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Skagit County Auditor

After recording return to:

Skagit County
Skagit County Commissioners Administration Building
1800 Continental Place
Mount Vernon WA 98273

REVIEWED BY
SKAGIT COUNTY TREASURER
DEPUTY MGuenn
DATE 11-17-2020

Grant Deed of Conservation Easement

Grantor:	**G and D Wallace, Inc.** P.O. Box 569 Burlington, WA, 98233
Grantee:	**Skagit County, a political subdivision of the State of Washington** Administered by: Skagit County Farmland Legacy Program Skagit County Commissioners Administration Building 1800 Continental Place Mount Vernon WA 98273
Partners receiving property interest:	☐ United States, Through the Us Department of Agriculture ☐ State of Washington, through the Recreation and Conservation Office ☒ Other: n/a
Abbreviated Legal Description:	Ptn. of Tracts 1 and 2 of Skagit County Short Plat No. 62-79 recorded under Auditor's File No. 7912140016, records of Skagit County, Washington, being a ptn. of the N ½ SW ¼ of Sec. 15, T. 35 N., R. 4 E, WM. *See exhibit A for a full legal description.*
Assessor's Property Number(s):	P36732, P103332
Size of Protected Property:	46.05 acres Maximum Impervious Surface: 2%
Consideration:	Approval of land division per SCC 14.16.860
Property Characterization:	Predominantly open farmland; *see exhibit C for a more complete characterization.*

Form updated 7/22/19

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Index of Exhibits: The following exhibits are attached and incorporated into this Easement.

- ☒ Exhibit A Legal Description
- ☒ Exhibit B Site Map/Plan and Building Envelope
- ☒ Exhibit C Property Characterization
- ☒ Exhibit D Baseline Documentation
- ☐ Exhibit E Subordination Agreement

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Grantor Acknowledgements

By initialing below, Grantor explicitly acknowledges that this Easement, in summary:



____ Prohibits use of the property for any purpose other than agricultural production (more specifically described in section 7).

____ Prohibits construction of buildings except those explicitly allowed in section 7.3.

____ Prohibits construction of impervious surface in excess of the amount provided in section 8.3.

____ Prohibits any division or partition of the property, including the sale of any portion of it, except as explicitly allowed in section 9.

____ Prohibits adjustment of the property's boundary lines, except as explicitly allowed in section 9.2.

The Grantor also acknowledges receiving approval of a land division per SCC 14.16.860 in consideration for granting this Easement as described below.

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Background and Definitions

1 Grantor and Grantee

1.1 This grant deed of conservation easement ("Easement") is made by Grantor in favor of Grantee.

1.2 The terms "Grantor" and "Grantee," wherever used in this Easement, and any pronouns used in their place, mean and include, respectively, the above-named Grantor, and its personal representatives, heirs, successors, and assigns, and the above-named Grantee, its personal representatives, successors, and assigns.

1.3 The term "Party" means Grantor or Grantee; "the Parties" means Grantor and Grantee together.

2 Protected Property

2.1 Grantor is the sole owner in fee simple of the real property (the "Protected Property") in Skagit County, Washington, described in Exhibit A, Legal Description, and shown on Exhibit B, Site Map/Plan. In the event of a conflict between the Legal Description and the Site Map/Plan, the Legal Description should be considered authoritative.

2.2 The Protected Property is predominantly open farmland; see Exhibit C, Property Characterization, for a more complete characterization.

3 Conservation Values

3.1 The Protected Property is of significant agricultural value to Grantor, the people of Skagit County, and the people of the State of Washington. The "Conservation Values" include protection of agricultural productivity and protection of prime and important agricultural soils.

3.2 The specific Conservation Values and characteristics of the Protected Property are documented in an inventory of relevant features of the Protected Property, attached as Exhibit D, Baseline Documentation. The Baseline Documentation consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this grant of Easement and that is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement.

3.3 Grantor, as owner of the Protected Property, has the right to protect and preserve the Conservation Values of the Protected Property, and desires to transfer such rights to Grantee in perpetuity.

Terms and Conditions

4 Conveyance and Consideration

4.1 For the reasons stated above, in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, Grantor hereby grants, conveys, and warrants to Grantee a conservation easement in perpetuity over the Protected Property, consisting of the rights in the Protected Property, hereinafter enumerated, subject only to the restrictions contained in this Easement.

4.2 This conveyance is of an interest in real property under the provisions of RCW 64.04.130, subject only to the mutual covenants, terms, conditions, and restrictions set forth in this Easement and to title matters of record as of the effective date of this Easement.

4.3 Grantor expressly intends that this Easement run with the land and that this Easement be binding upon Grantor's personal representatives, heirs, successors, and assigns in perpetuity.

5 Purpose

5.1 It is the Purpose of this Easement:

(a) to ensure that the Protected Property will be retained forever for agricultural productivity and use;

(b) to ensure no net loss of agricultural lands;

(c) to protect prime and important agricultural soils; and

(d) to prevent any use of, or activity on, the Protected Property that will significantly impair or interfere with its agricultural values, character, use or utility.

5.2 Grantor intends that this Easement will confine the use of, or activity on, the Protected Property to such uses and activities that are consistent with the purpose described above (the "Purpose").

6 Rights Conveyed to Grantee

To accomplish the Purpose of this Easement, Grantor conveys the following rights to Grantee:

6.1 **Protection**: To preserve and protect in perpetuity, and to enhance by mutual agreement, the Conservation Values of the Protected Property.

6.2 **Access for Monitoring and Enforcement**:

(a) To enter the Protected Property annually, upon prior written notice to Grantor, to make a general inspection to monitor compliance with this Easement.

(b) To enter the Protected Property at such other times as are necessary if Grantee has a reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of this Easement. Such entry must be after prior reasonable notice to Grantor, and Grantee may not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Protected Property.

6.3 **Development Rights:** To prevent development of the Protected Property. Grantor hereby grants to Grantee all development rights and the Parties agree that such rights may not be used on or transferred off of the Protected Property as it now or later may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield or density of the Protected Property or any other property.

6.4 **Injunction and Restoration**: To enjoin any use of, or activity on, the Protected Property that is inconsistent with the Purpose of this Easement, including trespasses by members of the public, and to require the restoration of such areas or features of the Protected Property as may be damaged by uses or activities inconsistent with the provisions of this Easement, all in accordance with section 14, Enforcement—Grantee's Remedies.

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6.5 **Enforcement**: To enforce the terms of this Easement, consistent with section 14, Enforcement—Grantee's Remedies.

6.6 **Assignment**: To assign, convey, or otherwise transfer Grantee's interest in the Protected Property in accordance with section 18, Assignment.

7 Permitted Uses and Activities

7.1 Grantor reserves for itself and its personal representatives, heirs, successors and assigns, all rights accruing from ownership of the Protected Property, including the right to engage in, permit, or invite others to engage in, any use of, or activity on, the Protected Property that is not inconsistent with the Purpose of the Easement and that is not specifically prohibited or otherwise limited by this Easement. Without limiting the generality of this paragraph, Grantor specifically reserves for itself and its personal representatives, heirs, successors, and assigns, the following uses and activities, which are limited in the manner provided below.

7.2 **Retained Uses**:

(a) **Agricultural**: Grantor retains the right to use the Protected Property for agricultural production, or to permit others to use the Protected Property for agricultural production, in accordance with applicable law. For the purpose of this paragraph, "agricultural production" means the production, processing, storage, or retail marketing of crops, livestock, and livestock products, including but not limited to, crops commonly found in the community surrounding the Protected Property; field crops; fruits; vegetables; horticultural specialties; livestock and livestock products; timber, wood and other wood products derived from trees; and aquatic plants and animals and their byproducts.

(b) **Recreational**: Subject to the limitations of subsection 8.9, Grantor retains the right to use the Protected Property for otherwise lawful recreational uses, including, but not limited to, hunting and fishing to the extent that it does not interfere with the general Purpose of this Easement to protect the Conservation Values of the property. Undeveloped recreational use, and the leasing of such uses for economic gain, is permitted if consistent with the Purpose and terms of this Easement.

7.3 **Construction of Buildings and Improvements**: Except as otherwise specifically provided for in this Easement, Grantor may construct, reconstruct, or otherwise improve the Protected Property only as provided below.

(a) **Approval and notice required.** Construction of the following improvements is allowed only within the Building Envelope(s) identified on the map in Exhibit B, only with approval of Grantee as provided for in section 12.4, and only when consistent with the impervious surface limitations in section 8.3.

(1) **New Agricultural Structures**: An agricultural structure that is an integral part of the farm operation.

(2) **Farmworker Housing**. Construction or placement of additional farmworker housing.

(3) **Ancillary Improvements**: Other improvements, including but not limited to small-scale facilities, including solar and wind generators for the generation and transmission of electrical power to support the agricultural uses on the Protected Property.

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(b) **Notice required.** Construction of the following improvements is allowed only when Grantor provides notice to Grantee in compliance with section 12, Notice, prior to undertaking any construction, reconstruction, or other improvement on the Protected Property.

(1) **Existing Agricultural Structures and Improvements:** Agricultural structures and improvements existing as of the Effective Date of this Easement and shown on Exhibit B may be repaired, reasonably enlarged, and replaced at their locations as shown on Exhibit B.

(2) **Fences**: Existing fences may be repaired and replaced, and new fences may be built on the Protected Property, for purposes of reasonable and customary management and protection of crops, livestock, and wildlife.

(3) **Utility Services and Septic Systems**: Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services to the improvements permitted under this Easement may be installed, maintained, repaired, removed, relocated, and replaced, and Grantor may grant easements over and under the Protected Property for such purposes. Septic or other underground sanitary systems serving the improvements permitted under this Easement may be installed, maintained, repaired, or improved.

7.4 **Roads and Paving**. Grantor may maintain, renovate, expand, or replace roads or construct new roads that may be reasonably necessary and incidental to carrying out permitted uses and activities on the Protected Property. Any road paved or otherwise covered with concrete, asphalt, or any other impervious paving material is subject to the impervious surface limitations in subsection 8.3.

7.5 **Composting, Use, and Storage of Agricultural Wastes or other Waste Materials**: Grantor may compost, use, and store agricultural waste and byproducts on the Protected Property, consistent with the Purpose of this Easement. Any such waste may be stored only temporarily and must be stored in appropriate containment and removed at reasonable intervals and in compliance with applicable federal, state, and local laws.

7.6 **Drainage Structures**: Grantor may construct and maintain drainage structures, including ditches, tubes, pipes, pumps, gates, or other facilities and appurtenances for enhancement of drainage systems in support of uses and activities permitted under this Easement. Grantor may not materially impair the natural course of the surface water drainage or runoff flowing over the Protected Property. Grantor must preserve existing natural watercourses in their natural state.

7.7 **Creation of Mortgage Liens**: Grantor may create consensual liens, whether by mortgage, deed of trust, or otherwise, for the purpose of indebtedness of Grantor, so long as such liens remain subordinate to this Easement.

7.8 **Emergencies**: Grantor may undertake other activities necessary to protect public health or safety on the Protected Property, or that are actively required by and subject to compulsion of any governmental agency with authority to require such activity. Any such activity must avoid interference with the Conservation Values of the Protected Property, or, if avoidance is not possible, minimize interference as much as possible.

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8 Prohibited Uses and Activities

8.1 **General**: Any use of, or activity on, the Protected Property inconsistent with the Purpose of this Easement is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in, or permit any such use or activity. 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 are prohibited, except as permitted in section 7, Permitted Uses and Activities.

8.2 **Construction**: The placement or construction of any buildings, structures, or other improvements of any kind is prohibited, except as permitted in section 7.3.

8.3 **Impervious Surface**: The total area covered by structures of any kind and impervious surfaces, such as rooftops, asphalt, gravel, or concrete is limited to the percentage of the Protected Property shown on page 1, inclusive of any and all impervious surfaces established prior to this Easement and the addition of any and all creation of impervious surfaces on any portion of the Protected Property.

8.4 **Commercial Signs**: The placement of commercial signs, billboards, or other advertising material on the Protected Property is prohibited except in connection with the onsite sale of agricultural products or the sale or lease of the Protected Property or to state the conditions of access to the Protected Property.

8.5 **Erosion or Water Pollution**: Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters is prohibited, including the use of manure lagoons or disposal of wastewater in manners inconsistent with the terms of this Easement.

8.6 **Kennels**: Kennels as defined in the Skagit County zoning code are prohibited.

8.7 **Mining**: The exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Protected Property is prohibited. The extraction of rock, dirt, sand, and gravel is permitted only if removal of such material is necessary to carry out other permitted activities on the Protected Property, and is limited to no more than one acre total of the Protected Property, and will not interfere with the Conservation Values of the Protected Property. Grantor must use all practical means to mitigate any adverse effect on the Conservation Values of the Protected Property in carrying out any permitted extraction activities, and upon completion of those activities, Grantor must promptly restore any affected portion of the Protected Property as nearly as possible to its prior condition.

8.8 **Motorized vehicles**: Grantor may not use motorized vehicles on the Protected Property or grant permission for such use except as necessary in the accomplishment of the agricultural, forestry, habitat management, law enforcement and public safety, or other permitted uses of the Protected Property. No use of motorized vehicles may create impacts that are detrimental to the productivity of the soils on the Protected Property and the purposes of this Conservation Easement.

8.9 **Recreation**: The following forms of recreation are prohibited on the Protected Property: golf courses; commercial use of motorized or mechanized recreational vehicles such as motorcycles, snowmobiles, and dune buggies; commercial overnight camping; athletic fields; use of the property for any commercial public recreation; and other developed recreational use of the property that requires special buildings, structures, or facilities.

8.10 **Waste Disposal**: Except as expressly permitted in section 7, the disposal or storage of rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or hazardous waste or material on the Protected Property is prohibited.

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8.11 **Alteration of Wetlands and Watercourses**: The draining, filling, dredging, ditching, or diking of wetland areas or any other action that would reduce the wetland area is prohibited, except as necessary to maintain existing drains consistent with the Purpose of this Easement and permitted by applicable law.

8.12 **Water Rights**: Grantor may not transfer, encumber, sell, lease, or otherwise separate any water rights historically used on or otherwise appurtenant to the Protected Property or change the historic use of such water rights without the approval of Grantee as provided for in section 12. Grantor may not abandon or allow the abandonment of, by action or inaction, any of the water rights without the permission of Grantee.

9 Subdivision, Boundary Line Adjustments, and Development Rights

9.1 The legal or de facto division, subdivision, platting, partitioning, or planned unit development of the Protected Property is prohibited.

(a) Legally created lots of record existing at the time of recording of this Easement may be conveyed separately but no other tracts of land may be alienated into separate ownership. Such conveyance is not permissible until an amendment to this Easement is recorded that addresses allocation of impervious surface and any other issues affecting the purposes of the Easement arising out of the conveyance or division of ownership.

(b) Grantee may not unreasonably withhold consent for such an amendment.

9.2 The boundary line adjustment of any lot, parcel, or tract that is encumbered, wholly or partially, by this Conservation Easement may only be permitted by amendment of this Conservation Easement per section 17. Grantee may withhold consent for such an amendment for any reason.

9.3 The boundary of the Protected Property may only be changed by amendment of this Conservation Easement per section 17. Grantee may withhold consent for such an amendment for any reason.

9.4 Grantor may not exercise its development rights in the Protected Property, transfer such development rights to any other portion of the Protected Property as it is now or hereafter may be bounded or described or to any other property adjacent to the Protected Property or otherwise, nor use such development rights or the area of the Protected Property for the purpose of calculating permissible lot yield of the Protected Property or any other property.

10 Stewardship

Grantor agrees to maintain the Protected Property for long-term agricultural productivity. No activities violating sound agricultural soil and water conservation management practices are permitted. All agricultural operations must be conducted in accordance with applicable law.

11 Access by Public Not Required

This Easement does not provide, and may not be construed as providing, access to the general public to any portion of the Protected Property.

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12 Notice and Approval

12.1 **Purpose of notice:** The purpose of requiring Grantor to notify Grantee prior to undertaking these permitted uses and activities is to afford Grantee an adequate opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the Purpose and terms of this Easement.

12.2 **When is notice required?** Grantor must notify Grantee in writing before:

(a) Construction of any buildings, structures, or improvements as required under section 7.3, at the time of permit application or pre-application;

(b) Grading activities requiring a permit from Skagit County, at the time of permit application;

(c) Transferring any interest in all or a portion of the Protected Property (as required under section 16.5), at least 45 days prior to the date of such transfer.

12.3 **What must the notice contain?** The notice must describe the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose of this Easement.

12.4 **Approval**: Where approval by Grantee is required, the Grantee must approve or deny in writing within 30 days of receipt of the written notice, and such approval may not be unreasonably withheld. Grantee's approval may include reasonable conditions that, if satisfied, would ensure that the proposed use or activity would not be inconsistent with the Purpose of this Easement. Failure by the Grantee to approve or deny within the time provided creates a presumption of approval.

12.5 **Optional Consultation**: If Grantor is unsure whether a proposed use or activity is prohibited by this Easement, Grantor may consult Grantee by providing Grantee a written notice describing the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to the consistency with the Purpose of this Easement and to provide comments thereon to Grantor for the Purpose of this Easement only. This paragraph does not itself impose a requirement of prior approval of the activity described in any such notice; however, if Grantee does not provide written objections within 30 days after Grantee's receipt of Grantor's notice, Grantee is deemed to have approved the proposed use or activity.

12.6 **Addresses**: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other must be in writing and either served personally or sent by first class certified mail, postage prepaid, to the addresses of Grantor and Grantee noted on page 1, or other address as either party designates by written notice to the other. Notices must also be sent to any other partner with property interest identified on page 1 to the addresses specified in the relevant exhibits.

13 Dispute Resolution—Grantee's Remedies

13.1 **Preventive Discussions**: Grantor and Grantee will promptly give the other notice of problems or concerns arising in connection with the other's actions under this Easement or the use of or activities or conditions on the Protected Property, and will meet as needed, but no later than 15 days after receipt of a written request for a meeting.

13.2 **Optional Alternative Dispute Resolution**: If a dispute is not resolved through preventative discussions, Grantor and Grantee may by mutual agreement submit the matter to mediation or arbitration upon such rules of mediation or arbitration as Grantor and Grantee may agree.

14 Enforcement—Grantee's Remedies

14.1 **Notice of Violation**: If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee may give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee.

14.2 **Grantor's Failure to Cure**: Grantee may bring an action as provided in section 14.3 if Grantor:

(a) Fails to cure the violation within 30 days after receipt of a notice of violation from Grantee; or

(b) Under circumstances where the violation cannot reasonably be cured within a 30-day period, fails to begin curing the violation within the 30-day period and fails to continue diligently to cure such violation until finally cured.

14.3 **Grantee's Action:**

(a) **Injunctive Relief**: Grantee may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Easement:

(1) To enjoin the violation, ex parte as necessary, by temporary or permanent injunction; and

(2) To require the restoration of the Protected Property to the condition that existed prior to any such injury.

(b) **Damages**: Grantee is entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of Conservation Values. Without limiting Grantor's liability in any way, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking corrective or restoration action on the Protected Property.

14.4 **Emergency Enforcement**: If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire.

14.5 **Scope of Relief**: Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee is entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section are cumulative and in addition to all remedies now or hereafter existing at law or in equity.

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14.6 **Costs of Enforcement**: In the event Grantee must enforce the terms of this Easement, Grantor must pay the costs of restoration necessitated by acts or omissions of Grantor, its agents, employees, contractors, family members, invitees, or licensees in violation of the terms of this Easement and Grantee's reasonable enforcement expenses, including attorneys' and consultants' fees, must be paid by Grantor or those of its personal representatives, heirs, successors, or assigns, against whom a judgment is entered. In the event that Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of such restoration and Grantee's reasonable expenses must be paid by Grantor and those of its personal representatives, heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized use or activity.

14.7 **Grantee's Discretion**: Grantee acknowledges its commitment to protect the Purpose of the Easement. Enforcement of the terms of the Easement is at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, family members, invitees, or licensees must not be deemed or construed to be a waiver by Grantee of such term or any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor may impair such right or remedy or be construed as a waiver of such term or any of Grantee's rights under this Easement. No grant by Grantee in its governmental or regulatory capacity of any building permit, grading permit, land use approval, or other development approval may be deemed or construed to be a waiver of any term or any of Grantee's rights under this Easement.

14.8 **Waiver of Certain Defenses**: Grantor acknowledges that it has carefully reviewed this Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Grantor hereby waives any claim or defense it may have against Grantee or its successors or assigns under or pertaining to this Easement based upon waiver, laches, estoppel, or prescription; except to the extent the defense is based upon an approval or deemed approval by Grantee pursuant to section 12 of this Easement. Except for the foregoing, Grantor specifically retains any and all rights it has under the law as owner of the Protected Property, including but not limited to the right to make claims against Grantee for any breach by Grantee of the terms of this Easement.

14.9 **Acts Beyond Grantor's Control**: Nothing contained in this Easement may be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including, without limitation, natural changes, fire, flood, storm, earth movement or climate change, or from acts of trespassers, that Grantor could not reasonably have anticipated or prevented or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. In the event the terms of this Easement are violated by acts of trespassers that Grantors could not reasonably have anticipated or prevented, Grantor agrees, at Grantee's option, to join in any suit, to assign its right of action to Grantee, or to appoint Grantee its attorney in fact, for the purpose of pursuing enforcement action against the responsible parties.

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14.10 **Compliance Certificates**: Upon request by Grantor, Grantee must within 30 days execute and deliver to Grantor, or to any party designated by Grantor, any document, including a certificate, that certifies, to the best of Grantee's knowledge, Grantor's compliance or lack of compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement. Such certification must be limited to the condition of the Protected Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee may conduct an inspection, at Grantor's expense, within 30 days of receipt of Grantor's written request.

15 Costs, Liabilities and Insurance, Taxes, Environmental Compliance, and Indemnification

15.1 **Costs, Legal Requirements, Liabilities, and Insurance**: Grantor retains all responsibilities and will bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of adequate liability insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approval for any construction or other activity or use permitted by this Easement, and any such construction or other activity or use must be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor will prevent the perfection of any liens against the Protected Property arising out of any work performed for, material furnished to, or obligations incurred by Grantor; provided that the Protected Property must be deemed to be free of such liens if Grantor is diligently challenging the application of such liens to the Protected Property.

15.2 **Taxes**: Grantor must pay before delinquency or file timely appeal of all taxes, assessments, fees, charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and must furnish Grantee with satisfactory evidence of payment upon request. If Grantor fails to pay any taxes when due, Grantee is authorized, but in no event obligated, to make or advance such payment of taxes upon three days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment will bear interest until paid by Grantor at the maximum rate allowed by law.

15.3 **Representations and Warranties**: Grantor represents and warrants that, after reasonable investigation and to the best of Grantor's knowledge:

(a) Grantor and the Protected Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Protected Property and its use;

(b) There has been no release, dumping, burying, abandonment or migration from off-site on the Protected Property of any substances, materials, or wastes that are hazardous, toxic, dangerous, or harmful or are designated as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful in violation of any federal, state or local law, regulation, statute, or ordinance;

(c) Neither Grantor nor Grantor's predecessors in interest have disposed of any hazardous substances off-site, nor have they disposed of substances at sites designated or proposed to be designated as federal Superfund (42 U.S.C. § 9601 et seq.) or state Model Toxics Control Act (RCW 70.105D.010 et seq.) ("MTCA") sites; and

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(d) There is no pending or threatened litigation affecting the Protected Property or any portion of the Protected Property that will materially impair the Conservation Values of any portion of the Protected Property. No civil or criminal proceedings have been instigated or are pending against Grantor or its predecessors by government agencies or third parties arising out of alleged violations of environmental laws, and Grantor has not received any notices of violation, penalties, claims, demand letters, or other notifications relating to a breach of environmental laws.

15.4 **Environmental Warranty**: Grantor warrants that the Protected Property is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any environmental law relating to the operations or conditions of the Protected Property. Grantor further warrants that he has no actual knowledge of a release or threatened release of Hazardous Materials.

Moreover, Grantor hereby promises to hold harmless and indemnify the Grantee (and the United States, if it is a partner receiving property interest) against all litigation, claims, demands, penalties and damages, including reasonable attorney's fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee at the Protected Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

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

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

15.5 **Remediation**: If, at any time, there occurs, or has occurred, a release in, on, or about the Protected Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic or dangerous to the air, water or soil, or in any way harmful or threatening to human health or environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee should be responsible for remediation.

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15.6 **Control**: Nothing in this Easement may be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of Grantor's activities on the Protected Property, or otherwise to become an operation with respect to the Protected Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"), and MTCA.

15.7 **Indemnification**: Grantor hereby agrees to release and hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with:

(a) Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property, regardless of cause unless due solely to the negligence of any of the Indemnified Parties; and

(b) The obligations, covenants, representations, and warranties in section 15.3.

16 Extinguishment, Condemnation, and Subsequent Transfer

16.1 **Extinguishment**: If circumstances arise that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, upon a finding and declaration to that effect by a court of competent jurisdiction.

16.2 **Condemnation**: If all or any of the Protected Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to extinguish this Easement, in whole or in part, Grantor and Grantee must act jointly to recover the full value of the interest in the Protected Property subject to the taking or in lieu purchase and all direct or incidental damages resulting from the taking or in lieu purchase. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase must be paid out of the amount recovered.

16.3 **Valuation**: In the event of an extinguishment, or the taking of all or part of the Protected Property by eminent domain, the Grantee is entitled to a proportional share each of gross sale proceeds or condemnation award representing an amount equal to the ratio of the appraised value of this Easement to the unrestricted fair market value of the Protected Property as these values are determined on the effective date of this Easement.

16.4 **Application of Proceeds:** Grantee must return any proceeds received due to extinguishment or condemnation to Skagit County's Conservation Futures Fund or its successor fund for use in purchasing conservation easements or development rights on other eligible sites under the program or successor program.

16.5 **Subsequent Transfers**:

(a) Grantor agrees to:

(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

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(2) Describe this Easement in and append it to any executory contract for the transfer of any interest in the Protected Property; and

(3) Obtain a certificate from the purchaser, leaseholder, or other party gaining an interest in all or part of the Protected Property and any financer, acknowledging their awareness of this Easement and their intent to comply with it. Such certificate must be appended to and recorded with any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Protected Property; and

(4) Give written notice to Grantee of the transfer of any interest in all or a portion of the Protected Property no later than 45 days prior to the date of such transfer. Such notice to Grantee must include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

(b) The failure of Grantor to perform any act required by this subsection does not impair the validity of this Easement or limit its enforceability in any way.

17 Amendment

This Easement may be amended by the execution and delivery of an amended easement deed, but only with the written consent of both Grantor and Grantee. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; except that no amendment may diminish the effectiveness of this Easement in carrying out the Purpose of the Easement in any way and that only those amendments that strengthen the effectiveness of the Easement in carrying out the Purpose of the Easement may be permitted. An amendment may not affect the perpetual duration of the Easement and must be recorded in the official records of Skagit County, Washington, and any other jurisdiction in which such recording is required.

18 Assignment

This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to the Grantee's judicially appointed successor, except as provided in section 20.7. As a condition of transfer, Grantee must require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement. Grantee must notify Grantor in writing in advance of such assignment. The failure of Grantee to give such notice does not affect the validity of such assignment nor does it impair the validity of this Easement or limit its enforceability in any way.

19 Recording

Grantee will record this instrument in a timely fashion in the official records of Skagit County, Washington, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.

20 General Provisions

20.1 **Controlling Law**: The interpretation and performance of this Easement is governed by the laws of the State of Washington.

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20.2 **Counterparts**: The parties may execute this instrument in two or more counterparts, each of which must be signed by all parties. Each counterpart is deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart controls.

20.3 **Entire Agreement**: This instrument sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Protected Property, all of which are merged into this Easement. No alteration or variation of this instrument is valid or binding unless contained in an amendment that complies with section 17.

20.4 **Joint and Several**: The obligations imposed by this Easement upon Grantor are joint and several.

20.5 **Liberal Construction**: Any general rule of construction to the contrary notwithstanding, this Easement must be liberally construed in favor of the grant to achieve the Purpose of this Easement and the policy and purpose of RCW 64.04.130 and RCW Chapter 84.34. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid must be favored over any interpretation that would render it invalid.

20.6 **No Forfeiture**: Nothing in this Easement will result in a forfeiture or reversion of Grantor's title in any way.

20.7 **No Merger**: In the event Grantee acquires all or a portion of the fee title to the Protected Property, the Parties intend that no merger of title will occur that would merge the restrictions of this Conservation Easement with fee title to the Protected Property and thereby eliminate them, and that the restrictions on the use of the Protected Property, as embodied in the Easement would remain permanent and perpetual restrictions on the use of the Protected Property. Grantee covenants to do whatever is required to prevent merge of title, including, if necessary, assignment of the Easement to an appropriate third party pursuant to section 18.

20.8 **Severability**: If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, may not be affected.

20.9 **Successors and Assigns**: The covenants, terms, conditions, and restrictions of this Easement are binding upon, and inure to the benefit of, the parties to this Easement and their respective personal representatives, heirs, successors, and assigns, and continue as a servitude running in perpetuity with the Protected Property.

20.10 **Termination of Rights and Obligations**: A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer will survive transfer.

20.11 **Warranty of Title**: Grantor warrants that Grantor has good title to the Protected Property, that Grantor has the right to convey this Easement, and that the Protected Property is free and clear of any encumbrances.

20.12 **Effective Date**: The effective date of this Easement is the date of recording in the records of Skagit County, Washington. This Easement is not effective until recorded.

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Each party is signing this agreement on the date stated opposite that party's signature. The individuals signing below, if signing on behalf of any entity, represent and warrant that they have the requisite authority to bind the entity on whose behalf they are signing.

G & D WALLACE, INC.

By: _____ 10/27/2020
Name: Jack Wallace Date

Title: Secretary

State of Washington
County of Skagit

Representative Acknowledgement—RCW 42.45.140(2):

I certify that I know or have satisfactory evidence that Jack Wallace 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 the SECRETARY of G and D Wallace, Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: OCTOBER 27, 2020

DENNY D LEGRO COMMISSION EXPIRES NOTARY PUBLIC 03-10-2021 STATE OF WASHINGTON

(Notary seal or stamp above)

_____
Signature of Notary Public

DENNY D. LEGRO
Printed Name of Notary Public

My appointment expires 03-10-2021

Form updated 7/22/19

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The Skagit County Board of Commissioners does hereby accept the above Grant Deed of Conservation Easement this 16 day of November, 2020.

Board of County Commissioners
Skagit County, Washington

Ron Wesen, Chair

Kenneth A. Dahlstedt, Commissioner

Lisa Janicki, Commissioner

Recommended:

Department Head

Approved as to form:

Civil Deputy Prosecuting Attorney

Approved as to indemnification:

Risk Manager

Approved as to budget:

Budget and Finance Director

Attest:

Clerk of the Board

State of Washington
County of Skagit

I certify that I know or have satisfactory evidence that Lisa Janicki, Ron Wesen, and Kenneth A. Dahlstedt are the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the County Commissioners of Skagit County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: November 16, 2020

LINDA HAMMONS
NOTARY PUBLIC #131285
STATE OF WASHINGTON
COMMISSION EXPIRES
NOVEMBER 29, 2023

(Notary seal or stamp above)

Signature of Notary Public

Linda Hammons
Printed Name of Notary Public

My appointment expires 11-29-2023

Form updated 7/22/19

Exhibit A. Legal Description

Lot 2 of Skagit County Alteration of Final Subdivision No. PL20-0091, approved November 16, 2020 and recorded November 17, 2020 under Skagit County Auditor's Number 202011170042, being a portion of Tracts 1 and 2 of Skagit County Short Plat No. 62-79 approved December 13, 1979 and recorded December 14, 1979 in Book 4 of Short Plats at Page 13 under Auditor's File No. 7912140016, records of Skagit County, Washington, being a portion of the N ½ of the SW ¼ of Section 15, Township 35 North, Range 4 East W.M.

SUBJECT TO and TOGETHER WITH easements, reservations, restrictions, covenants, liens, leases, court causes, and other instruments of record.

Situated in the County of Skagit, State of Washington.

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Exhibit B. Site Map/Plan and Building Envelope

For easements granted as consideration for approval of a land division per SCC 14.16.860, the Building Envelope for construction of agricultural structures and improvements per paragraph 7.3(a) is the entire Protected Property.

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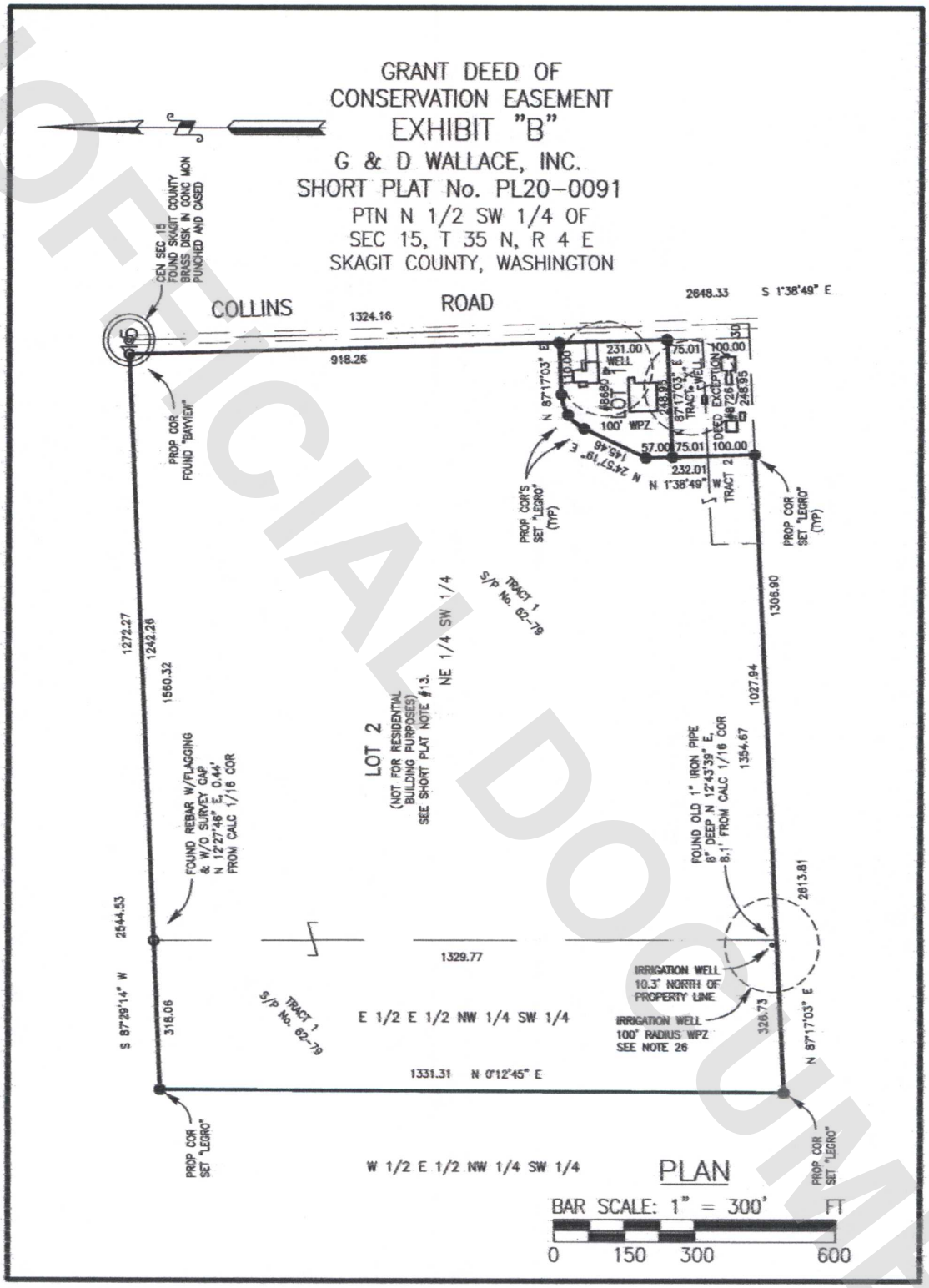


Exhibit C. Property Characterization

The Protected Property is primarily open farmland that has been classified as "prime farmland" by the Natural Resources Conservation Service, U.S. Department of Agriculture, and has been zoned by Skagit County as Agriculture—Natural Resource Land., defined as "low flat land with highly productive soil and is the very essence of the County's farming heritage and character."

Protected Property Zoning

☒ The Protected Property is zoned "Agricultural—Natural Resource Lands" under the Skagit County zoning code. Skagit County Code 14.16.400 states that the goal of the zone is to "provide land for continued farming activities, conserve agricultural land, and reaffirm agricultural use, activities and operations as the primary use of the district."

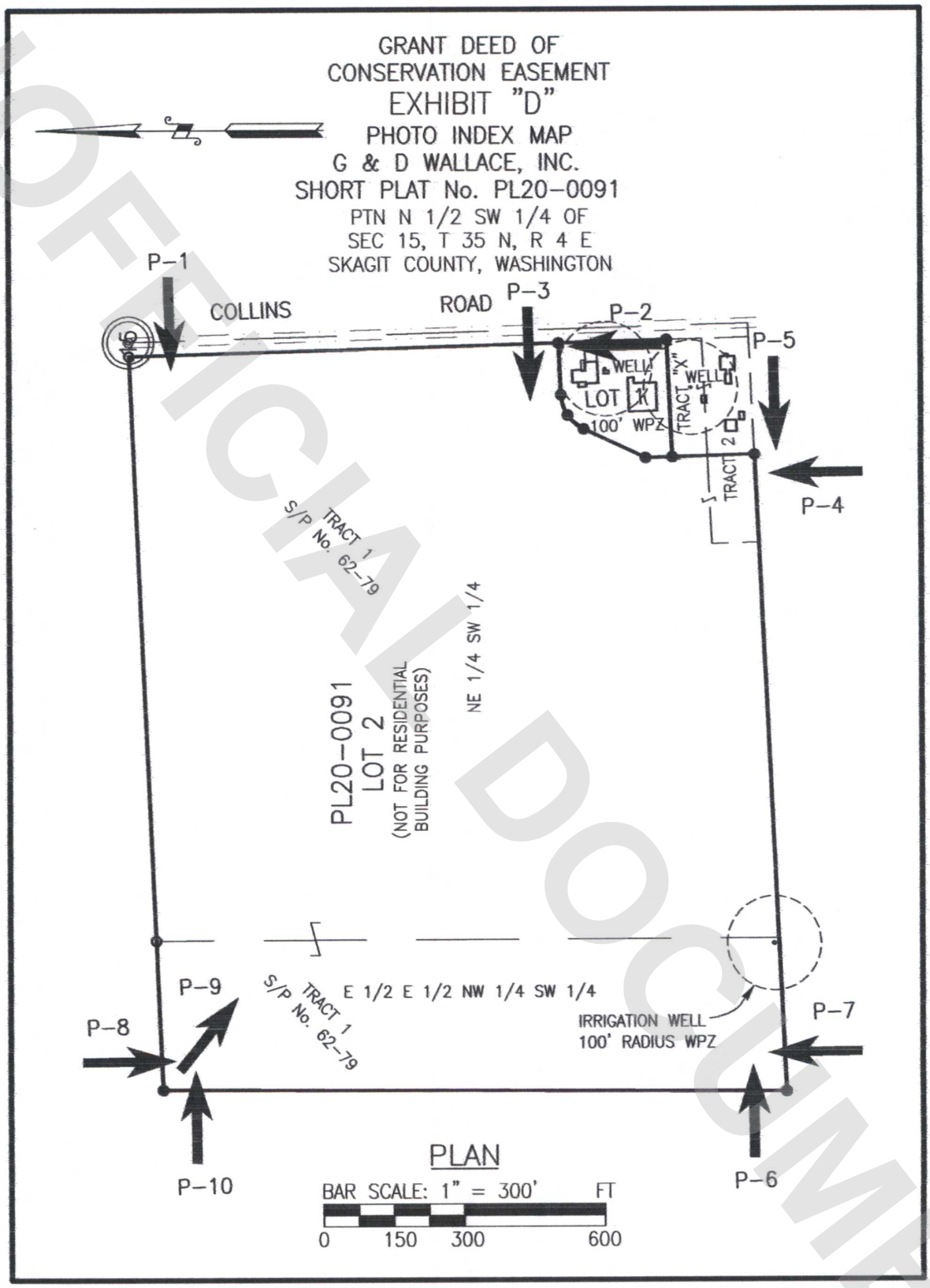
☐ The Protected Property is zoned "Rural Resource—Natural Resource Lands" under the Skagit County zoning code. Skagit County Code 14.16.430 states that the goal of the zone is to "recognize and encourage the conservation of those lands which have the characteristics of both long-term commercially significant agriculture and forestry either on-site or on adjacent sites."

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Exhibit D. Baseline Documentation

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P-1: Looking West from Collins Road at NE corner of Lot 2.



P-2: Looking North along West side of Collins Road from NE corner of Lot 1.

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P-3: Looking West from Collins Road at NE corner of Lot 1.



P-4: Looking North from SE corner of Lot 2.

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P-5: Looking West from SE corner of Lot 2.



P-6: Looking East from SW corner of Lot 2.

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P-7: Looking North from SW corner of Lot 2.



P-8: Looking South from NW corner of Lot 2.

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P-9: Looking SE from NW corner of Lot 2.



P-10: Looking East from NW corner of Lot 2.

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