOKUM CREEK CONSERVATION AND PUBLIC ACCESS EASEMENT**

**GRANTOR: WHATCOM LAND TRUST**

**GRANTEE: WHATCOM COUNTY**

ABBREVIATED LEGAL DESCRIPTION: Ptn S1/2 Sec 17, Ptn S1/2 Sec 18, SW1/4 NW1/4, all in T37N, R6E, W.M.

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

**UPPER SKOOKUM CREEK CONSERVATION AND PUBLIC ACCESS EASEMENT**

- 1. Parties/Instrument.** The Grantor of this Conservation and Public Access 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 Upper Skookum Creek (“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 1000-acre parcel of land located in Whatcom County. The property abuts 2.5 miles of Skookum Creek, a vital cold-water tributary to the South Fork Nooksack River, and, in combination with an earlier WLT acquisition, creates a 5-mile protected corridor along Skookum Creek from the confluence of the South Fork Nooksack River to the Arlecho Creek Old Growth Preserve. 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 in a beautiful natural setting, providing 5.3 miles of non-motorized public access along an existing forest roadway for hiking, biking, horseback riding, snowshoeing, and cross-country skiing.

- 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 maintain the nature of the Protected Property and provide non-motorized public access along an existing forest roadway for hiking, biking, horseback riding, snowshoeing, and cross-country skiing, the County seeks to purchase a non-possessory property interest in the Protected Property from WLT.

### **3. Purpose**

The purpose of this Easement is to assure that the Protected Property will be preserved in perpetuity as open space to enhance and protect aquatic and terrestrial wildlife habitat, conserve the site's natural and scenic resources, protect water quality, sequester carbon, provide non-motorized public access along an existing forest roadway for hiking, biking, horseback riding, snowshoeing, and cross-country skiing and prevent any use of the Protected Property that will significantly impair or interfere with its value as undeveloped open space. WLT intends that this Easement will confine the use of and activity on the Protected Property to such 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, and in consideration of payment of \$1,250,000.00 to WLT by the County, the receipt of which is acknowledged, 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. Prohibited Uses and Activities**

- 5.1 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.
- 5.2 Subdivision and Development Rights: The legal or de facto division, subdivision, platting, partitioning or planned unit development of the Protected Property is prohibited.

- 5.3 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.
- 5.4 Recreation: All forms of recreation are prohibited, except non-motorized public access along an existing forest roadway and adjacent trails for hiking, biking, horseback riding, snowshoeing, and cross-country skiing.
- 5.5 Commercial Use: Any commercial use, including commercial signage, is prohibited, provided that activity to restore and enhance the health of the forest on the Protected Property that incidentally generates revenue used for stewardship of the Protected Property is not prohibited.

**6. Grant in Perpetuity.**

- 6.1 This Easement shall run with the property in perpetuity and shall bind the Parties and their respective successors and assigns forever.
- 6.2 Subsequent Transfers. WLT agrees to:
  - 6.2.1 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
  - 6.2.2 Describe this Easement in and append it to any executory contract for the transfer of any interest in the Protected Property; and
  - 6.2.3. 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
  - 6.2.4. 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.
- 6.3 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.

**7. Rights of the County.**

- 7.1. 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.
- 7.2 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.

**8. Miscellaneous.**

- 8.1. 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.
- 8.2. 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.
- 8.3. 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.
- 8.4. 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.
- 8.5. 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.

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

Director  
Whatcom County Parks & Recreation Department  
3373 Mount Baker Highway  
Bellingham WA 98226  
Phone: (360) 778-5850

8.7. 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 and Public Access Easement this \_\_\_\_\_ day of \_\_\_\_\_, 2021 and Whatcom County has executed this agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Whatcom Land Trust

Whatcom County

\_\_\_\_\_

\_\_\_\_\_  
Satpal Sidhu, County Executive

STATE OF WASHINGTON )

)ss.

COUNTY OF WHATCOM )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, 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 \_\_\_\_\_, 2021, 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

APPROVED BY EMAIL BRANDON WALORAN  
Senior Deputy Prosecuting Attorney 5-21-21

Exhibit A  
Legal Description

Exhibit B  
Map of Property