

Return to:

Snohomish County
Planning and Development Services
TDR Program Manager
3000 Rockefeller Ave. M/S #604
Everett, WA 98201

Parcel Identification Numbers:

**TRANSFER OF DEVELOPMENT RIGHTS (TDR) CONSERVATION
EASEMENT**

THIS GRANT OF TDR CONSERVATION EASEMENT (hereinafter “Easement”) is made this ____ day of _____, 20__, by _____ (hereinafter “Grantor(s)”) to Snohomish County (hereinafter “Grantee” or “County”) in perpetuity as holder of the easement pursuant to Snohomish County Code (“SCC”) Chapter 30.35A and Revised Code of Washington (“RCW”) Section 64.04.130.

WITNESS THAT:

1. The Washington State Growth Management Act (“GMA”), Chapter 36.70A RCW, requires counties to designate lands of long-term significance to the commercial production of agriculture and to assure the conservation of such lands for agricultural use. To help further this GMA mandate while also providing compensation to farmers, Chapter 30.35A SCC authorizes the transfer of development rights from “sending sites” that are targeted for conservation by the Snohomish County GMA Comprehensive Plan (“GMACP”). Development rights properly transferred from a sending site can be applied, pursuant to Chapter 30.35A SCC, to “receiving sites” where development is encouraged under the GMACP.
2. Development rights are transferred from sending sites through the issuance of “TDR certificates” pursuant to Chapter 30.35A SCC, a process which requires the grant of a conservation easement restricting development on the sending site.

3. TDR certificates can be freely sold by the sending site landowner to whom they are issued. Receiving site landowners who obtain TDR certificates may use those certificates to obtain density bonuses or other development incentives pursuant to applicable county or city regulations.
4. Pursuant to Chapter 30.35A SCC, Grantors submitted an application to obtain TDR certificates on _____, (hereinafter “TDR Certificate Application”) for certain real property (hereinafter “Protected Property”) owned by Grantors in fee simple and located in Section __, Township __, Range __, Snohomish County in the State of Washington, described in a deed to Grantors, dated _____ and recorded under Snohomish County Auditor’s File No. _____, at Snohomish County Registry of Deeds. A legal description of the Protected Property is attached hereto as Exhibit A and incorporated herein by reference as if set forth in full.
5. The TDR Certificate Application materials submitted by Grantors are on file with the County, in the PDS Centralized Records Management System under File No. _____, and are incorporated herein by reference as if set forth in full. The Grantors represent that these application materials reflect existing conditions on the Protected Property as of the date this Easement is executed, as well as the Grantors’ intentions concerning future residential development, if any, to occur on the Protected Property.
6. Pursuant to Chapter 30.35A SCC, the County issued a TDR certificate letter of intent on _____, a true and correct copy of which is attached hereto as Exhibit B and incorporated herein by reference as if set forth in full. In the letter, the County agreed to issue Grantors _____ TDR Certificates, to be numbered _____, provided that the Grantors grant a conservation easement on the Protected Property to Snohomish County in accordance with the requirements of Chapter 30.35A SCC.
7. Consistent with the foregoing requirements, and subject to the specific terms of this Easement contained herein, the Grantors and the County, as Grantee of the Easement, intend and have the common purpose of retaining the Protected Property for agricultural use by placing restrictions on the use of the Protected Property, which shall run with the land and bind the Protected Property in perpetuity.

NOW, THEREFORE, to permit the transfer of certified development rights from the Protected Property, and in consideration of the covenants, terms, conditions and restrictions hereafter set forth and other good and valuable consideration, receipt of which is hereby acknowledged, Grantors do grant and convey to Grantee, forever and in

perpetuity, an interest and Easement in the Protected Property, for and in consideration of the recitals and the mutual covenants, terms, conditions, and restrictions contained herein.

I. Nature of Easement. This Easement shall be perpetual. It is an easement in gross, and as such, is inheritable and assignable and runs with the land as an incorporeal interest in the Protected Property enforceable with respect to the Protected Property by the Grantee, and its successors and assigns, against the Grantors and their heirs, successors, and assigns. This Easement is acquired and held by Grantee pursuant to RCW 84.34.210.

II. Purpose. The purpose of this Easement is to:

- A. protect the ability of present and future generations to use the Protected Property for agricultural purposes;
- B. preserve the prime farmland soil as a valuable resource and prevent activities that will impair the ability, now or in the future, to use the Protected Property for agricultural activity and production;
- C. enable the Protected Property to remain in agricultural use by preserving and protecting in perpetuity its agricultural production capability; and
- D. prevent any use or condition on the Protected Property that would diminish, impair, or interfere with the agricultural production capabilities of the Protected Property.

This statement of purpose is intended as a substantive provision of the Easement. Any ambiguity or uncertainty regarding the application of the provisions of this Easement will be resolved so as to further this purpose.

III. Permitted Uses and Activities. As owners of the Protected Property, the Grantors retain the right to perform any act consistent with the applicable zoning, to the extent such act is not prohibited or limited by the requirements of this Easement. These ownership rights include, but are not limited to, the right to exclude any member of the public from trespassing on the Protected Property and the right to sell, lease or otherwise transfer the Protected Property to anyone the Grantors choose. The Grantors retain the right to use the Protected Property for any agricultural use and to carry on all normal agricultural practices.

IV. Prohibited Uses and Activities. Grantors are prohibited from engaging in or permitting any of the following uses or activities on the Protected Property:

- A. the construction of all single family or other residential, commercial, or industrial structures except for the following:

- (1) single family dwellings or other structures, if any, that were described by Grantors in the TDR Certificate Application materials on file with the County, in the PDS Centralized Records Management System under File No. _____; and
 - (2) permitted accessory and temporary dwelling units that are subservient to existing or proposed single family or other residential dwelling units that were described by Grantors on file with the County, in the PDS Centralized Records Management System under File No. _____; and
 - (3) farm worker dwellings, consistent with Chapter 30.22 SCC and Chapter 30.91F SCC.
- B. any subdivision of the sending site, except for subdivisions, if any, that were described by Grantors in the TDR Certificate Application materials on file with the County, in the PDS Centralized Records Management System under File No. _____;
 - C. athletic fields, golf courses or driving ranges, commercial airstrips or helicopter pads, motocross biking and all other recreational uses; except for accessory recreational uses, including but not limited to hunting, fishing, and educational activities, to the extent such uses do not impair or diminish agricultural production capability;
 - D. additional encumbrances or easements that would thwart the conservation purposes of this Easement by diminishing or impairing the agricultural production capability of the Protected Property;
 - E. any and all uses or activities that impair or diminish agricultural production capability; and
 - F. to fulfill the purpose of this Easement as set forth in Section II, Grantor shall 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 the water rights. Grantor shall not abandon or allow abandonment of by action or inaction, any of the water rights appurtenant to the Protected Property.

V. Water Rights. Sufficient water for agricultural use is necessary to preserve agricultural production in Snohomish County. Farmers also require the flexibility to use their water rights in a manner to avoid relinquishment. To address these competing

needs, the following provisions apply to water rights associated with the Protected Property.

The Grantor shall retain water rights necessary for present or future agricultural production on the Property and shall not transfer, encumber, lease or otherwise separate any water rights historically used on or otherwise appurtenant to the Protected Property or change the historic use of the water rights. Grantor shall not abandon or allow abandonment of, by action or inaction, any of the water rights appurtenant to the Protected Property. **EXCEPTION:** To enable the Protected Property to remain in agricultural use in perpetuity, protect water rights, and provide flexibility in agricultural production, Grantor may lease the water rights for a period not to exceed two years. Such lease shall not sever the water right from the Protected Property's title, and must meet all state law requirements. Before entering into a short-term lease, Grantor shall notify Grantee as provided in Section XIII.

VI. Enforcement & Monitoring. Grantee shall have the responsibility to enforce the terms of this Easement. To fulfill this responsibility and thereby further the purpose of this Easement to protect the agricultural production capability of the Protected Property, the Grantee shall have the following rights under this Easement, which are subject to the stated limitations:

- A. Entry onto Protected Property with Reasonable Notice. If the Grantee has reason to believe that a violation of the terms of this Easement has occurred or is occurring, the Grantee shall have the right to enter the Protected Property, provided that reasonable advance notice is given to the Grantors, for the purpose of inspecting it for violations of any requirement set forth in this Easement. Additionally, the Grantee shall have the right to enter the Protected Property at least once a year, at a mutually agreed time and upon notice to Grantors, for purposes of inspection and compliance monitoring regardless of whether Grantee has reason to believe that a violation of this Easement exists.
- B. Enforcement Mechanisms and Remedial Measures. If the Grantee Snohomish County finds what it believes to be a violation of this Easement, it may at its discretion use any available legal or equitable remedy to secure compliance, including but not limited to seeking injunctive relief and/or specific performance requiring the Grantors to cease and desist all activity in violation of the terms of this Easement and to return the Protected Property to its condition prior to any violation(s). Except when an imminent violation could irreversibly diminish or impair the agricultural production capability of the Protected Property, the Grantee shall give the Grantors written notice of the violation and thirty (30) days in which to take corrective action prior to commencing any legal action. The failure of Grantee to discover a violation or to take immediate

legal action shall not bar it from doing so at a later time. Grantee may use the information on existing conditions contained in the TDR Certificate Application materials on file with the County, in the PDS Centralized Records Management System under File No. _____, as a basis for enforcing the provisions of this Easement, but Grantee may also rely on other evidence to show a change of conditions.

VII. No Right to Public Access. This Easement provides no right of access to the general public.

VIII. Termination and Extinguishment. This Easement may only be terminated or extinguished by a court of competent jurisdiction upon a request to terminate made by the Grantor or the Grantee based on a finding by the court that the conditions or circumstances on or surrounding the Protected Property have changed to such a degree that it has become impossible to preserve the agricultural production capability of the Protected Property consistent with the conservation purposes of this Easement. Landowner intent to discontinue agricultural use of the Protected Property shall not constitute a changed circumstance sufficient to terminate or extinguish this Easement, nor may it be terminated or extinguished based on theories of abandonment or adverse possession.

IX. Subordination. At the time of conveyance of this Easement, the Protected Property is subject to a mortgage or deed of trust dated _____, and recorded under Snohomish County Auditor's File No. _____, at Snohomish County Registry of Deeds. The beneficiary of the mortgage or deed of trust has agreed by separate instrument, as set forth in attached Exhibit C, which is incorporated herein by reference as if set forth in full, to subordinate its rights in the Protected Property to this Easement to the extent necessary to permit Grantee Snohomish County to enforce the purpose of the Easement in perpetuity and to prevent any modification or extinguishment of the Easement by exercising any rights of the beneficiary under the mortgage or deed or trust.

X. Costs and Liabilities. Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to ownership, operation, upkeep, and maintenance of the Protected Property.

- A. Taxes. Grantors shall continue to be solely responsible for payment of all taxes and assessments levied against the Protected Property.
- B. Hold harmless. This Easement does not alter the Grantors' liability arising out of tort actions, including but not limited to actions brought for personal injury or property damage, that occur on or about the Protected Property. The Grantors shall hold harmless, indemnify, and defend the Grantee from and against all liabilities, penalties, costs, losses, damages,

claims, or judgments in any way connected to injury to or the death of any person, or damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property, unless due to the negligence of Grantee. This subsection shall not be construed to relieve the Grantee from any liability for which it would otherwise be responsible for injuries to its employees occurring on the Protected Property in the course and scope of their duties.

XI. Transfer of Protected Property: Upon transfer of the Protected Property, or any interest in the Protected Property, from one landowner to another, the conveyance document shall expressly refer to this Easement and be subject to its terms, covenants, conditions, and restrictions, which shall run with the land and bind the Protected Property in perpetuity.

XII. Recordation. Grantee Snohomish County shall record this instrument in the Office of the Snohomish County Auditor and may re-record it at any time.

XIII. Notices. Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to another party under the terms of this Easement shall be in writing and either served at or mailed to:

GRANTOR(S): _____

GRANTEE: Snohomish County Department of Planning and
Development Services
Attn: TDR Program Manager
3000 Rockefeller, M/S #604
Everett, WA 98201

or to such other address as any party from time to time shall designate by written notice to others.

XIV. General Provisions.

A. Amendment. If circumstances arise under which an amendment to this Easement would be appropriate, the owner of the Protected Property and the County may jointly amend this Easement provided that such an amendment does not diminish the effectiveness of this Easement in carrying out its purpose. All amendments to this Easement shall be by a

written instrument signed by the director of PDS and the current owner of the Protected Property, which shall be recorded by PDS with the Snohomish County Auditor.

- B. Controlling Law. The interpretation or performance of this Easement shall be governed by the laws of the State of Washington. Any legal proceeding regarding this Easement shall be initiated in Snohomish County Superior Court and shall not be removed to federal district court.

- C. Interpretation. This Easement shall be interpreted to resolve any ambiguities and questions of the validity of specific provisions to give maximum effect to its preservation purpose, as stated in Section I, above. If the Grantors have any doubt concerning the Easement, covenants, conditions, limitations or restrictions herein contained with respect to any particular use of the said Protected Property, they may submit a written request to the Grantee for consideration and approval of such use.

D. Rules of Construction.

- (1) The terms “Grantors” and “Grantee,” wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include respectively the above-named Grantors, their personal representatives, heirs, successors, and assigns, and the above-named Grantee, its personal representatives, successors and assigns.
- (2) The words “or” and “and” shall be read in the conjunctive and not in the disjunctive.
- (3) References in this Easement to chapters or sections of the Snohomish County Code or the Revised Code of Washington shall be deemed to include any amendments thereto which are adopted following execution of this Easement, provided that such amendments are not contrary to the purposes of this Easement. Amendments to code chapters or sections referenced herein shall not affect the legality or enforceability of this Easement unless such amendments clearly state or necessarily imply an intent by the legislative body to do so.

E. Entire agreement. This Easement sets forth the entire agreement of the parties with respect to the issues addressed herein and supersedes all prior discussions, negotiations, understandings, or agreements relating to these issues, all of which are merged herein.

F. No forfeiture. Nothing in this Easement shall result in a forfeiture or revision of Grantors’ title in any respect.

G. Successors. As stated in the above terms and recitals, all covenants, terms, conditions, and restrictions of this Easement shall run with the land and be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

H. Severability. If any portion of this Easement is declared unlawful or invalid, the remainder of the Easement shall remain in full force and effect.

I. Authority of signatories. The individuals executing this Easement warrant and represent that they are duly authorized to execute and deliver this Easement.

TO HAVE AND TO HOLD unto GRANTEE SNOHOMISH COUNTY, its respective successors and assigns forever.

IN WITNESS WHEREFOF the parties have, by their authorized officers set their hands as of the day and year first stated above.

GRANTOR(S) :

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

On this the _____ of _____, 20____, before me personally appeared _____, and executed the within and foregoing instrument, and acknowledged the said instrument to be his/her/their free and voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Printed Name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at _____.
My Commission Expires: _____.

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

On this the _____ of _____, 20____, before me personally appeared _____, and executed the within and foregoing instrument, and acknowledged the said instrument to be his/her/their free and voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Printed Name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at _____.
My Commission Expires: _____.

