

Department of Ecology
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Shorelands & Environmental
Assistance Program

**MITIGATION BANKING INSTRUMENT:
Skykomish Habitat Mitigation Bank**

August 9, 2006

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**MITIGATION BANKING INSTRUMENT
SKYKOMISH HABITAT MITIGATION BANK**

This Mitigation Banking Instrument regarding the establishment, use, operation, and maintenance of Skykomish Habitat Mitigation Bank (hereinafter, the Bank) is made and entered into by and among Skykomish Habitat, LLC, a Delaware Limited Liability Company (hereinafter, Sponsor), the U.S. Army Corps of Engineers (Corps), and the Washington State Department of Ecology (Ecology), with reference to the following:

I. PREAMBLE

A. Purpose:

Whereas, the purpose of this Mitigation Banking Instrument (hereinafter, Instrument) is to specify responsibilities for the establishment, use, operation, and maintenance of the Bank. It consists of this “Basic Agreement” establishing the central obligations assumed and consideration provided by each Party, as well as appendices (hereinafter, the Appendices) that establish the site-specific conditions, standards and procedural requirements applicable to each operational phase of the Bank. The Bank will provide compensatory mitigation for unavoidable adverse impacts to waters of the United States, including wetlands, and to aquatic habitat including habitat for endangered and threatened species, that result from activities authorized by Federal, State, and local authorities, when use of the Bank has been specifically approved by the appropriate regulatory agencies.

B. Location and Ownership of Parcel:

Whereas, the Sponsor owns approximately 260 acres of land located along the Skykomish River at 18016 – 177th Street SE, in the City of Monroe, in Snohomish County, Washington.

C. Project Description:

Whereas, the Sponsor has expressed an intent to restore and/or enhance aquatic and associated upland habitat in accordance with the provisions of this Instrument, and shall then maintain each established phase of the Bank in accordance with the provisions of this Instrument. The Bank is projected to, among other purposes, restore and enhance salmonid habitat and wetlands, through the creation and restoration of a braided side channel and floodplain wetland complex along the north bank of the Skykomish River, approximately 2.5 miles upstream of the Snohomish River confluence.

D. Mitigation Bank Review Team.

Whereas, in consideration of the establishment and maintenance of the Bank, the Mitigation Bank Review Team (MBRT) is willing to award credits in accordance with the procedures outlined in this Instrument, which will be made available to serve as compensatory mitigation pursuant to applicable Federal, Washington State, and local laws and regulations. The MBRT is the group of Federal, State, and local agencies that has reviewed and approved the provisions of the Instrument, and consists of:

1. Co-Chair: U.S. Army Corps of Engineers, Seattle District (Corps).
2. Co-Chair: Washington Department of Ecology (Ecology)
3. U.S. Environmental Protection Agency, Region X (EPA).
4. Washington Department of Natural Resources.
5. Snohomish County

See Article V of this Instrument for a description of the responsibilities of the Co-Chairs of the MBRT. A detailed list of the agencies participating in the development of this Instrument is in Section 3 of the Appendices.

NOW, THEREFORE, the Parties agree to the following:

II. PRINCIPAL AUTHORITIES

The establishment, use, operation and maintenance of the Bank shall be carried out in accordance with the following principal authorities. A complete listing of the authorities governing this Instrument is located in Section 2 of the Appendices:

A. Federal:

1. Clean Water Act (33 USC §§ 1251 et seq.)
2. Rivers and Harbors Act of 1899 (33 USC § 403)
3. Regulatory Programs of the Corps of Engineers, Final Rule (33 CFR Parts 320-331)
4. Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army concerning the Determination of Mitigation Under the Clean Water Act, Section 404(b)(1) Guidelines (February 6, 1990)
5. Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks (60 F.R. 58605 et seq.)
6. Regulatory Guidance Letter No. 02-02, *Guidance on Compensatory Mitigation Projects for Aquatic Resource Impacts under the Corps Regulatory Program pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899*, U.S. Army Corps of Engineers, December 26, 2002

B. State of Washington:

1. Washington Water Pollution Control Act, RCW 90.48 et seq.
2. Washington State Alternative Mitigation Policy, developed by Ecology, Washington State Department of Transportation (WSDOT), Washington Department of Fish and Wildlife (WDFW), and the Office of Community Development (OCD), 2000.
3. Washington State's Pilot Rule on Wetland Mitigation Banking (WAC 173-300, Compensatory Wetland Mitigation Banking)

C. Local

1. Snohomish County Critical Areas Code, General Policy Plan, Shoreline Management Substantial Development Program, and Unified Development Code
2. King County Sensitive Areas Ordinance (SAO) Title 21A 24.345
3. King County Wetland Mitigation Banking Regulations (PUT 8-11, 1999)

III. ESTABLISHMENT OF THE BANK

A. Permits

The Sponsor shall obtain all appropriate environmental documentation, permits and other authorizations needed to establish and maintain the applicable phase of the Bank, prior to the award of any mitigation credits. Compliance with this Instrument does not fulfill the requirement, or substitute, for such authorization.

B. Bank Establishment

The Sponsor agrees to establish the Bank as described in Sections 7 through 9 of the Appendices. In recognition thereof, credits will be awarded to the Sponsor in accordance with the procedures and schedules prescribed in the Appendices, particularly in Sections 10 and 11. In the event the Sponsor determines that modifications to the Appendices are necessary, the Sponsor shall submit a written request for such modification to the MBRI, through the Co-Chairs, for approval. Documentation of implemented modifications shall be made consistent with Article VI.B.2. of this Instrument.

C. Financial Assurance Requirements.

The Sponsor agrees to provide the financial assurances for the work described in this Instrument. The enumerated paragraphs and subsections immediately below relate specifically to the content of Appendix 1 for the Phase 1 area of the Bank and are reflective of site specific conditions and performance standards applicable to Phase 1 only. If additional phases are added to the Bank in the future, additional financial assurance mechanisms will be required to guarantee the activities to be undertaken in those phases. The Co-Chairs, in consultation with the MBRI, will review and consider for approval the form and content of any additional financial assurance, as well as the identity of the financial institution issuing and underwriting the additional financial assurance, on a case-by-case basis. Any new financial assurances required for future Bank phases will be as addressed in an amendment to this Basic Agreement and a new Appendix (e.g., Appendix 2), which when combined shall constitute the Amended Instrument. Amendments to this Basic Agreement or Appendices will be made according to Article VI.B of the Instrument. All decisions by the Corps and Ecology relating to financial assurances will be made with good faith and judgment as prescribed in Article V.D of this Instrument.

1. Phase 1 Irrevocable Letter of Credit for Construction:

The Sponsor shall furnish a Letter of Credit to provide financial assurance underlying initial functionality during the Construction Stage of Phase 1 of the Bank as defined in Article IV.K. of this Instrument. A separate Letter of Credit shall be furnished for each segment of Bank construction (e.g., Phases 1A and 1B), except as approved by the Corps and Ecology. The Corps and Ecology must specifically approve all terms and conditions

of the Letter of Credit, as well as the identity of the financial institution issuing and underwriting the Letter of Credit. Approval of the financial institution selected by the Sponsor shall not be unreasonably withheld. The form and content of each Letter of Credit for Construction shall be approved by the Corps and Ecology, shall conform to the requirements of Section 17.1 of Appendix 1, and shall be instituted by the Sponsor prior to the release of any credits reflecting satisfaction of any performance standards under Performance Standard 1 D., as delineated in Section 9 of Appendix 1.

a. The Corps or Ecology, acting independently or in concert, may direct disbursement from the credit funds account of the Letter of Credit for Construction under the following circumstances: upon abandonment of Bank establishment efforts during the construction stage of the Bank, or any failure stemming from any cause to achieve any of the Bank Objectives or Performance Standards during the construction stage as reflected in Section 9 of Appendix 1, including but not limited to deficient design, ineffective establishment, deterioration of functionality or performance or financial limitations of the Sponsor. Ninety calendar days prior to accessing funds pursuant to a Letter of Credit, the Corps and Ecology shall provide specific and express written direction for corrective action to the Sponsor in accordance with Article IV H of this Instrument and Section 16.2 of Appendix 1. If, within 90 days of delivery of notice of the demand for corrective action, the Sponsor has initiated compliance efforts and the Corps and Ecology have determined, in their sole discretion, that substantial progress has been made toward completion of corrective action, the Corps and Ecology will defer accessing the Letter of Credit.

b. Following consultation with the MBRT, during the construction stage of the Bank as described in Article IV K., the Corps and Ecology may access the funds guaranteed by the Letter of Credit for Construction to accomplish any of the following objectives or features of Phase 1 of the Bank: construction and inception activities reflected in, or directly supporting accomplishment of, the Objectives and Performance Standards reflected in Section 9 of Appendix 1. Corrective or remedial actions determined to be necessary will be accomplished through a Third Party Designee selected by the Corps and Ecology.

c. The Letter of Credit for Construction shall take the general form of an agreement on the part of the issuing financial institution to honor the engagement reflected therein. Separate and distinct Letters of Credit for Construction shall be furnished in the following amounts:

(i) Phase 1A: \$1,707,000

(ii) Phase 1B: \$1,370,000

d. Upon termination of the construction stage of Phase 1 pursuant to Article IV K., the Corps and Ecology will certify such termination in writing, and will authorize rescission or cancellation of the Letter of Credit for Construction applicable to Phase 1A or 1B, as appropriate.

e. Notwithstanding the fact that the Letter of Credit for Construction applicable to Phase 1A or 1B has been accessed, and full or partial remedial or corrective action has been taken by the Third Party Designee, unless this Instrument is terminated pursuant to Articles IV.J. and VI.B. the Sponsor shall remain responsible for the timely and effective achievement of all the Objectives and Performance Standards mandated in Section 9 of Appendix 1.

f. Alternatively, the Sponsor may request, and the Corps and Ecology may approve a substitute financial assurance instrument for any of the Letters of Credit for Construction required under this Instrument. The form and content of any financial assurance instrument must be specifically approved before a substitution is utilized in satisfaction of the financial assurance obligations during the period of establishment of the Bank. The Corps and Ecology must specifically approve the identity of the financial institution issuing and underwriting the financial assurance instrument. The provisions of the substitute financial assurance instrument must conform to each of the material requirements of this Article III.C.1., as well as Section 17.1 of Appendix 1, within this Instrument. In particular, the provisions of the substitute financial assurance instrument must designate the Corps and Ecology as distinct and independent beneficiaries, and must expressly authorize either the Corps or Ecology to independently access and direct either partial or full disbursement of funds secured by that instrument consistent with the other provisions within Article III.C.1. Each financial assurance instrument will provide that the issuing financial institution shall honor the credit engagement or other assurance and pay to the Third Party Designee the directed sum without inquiring whether the directing Beneficiary agency or the receiving Third Party Designee has a right to make such a demand, and without acknowledgement of any inconsistent claim of the Sponsor to those funds. Furthermore, the Sponsor must waive any and all opportunity to challenge or delay any such access or disbursement. Additionally, the substitute financial assurance must extend for the full period of time that the Letter of Credit it replaces must extend, and may be terminated only at the written direction of both the Corps and Ecology. The replacement financial assurance instrument must be instituted so that there is no period of time during which there is no financial assurance in effect. No further credits will be awarded from any phase of the Bank while any phase lacks an effective financial assurance instrument.

2. Phase 1 Irrevocable Letter of Credit for Maintenance, Monitoring and Contingencies

Upon the completion of the construction stage of the Bank as defined in Article IV.K. of this Instrument, the Sponsor shall furnish a Letter of Credit to provide financial assurance underlying the maintenance, monitoring, and any adaptive management or contingent remedial actions for Phase 1 of the Bank. A separate Letter of Credit shall be furnished for each segment of Bank maintenance, monitoring, and contingencies (e.g., Phases 1A and 1B), except as approved by the Corps and Ecology. The Corps and Ecology must specifically approve all terms and conditions of the Letter of Credit for Maintenance, Monitoring, and Contingencies, as well as the identity of the financial institution issuing and underwriting the Letter of Credit. The approval of the financial institution selected

by the Sponsor shall not be unreasonably withheld. The form and content of each Letter of Credit for Maintenance, Monitoring, and Contingencies shall be approved by the Corps and Ecology, shall conform to the requirements of Section 17.2 of Appendix 1, and shall be instituted by the Sponsor prior to the certification of termination of the construction stage of the Bank, pursuant to Article IV.K. of this Instrument.

a. The Corps or Ecology, acting independently or in concert, may direct disbursement from the credit funds account of the Letter of Credit for Maintenance, Monitoring, and Contingencies under the following circumstances: upon abandonment of Phase 1 Bank establishment efforts directed at a particular phase, or any failure stemming from any cause to achieve any of the Phase 1 Bank Objectives or Performance Standards reflected in Section 9 of Appendix 1 in regard to a particular phase, including but not limited to deficient design, ineffective establishment, deterioration of functionality or performance after establishment, or financial limitations of the Sponsor. Ninety calendar days prior to accessing funds pursuant to a Letter of Credit, the Corps and Ecology shall provide specific and express written direction for corrective action to the Sponsor in accordance with Article IV.H. of this Instrument and Section 17.2 of Appendix 1. If, within 90 days of delivery of notice of the demand for corrective action, the Sponsor has initiated compliance efforts and the Corps and Ecology have determined, in their sole discretion, that substantial progress has been made toward completion of corrective action, the Corps and Ecology will defer accessing the Letter of Credit for Maintenance, Monitoring, and Contingencies.

b. Following consultation with the MBRT, the Corps and Ecology may access the funds guaranteed by the Letter of Credit for Maintenance, Monitoring, and Contingencies to accomplish any of the following objectives or features of Phase 1 of the Bank: establishment, maintenance, monitoring, and any adaptive management or contingent remedial action activities reflected in, or directly supporting accomplishment of, the Objectives and Performance Standards reflected in Section 9 of Appendix 1. Corrective or remedial actions determined to be necessary will be accomplished through a Third Party Designee selected by the Corps and Ecology.

c. The Letter of Credit for Maintenance, Monitoring, and Contingencies shall take the general form of an agreement on the part of the issuing financial institution to honor the engagement reflected therein. Separate and distinct Letters of Credit for Maintenance, Monitoring, and Contingencies shall be furnished in the following amounts:

(i) Phase 1A: \$427,000

(ii) Phase 1B: \$343,000

d. The Sponsor may, upon approval from the Corps and Ecology, combine the credit account requirements from the separately maintained Letters of Credit for Maintenance, Monitoring, and Contingencies into one single Letter of Credit,

provided that the combined amount of a single replacement Letter of Credit equals the combined aggregate amount of the separate Letters of Credit for Maintenance, Monitoring, and Contingencies.

e. Upon satisfaction of all Objectives and Performance Standards required in Section 9 of the Appendices for each phase of the Bank, and upon a determination by the Corps and Ecology that the Sponsor has completed the following, the Corps and Ecology will authorize rescission or cancellation of the Irrevocable Letter of Credit for Maintenance, Monitoring, and Contingencies applicable to that phase:

(i) for the final phase of Bank implementation, the Sponsor satisfied the additional requirements reflected in Article IV.L. of this Instrument for termination of the establishment phase of the Bank;

(ii) for all preceding phases of Bank implementation, the Sponsor has been awarded all credits for that phase, or has permanently ceased banking activities applicable to that phase

f. Notwithstanding the fact that the Letter of Credit for Maintenance, Monitoring, and Contingencies applicable to Phase 1A or 1B has been accessed, and full or partial remedial or corrective action been taken by the Third Party Designee, unless this Instrument is terminated pursuant to Articles IV.J. and VI.B. the Sponsor shall remain responsible for the timely and effective achievement of all the Objectives and Performance Standards mandated in Section 9 of the Appendices.

g. Alternatively, the Sponsor may request, and the Corps and Ecology may approve a substitute financial assurance instrument for any of the Letters of Credit for Maintenance, Monitoring, and Contingencies required under this Instrument. The form and content of any financial assurance instrument must be specifically approved before a substitution is utilized in satisfaction of the financial assurance obligations during the period of establishment of the Bank. The Corps and Ecology must specifically approve the identity of the financial institution issuing and underwriting the financial assurance instrument. The provisions of the substitute financial assurance instrument must conform to each of the requirements of this Article III.C.2., as well as Section 17.2 of Appendix 1, within this Instrument. In particular, the provisions of the substitute financial assurance instrument must designate the Corps and Ecology as distinct and independent beneficiaries, and must expressly authorize either the Corps or Ecology to independently access and direct either partial or full disbursement of the funds secured by that instrument consistent with the other provisions within Article III.C.2. Each financial assurance instrument will provide that the issuing financial institution shall honor the credit engagement or other assurance and pay to the Third Party Designee the directed sum without inquiring whether the directing Beneficiary agency or the receiving Third Party Designee has a right to make such a demand, and without acknowledgement of any inconsistent claim of the Sponsor to those funds. Furthermore, the Sponsor must waive any and all opportunity to challenge or delay any such access or disbursement. Additionally, the substitute financial assurance must extend for the full

period of time that the Letter of Credit it replaces must extend, and may be terminated only at the written direction of both the Corps and Ecology. The replacement financial assurance instrument must be instituted so that there is no interval in which there is no financial assurance in effect. No further credits will be awarded from any phase of the Bank while any phase lacks an effective financial assurance instrument.

D. Real Estate Provisions.

All real property to be included within the Bank site area, as more completely described in Exhibit A to this Instrument, is owned in fee simple by Skykomish Habitat and has been pledged for use in the Bank in a manner consistent with this Instrument. The Sponsor shall burden the title to the Bank real property through the grant of a conservation easement, pursuant to the provisions of Section 15.1 of the Appendix.

The overall property size is approximately 260 acres (hereinafter "property" relates to total site acreage), of which 172 acres constitute Phase I of the Bank. The inclusion of the aforementioned Phase I acreage in the Bank and the granting of a conservation easement restricting future land uses for the benefit of the Bank shall not convey or establish any property interest on the part of any Party to this Instrument, nor convey or establish any interest in Bank credits. The Instrument does not authorize, nor shall it be construed to permit, the establishment of any lien, encumbrance, or other claim with respect to the property, with the sole exception of the right on the part of the Corps to require Skykomish Habitat to implement elements of this Instrument, including recording the conservation easement, required as a condition of a permit issued under Section 404 of the Clean Water Act for discharges of dredged and fill material into waters of the United States associated with construction and operation and maintenance of the Bank.

IV. OPERATION OF THE BANK

A. Service Area.

The Bank is approved to provide compensatory mitigation for impacts to the Waters of the United States, including wetlands, within a portion of Water Resources Inventory Area 7, "Snohomish River," as shown in the Service Area Figure of the Appendices and described in Section 13 of the Appendices. In exceptional situations, the Bank may be used to compensate for an impact that occurs outside of the Service Area if specifically approved by the regulatory agency(ies) having jurisdiction over that impact and by the MBRT, pursuant to the procedures and criteria prescribed in Section 13 of the Appendices. If the Corps and Ecology determine that the Sponsor has sold, used, or transferred credits at any time to provide compensatory mitigation for loss of aquatic resources outside of the Service Area without prior approval, the Corps and Ecology, in consultation with the other members of the MBRT, may direct that the sale, use, or other transfer of credits immediately cease, and will determine, in consultation with the MBRT and the Sponsor, what remedial actions are necessary to correct the situation and will direct their performance prior to the award of any additional mitigation credits. Notwithstanding the fact that ceasing sale, use, or other transfer of credits may have been required, unless this Instrument is terminated pursuant to Articles IV J. and VI B., the Sponsor shall remain responsible for the timely and effective achievement of all the Objectives and Performance Standards mandated in Section 9 of the Appendices.

B. Access to the Bank Site.

The Sponsor will allow, or otherwise provide for, access to the Bank site by members of the MBRT or their agents or designees as reasonably necessary for the purpose of inspection, compliance monitoring, and remediation consistent with the terms and conditions of this Basic Agreement and Appendices, throughout the periods of Bank establishment and operation. Inspecting parties shall provide the Sponsor reasonable prior notice of a scheduled inspection and shall not unreasonably disrupt or disturb activities on the property.

C. Availability of Mitigation Credits.

1. Schedule of Credit Availability: Subject to the documentation and scheduling provisions of Sections 9 and 11 of the Appendices, the Sponsor may submit to the MBRT written evidence that particular performance standards have been achieved. If the Corps and Ecology, after consulting with the other members of the MBRT and the Sponsor, concur that certain performance standards have been achieved in full, it is agreed that the credits associated with those performance standards will become available for sale, use, or transfer by the Sponsor.

2. Availability of Credits in the Event a Financial Assurance is Accessed: In the event the Corps or Ecology, acting pursuant to Articles III.C.1.a., and III.C.1.b., or Articles III.C.2.a., and III.C.2.b, of this Instrument, accesses the financial assurances established pursuant to Articles III.C.1., or III.C.2, or accesses future financial assurances required under similar provisions of Article III.C. for future phases of the Bank, and accomplishes any objectives, performance standards, or features of the Bank, the Corps and Ecology, in consultation with the other members of the MBRT, may award credits for sale, use, or transfer by the Sponsor, reflecting objectives and performance standards achieved as a result of such remedial action.

D. Credit Deficit or Fraudulent Transactions.

If the Corps and/or Ecology determine at any point that the Bank is operating without prior written approval at a deficit, or has engaged in fraudulent transactions in the sale, use, or transfer of credits, the Corps and/or Ecology will direct the Sponsor to immediately cease award and sale, use, or other transfer of credits, and will determine, in consultation with the MBRT and the Sponsor, what remedial actions are necessary to correct the situation and will direct their performance prior to the award of any additional mitigation credits. Notwithstanding the fact that ceasing sale, use, or other transfer of credits may have been required, unless this Instrument is terminated pursuant to Articles IV.J. and VI.B., the Sponsor shall remain responsible for the timely and effective achievement of all the Objectives and Performance Standards mandated in Section 9 of the Appendices.

E. Provisions for Use of the Mitigation Bank Area.

The Sponsor shall not:

1. Grant additional easements, rights of way, or any other property interest in the project areas, without the written consent of the Corps and Ecology, in consultation with the MBRT.
2. Use or authorize the use of any areas within the Bank for any purpose that is contrary to the provisions of this Instrument or the conservation easement, or which interferes with the conservation purposes of the Bank.

F. Maintenance Provisions.

Following achievement of the Performance Standards, the Sponsor agrees to perform all necessary work to maintain those standards as prescribed in Section 16 of the Appendices.

G. Monitoring Provisions.

The Sponsor agrees to perform all necessary work, pursuant to Section 16 of the Appendices, to monitor the Bank to demonstrate compliance with the performance standards established in Section 9 of the Appendices.

H. Contingency Plans/Remedial Actions.

In the event the Bank fails to achieve by the specified date one or more of the performance standards delineated in Section 9 of the Appendices, the Sponsor shall develop necessary contingency plans and implement appropriate remedial and monitoring actions for the Bank as specified in Section 16 of the Appendices, to attain those project objectives and performance standards. Prior to their execution, proposals for the contingency plans and remediation and monitoring activities must be approved by the Corps and Ecology, in consultation with the Sponsor and the MBRT. In the event the Sponsor fails to implement necessary remedial actions within the prescribed period, the Corps and/or Ecology, following consultation with the Sponsor and the MBRT, will direct remedial, corrective, and/or sanctioning action in accordance with the procedures specified in Section 16 of the Appendices. Alternatively, the Corps and Ecology may accomplish such remedial action directly, acting through a Third Party Designee, by accessing the Letter of Credit funds account pursuant to Articles III.C.1.a. and III.C.1.b., and/or Articles III.C.2.a and III.2.b of this Instrument.

I. Force Majeure.

In the event of substantial damage caused by a natural or human-caused catastrophic event or a deliberate and unlawful act, that the Corps and Ecology, in consultation with the Sponsor and the MBRT, determine has had a significant adverse impact on the quality of the aquatic functions, native vegetation, soils, or wildlife of the Bank and is beyond the control of the Sponsor, its agents, contractors, or consultants to prevent or mitigate: the Sponsor may request, pursuant to Article III.B. of this Agreement, and the Corps and Ecology, in consultation with the MBRT, may approve changes to the construction, operation, project objectives, performance standards, or crediting formula of the Bank, pursuant to the standards and procedures specified in Section 16.2 of the Appendices. A

natural catastrophic event includes, but is not limited to, a flood equal to or greater in magnitude than the 100-year flood event, an earthquake of a force projected from an earthquake with a return period of 475 years, drought that is significantly longer than the periodic multi-year drought cycles that are typical of weather patterns in the Pacific Northwest, as well as debilitating disease, wildfire, depredation, regional pest infestation, or fluviogeomorphic change. A human-caused catastrophic event includes, but is not limited to, war, insurrection, riot or other civil disorders, spill of a hazardous or toxic substance, or fire. A deliberate and unlawful act includes, but is not limited to, the dumping of a hazardous or toxic substance, as well as significant acts of vandalism or arson. If any such act occurs the MBRT, in consultation with the Sponsor, will determine what changes to the Bank and/or this Instrument will be in the best interest of the Bank and the aquatic environment. The consequences of any events of force majeure recognized as such by the Corps and Ecology shall not affect the status of previously released credits, whether or not they have yet been sold, used or transferred.

J. Default.

Should the Corps and/or Ecology, in consultation with the MBRT, determine that the Sponsor is in material default of any provision of this Instrument, the Corps and/or Ecology may cease award of mitigation credits, and may notify the Sponsor that the debiting, sale, use, and/or transfer of mitigation credits are suspended until the delineated deficiencies are rectified. Upon written notification of suspension, the Sponsor agrees to immediately cease any sale, use, or transfer transactions not yet finally completed for that phase, until informed by the Corps and/or Ecology that award, sale, use, or transfer of credits may be resumed. Should the Sponsor remain in default for a period of 90 days, the Corps and/or Ecology, following consultation with the MBRT, may terminate this Instrument and any subsequent banking operations. In the event such termination action is commenced, the Sponsor agrees to fulfill its pre-existing obligations to perform all establishment, monitoring, maintenance, management, and remediation responsibilities that arise directly from credits that have already been awarded, sold, used, or transferred at the time of termination.

K. Termination of the Construction Stage of the Bank.

Upon satisfaction of the following, the Sponsor may request certification that the construction stage of that phase of the Bank is complete:

- (1) The achievement of the Objectives and Performance Standards applicable to the construction and inception of a phase of the Bank in Section 9 of the Appendices;
- (2) The documentation required by Section 16 of the Appendices has been submitted to the MBRT; and
- (3) A Letter of Credit for Maintenance, Monitoring and Contingencies has been approved by the MBRT and initiated by the Sponsor.

Upon approval of both the Corps and Ecology, following consultation with the other members of the MBRT, certification that the construction stage of that phase of the Bank has terminated will be issued.

L. Establishment Phase of the Bank.

The Establishment Phase of the Bank will commence on the date the Instrument takes effect pursuant to Article VI B.1. Prior to termination of the establishment phase of any phase of the Bank, the MBRT will perform a final compliance inspection to evaluate whether all performance standards have been achieved. Upon the Corps and Ecology determining, in consultation with the other members of the MBRT and the Sponsor, that:

(1) all applicable performance standards prescribed in the Appendices for that phase have been achieved;

(2) all available credits for that phase have been awarded, or the Sponsor has permanently ceased banking activities; and

(3) the Bank has complied with the terms of this Instrument, the establishment phase for that phase of the Bank will terminate, and the long-term maintenance and management of the site will be the responsibility of the site owner pursuant to the terms and conditions for preserving the conservation values as provided for within the Conservation Easement.

M. Operational Life of the Bank.

The Operational Life of the Bank will commence on the date the Instrument takes effect pursuant to Article VI.B.1. Following the termination of the establishment phase of any phase of the Bank, upon sale or transfer of all credits or upon acceptance by the MBRT of a written declaration by the Sponsor that it has permanently ceased banking activities within that phase, the operational life of that phase of the Bank will terminate.

N. Transfer of Ownership of the Bank Site.

The Sponsor shall remain responsible for complying with the provisions of this Instrument throughout the operational life of the Bank, regardless of the ownership status of the underlying real property, unless those responsibilities have been assigned pursuant to the provisions of Article VI.C. of this Instrument. The Sponsor may transfer ownership of all or a portion of the Bank to another party provided the Corps and Ecology, following consultation with the other members of the MBRT, expressly approve the transfer in writing.

V. RESPONSIBILITIES OF THE CORPS AND ECOLOGY

A. The Corps and Ecology agree to provide appropriate oversight in carrying out provisions of this Instrument.

B. The Corps and Ecology agree to review and provide comments on project plans, monitoring reports, contingency and remediation proposals, and similar submittals from the Sponsor in a timely manner. As Co-Chairs, the Corps and Ecology will coordinate their review with the other members of the MBRT.

C. The Corps and Ecology agree to review requests to modify the terms of this Instrument, transfer title or interest in the Bank, and determine achievement of performance standards in order to evaluate the award of credits for each phase of the Bank. As Co-Chairs, the Corps and Ecology will coordinate review with the members of

the MBRT so that a decision is rendered or comments detailing deficiencies are provided in a timely manner. The Corps and Ecology agree to not unreasonably withhold or delay decisions on such requests.

D. The Corps and Ecology agree to act in good faith when rendering decisions about acceptability of financial assurances, requiring corrective or remedial actions, and awarding credits. Both the Corps and Ecology will consult with the Sponsor throughout all of these processes to facilitate exchange of information and clear communication regarding issues under consideration at each stage. The Corps and Ecology will exercise good judgment in accessing the financial assurances, will consult with each other prior to accessing the financial assurances, and will utilize those monies only to the extent they reasonably and in good faith conclude that such remedial or corrective actions are an effective and efficient expenditure of resources. In implementing the process delineated in Articles III.C.1. and III.C.2. of this Instrument, the Corps and Ecology will act in good faith in determining the scope and nature of corrective actions to be undertaken; shall act in good faith in conducting monitoring, developing reports, and assessing compliance with performance standards; and will not unreasonably limit corrective action activities or otherwise apply their discretion so as to unduly prejudice the Sponsor as to the timing or number of credits awarded.

E. The Corps and Ecology will periodically inspect the Bank site as necessary to evaluate, in consultation with the other members of the MBRT, the achievement of performance standards, to assess the results of any corrective measures taken and, in general, to verify the Sponsor's compliance with the provisions of this Instrument.

F. Upon satisfaction of the requirements of Article IV.K. for any Bank phase under this Instrument, the Corps and Ecology will certify, following consultation with the Sponsor and the other members of the MBRT, that the construction stage of the Bank has terminated. Upon satisfaction of the requirements of Article IV.L. for any Bank phase under this Instrument, the Corps and Ecology will certify, following consultation with the Sponsor and the other members of the MBRT, that the establishment phase of the Bank has terminated. Upon satisfaction of the requirements of Article IV.M. of this Instrument, the Corps and Ecology, following consultation with the other members of the MBRT, will jointly issue a letter certifying that the operational life of that phase of the Bank has terminated.

VI. GENERAL PROVISIONS

A. Decision Making by Consensus.

The Corps and Ecology will strive to achieve consensus regarding issues that arise pertaining to the establishment, operation, maintenance, and management of the Bank. As Co-Chairs, the Corps and Ecology will coordinate the review and oversight activities of the MBRT so as to best facilitate opportunity to reach the desired consensus. Review and oversight decisions will take into account the views of the Sponsor to the maximum extent practicable. Where consensus cannot otherwise be reached within a reasonable timeframe, following full consideration of the comments of the members of the MBRT and following consultation with the Sponsor, the Corps holds the responsibility and

authority under Section 404 of the Clean Water Act, and Ecology holds independent responsibility and authority under Section 401 of the Clean Water Act and RCW Ch. 90.48, to make final decisions regarding the application of the terms of this Instrument.

B. Entry into Effect, Modification or Amendment, and Termination of the Instrument:

1. This Instrument will enter into effect upon the signature by authorized representatives of each of the Corps, Ecology, and the Sponsor, as of the date of the last of these three signatures.

2. This Basic Agreement portion of the Instrument may be amended or modified only with the written approval of the Sponsor, the Program Manager for Shorelands and Environmental Assistance on behalf of Ecology, and the Seattle District Engineer on behalf of the Corps, or their designees. Any such modifications or amendments will take effect following consultation with the other members of the MBRT. Amendment of the provisions of the Appendices may be effectuated through an exchange of letters signed by the Sponsor, the Mitigation Banking Specialist serving as Co-Chair on behalf of the Corps, and the Mitigation Banking Specialist serving as Co-Chair on behalf of Ecology, provided the exchange of letters expresses mutual agreement as to the exact language to be deleted or modified, and the exact language to be inserted.

3. If changes are made to Federal, State or local mitigation banking regulations or policies, Sponsor shall have the right to request modifications to this Instrument that incorporate those changes. Approval for these modifications will not be unreasonably withheld.

4. If future demand in WRIA 7 warrants, Sponsor may request approval to expand the Bank onto contiguous properties. Sponsor will be required to develop and submit to the MBRT a proposed amendment to this Basic Agreement as well as an Appendix to the Instrument that includes a description of the location and baseline physical and biological conditions of the expansion area and describes how the project would comply with the provisions of this Instrument. The Appendix must include anticipated benefits to the watershed resulting from the proposed improvements; performance standards; success criteria; credit/debit determinations; changes to the service area (if any); monitoring and reporting and remedial actions; financial assurances and other elements within this Instrument, as appropriate.

5. This Instrument may be terminated by the mutual agreement of the Sponsor, Corps, and Ecology, following consultation with the MBRT, or may be terminated under the terms of Article IV J. of this Instrument in the case of default by the Sponsor. In the event such termination action is commenced, the Sponsor agrees to fulfill its pre-existing obligations to perform all establishment, monitoring, maintenance, management, and remediation responsibilities that arise directly from credits that have already been awarded, sold, used, or transferred at the time of termination.

6. Upon termination of the operational life of the Bank pursuant to Article IV M., and certification to that effect pursuant to Article V.F., this Instrument shall terminate without further action by any Party.

C. Assignment of Obligations under this Instrument.

The Sponsor may be permitted to assign its obligations, responsibilities, and entitlements under this Instrument to a third party. The Corps and Ecology, following consultation with the MBRI, must approve the identity of the assignee in order for any assignment to effectively relieve the Sponsor of those obligations. In evaluating a prospective assignee, the Corps and Ecology may consider characteristics such as environmental mitigation expertise, wetlands mitigation project or analogous experience, and financial strength and stability. Approval of the identity of the assignee will not be unreasonably withheld. The assignee must execute a mitigation banking instrument with the Corps and Ecology under terms identical, to the extent practicable, to the present Instrument. The applicable financial assurances established pursuant to Articles III C must be initiated. The obligations, responsibilities, and entitlements under this Instrument may reside in only a single entity at any one time, and may not be severed or transferred piecemeal. However, the physical ownership of the Bank site real property and the obligations, responsibilities, and entitlements under this Instrument are separate and distinct; thus, ownership may be transferred independently of assignment of this Instrument. Once assignment has been properly accomplished, the Sponsor will be relieved of all its obligations and responsibilities under this Instrument.

D. Specific Language of this Basic Agreement Shall Be Controlling.

To the extent that specific provisions of this Basic Agreement portion of the Instrument are inconsistent with any terms and conditions contained in the Appendices, or inconsistent with other documents that are incorporated into this Instrument by reference and that are not legally binding, the specific language within this Basic Agreement shall be controlling.

E. Notice.

Any notice required or permitted hereunder shall be deemed to have been given either (i) when delivered by hand, or (ii) three (3) days following the date deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, or (iii) sent by Federal Express or similar next-day nationwide delivery system, addressed as follows (or addressed in such other manner as the party being notified shall have requested by written notice to the other party):

Skykomish Habitat, LLC
Attention: Eric Gleason, Project Manager
128 Chestnut Avenue
P. O. Box 1088
Washington Grove, MD 20880-1083
301-977-4311

AND

Skykomish Habitat, LLC
Attention: David Remlinger, Member
12525 Old Snohomish-Monroe Road
Snohomish, WA 98290
360-568-1780

U.S. Army Corps of Engineers, Seattle District
Mitigation Banking Specialist/Co-chair of the MBRT
Regulatory Branch
Seattle District, Corps of Engineers
4735 E. Marginal Way South
P.O. Box 3755
Seattle, WA 98124-3755
206-764-3495

Washington State Department of Ecology
Mitigation Banking Specialist/ Co-chair of the MBRT
Shorelands and Environmental Assistance Program
PO Box 47600
300 Desmond Drive
Olympia, WA 98504-7600
360-407-7045

F. Entire Agreement.

This Instrument constitutes the entire agreement between the parties concerning the subject matter hereof.

G. Invalid Provisions.

In the event any one or more of the provisions contained in this Instrument are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions hereof, and this Instrument shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

H. Effect of Agreement.

This Instrument does not in any manner affect statutory authorities and responsibilities of the signatory parties. This Instrument is not intended, nor may it be relied upon, to create any rights in third parties enforceable in litigation with the United States or the State of Washington. This Instrument does not authorize, nor shall it be construed to permit, the establishment of any lien, encumbrance, or other claim with respect to the Bank property, with the sole exception of the right on the part of the Corps and Ecology to require the Sponsor to implement the provisions of this Instrument, including recording the conservation easement, required as a condition of the issuance of permits for discharges

of dredged and fill material into waters of the United States associated with construction and operation and maintenance of the Bank.

I. Attorneys' Fees:

If any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Instrument, each party to the litigation shall bear its own attorneys' fees and costs of litigation

J. Availability of Funds:

Implementation of this Instrument is subject to the requirements of the Anti-Deficiency Act, 32 U.S.C. § 1341, and the availability of appropriated funds. Nothing in this Instrument may be construed to require the obligation, appropriation, or expenditure of any money from the United States Treasury, in advance of an appropriation for that purpose.

K. Headings and Captions.

Any paragraph heading or caption contained in this Instrument shall be for convenience of reference only and shall not affect the construction or interpretation of any provision of this Instrument.

L. Counterparts.

This Instrument may be executed by the parties in any combination, in one or more counterparts, all of which together shall constitute one and the same Instrument.

M. Binding.

This Instrument shall be immediately, automatically, and irrevocably binding upon the Sponsor and its heirs, successors, assigns and legal representatives upon execution by the Sponsor, Ecology, and the Corps.

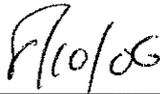
SIGNATURES

IN WITNESS WHEREOF, the parties hereto have executed this Instrument on the date herein below last written.

SPONSOR



Eric J Kaplan
Managing Member
Skykomish Habitat, LLC
Skykomish Habitat Mitigation Bank



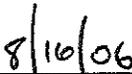
Date

MITIGATION BANK REVIEW TEAM

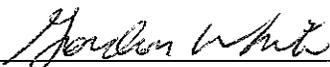
By the MBRI Co-Chairs:



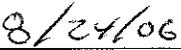
Michael McCormick
Colonel, Corps of Engineers
District Engineer



Date



Gordon White
Program Manager for Shorelands and Environmental Assistance Program
Washington State Department of Ecology



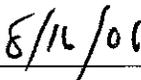
Date

LOCAL REGULATORS

By the County:



Craig R. Ladiser
Director, Department of Planning and Development Services
Snohomish County



Date

Skykomish Habitat Mitigation Banking Instrument

EXHIBIT A

Phase 1 Bank Area & Conservation Easement Site Survey

Legal Descriptions

SKYKOMISH HABITAT, LLC
 TOWNSHIP 27 NORTH, RANGE 6 EAST, W.M.
 SECTION 11
 NORTH HALF SECTION 14

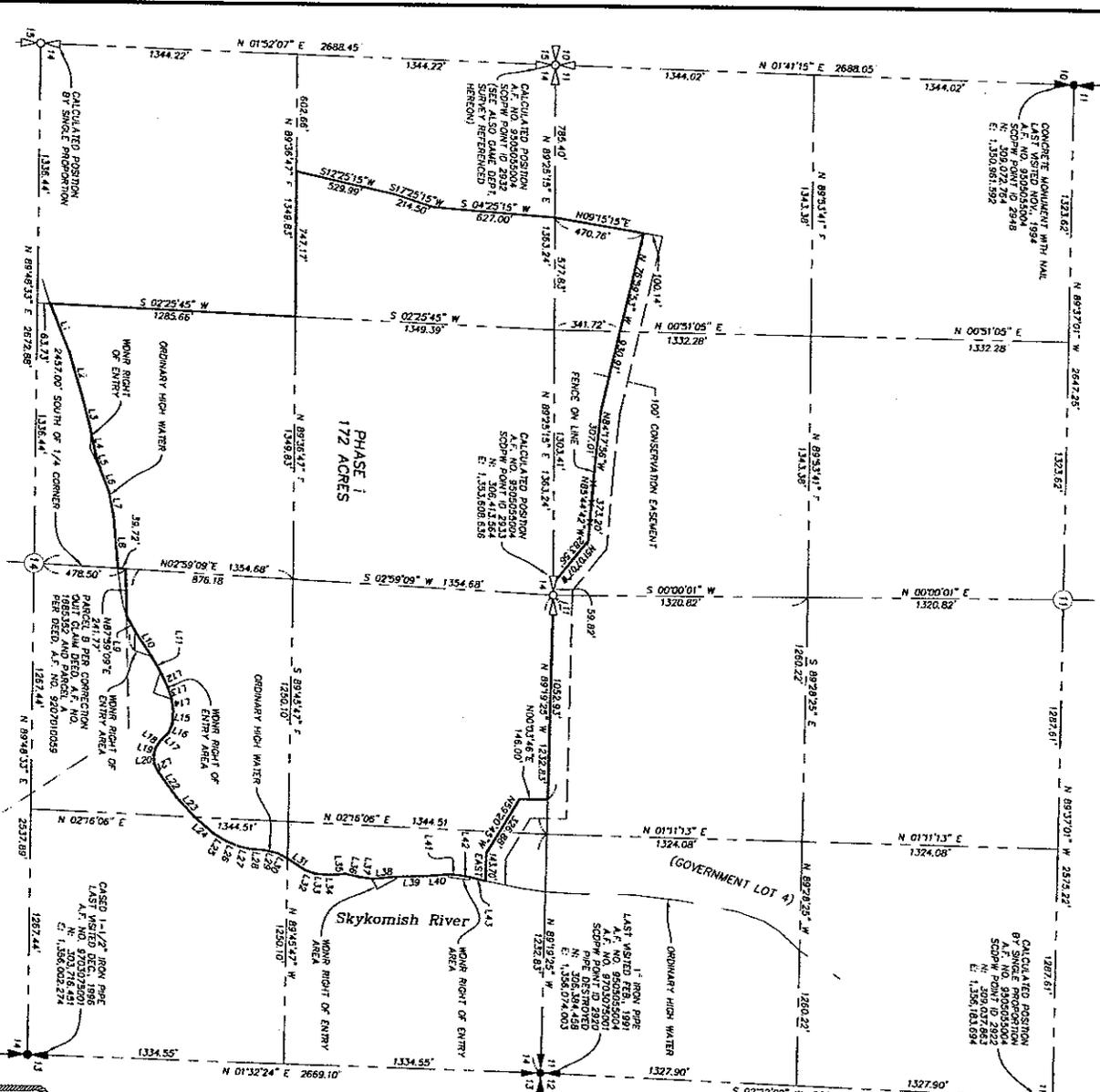
WASHINGTON STATE PLANE
 COORDINATE SYSTEM NORTH ZONE
 AVERAGE CORRECTION FACTOR=
 0.9999232358



NUMBER	BEARING	DISTANCE
1	N 89°31'09" E	268.45
2	N 89°31'09" E	268.45
3	N 89°31'09" E	268.45
4	N 89°31'09" E	268.45
5	N 89°31'09" E	268.45
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98	N 89°31'09" E	268.45
99	N 89°31'09" E	268.45
100	N 89°31'09" E	268.45

SURVEY NOTES:

- 1) THE CALCULATIONS AND CORRECTIONS SHOWN ON THIS SURVEY MEET OR EXCEED THOSE STANDARDS CONTAINED IN THE WASHINGTON SURVEYING ACT.
- 2) NO PROPERTY CORNERS WERE SET NOR ANY FIELD WORK CONDUCTED FOR THIS SURVEY. MEASURED GROUND DISTANCES.
- 3) DISTANCES ARE IN FEET AND DECIMALS THEREOF AND REVERSELY CALCULATED OR MEASURED GROUND DISTANCES.
- 4) COORDINATES SHOWN HEREON ARE WASHINGTON STATE PLANE COORDINATES, NORTH ZONE, BASED ON SNOHOMISH COUNTY DEPARTMENT OF PUBLIC WORKS SURVEY CONTROL.
- 5) ALL DISTANCES, BEING CORRECTED FOR CURVATURE AND REFRACTION.
- 6) THIS SURVEY DOES NOT PURPORT TO SHOW ALL EASEMENTS.
- 7) RIVER, ROADS, BUILDINGS AND FENCES ARE FROM PHOTOGRAMMETRY PERFORMED JULY 8, 2002 BY WALKER & ASSOCIATES.
- 8) THE ORDINARY HIGH WATER MARK (OHWM) WAS DETERMINED IN THE FIELD WITH THE ASSISTANCE OF AERIAL PHOTO INTERPRETATION ON JUNE 23, 2004 BY A CERTIFIED REGISTERED PROFESSIONAL SURVEYOR (RPS) WITH THE OVERSIGHT OF DISTRICT AND IDENTIFIED BASED ON THE EXISTING FOREST PLANS, WHICH WERE RECEIVED BY STAMPS OF AIDER ALONG THE MARGIN OF THE GRAVEL RIVER CHANNEL. THESE STAMPS PROVIDED TO HARKSEN & ASSOCIATES, INC. BY SHAW ENVIRONMENTAL, INC. IN DIGITAL FORMAT.
- 9) THE ORDINARY HIGH WATER MARK (OHWM) HAS BEEN ANNOTATED FOR THE PURPOSE OF THE ACTUAL OHWM DEPENDS ON THIS PRESENT LOCATION AS DESCRIBED IN PARAGRAPHS 8 ABOVE TO DETERMINE THE LOCATION AND ALSO DUE TO THE NATURAL SHIFTING OF THE RIVER OVER TIME.



SKYKOMISH HABITAT, LLC
 CONSERVATION EASEMENT SKETCH

SCALE: 1" = 400'
 DRAWN BY: TJP
 CHECKED BY: TJP
 DATE: 04-21-08
 HARKSEN & ASSOC., INC.
 1000 N. 10TH ST. SUITE 200
 SEASIDE, WA 98138
 PHONE: (360) 794-7811 / (206) 343-8803
 FAX: (360) 794-7812
 SHEET 1 OF 1
 DATE: 04-21-08
 5:12 AM
 5:12 AM
 5:12 AM

EXHIBIT A:

SKYKOMISH HABITAT MITIGATION BANK

**LEGAL DESCRIPTION OF PHASE 1 BANK AREA AND
PHASE 1 BUFFER EASEMENT**

PHASE 1

THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 14,
TOWNSHIP 27 NORTH, RANGE 6 EAST, W.M.;

TOGETHER WITH GOVERNMENT LOT 3, SECTION 14, TOWNSHIP 27 NORTH,
RANGE 6 EAST, W.M.;

ALSO TOGETHER WITH THAT PORTION OF THE NORTHWEST QUARTER OF
THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 27 NORTH, RANGE 6
EAST, W.M. DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 14;
THENCE NORTH 89°25'15" EAST A DISTANCE OF 785.40 FEET TO THE TRUE
POINT OF BEGINNING;
THENCE SOUTH 04°25'15" WEST A DISTANCE OF 627.00 FEET;
THENCE SOUTH 17°25'15" WEST A DISTANCE OF 214.50 FEET;
THENCE SOUTH 12°25'15" WEST A DISTANCE OF 529.99 FEET TO THE SOUTH
LINE OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER;
THENCE NORTH 89°36'47" EAST, ALONG THE SAID SOUTH LINE, A DISTANCE
OF 747.17 FEET TO THE SOUTHEAST CORNER OF SAID NORTHWEST
QUARTER OF THE NORTHWEST QUARTER;
THENCE NORTH 02°25'45" EAST, ALONG THE EAST LINE THEREOF, A
DISTANCE OF 1349.39 FEET TO THE NORTHEAST CORNER THEREOF;
THENCE SOUTH 89°25'15" WEST A DISTANCE OF 577.83 FEET TO THE TRUE
POINT OF BEGINNING;

ALSO TOGETHER WITH THAT PORTION OF SECTION 11, TOWNSHIP 27
NORTH, RANGE 6 EAST, W.M.; DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST
QUARTER OF SAID SECTION 11;
THENCE SOUTH 89°25'15" WEST, ALONG THE SOUTH LINE OF SAID
SOUTHWEST QUARTER, A DISTANCE OF 59.82 FEET TO THE TRUE POINT OF
BEGINNING;
THENCE NORTH 51°07'07" WEST, A DISTANCE OF 283.56 FEET;
THENCE NORTH 85°44'42" WEST, A DISTANCE OF 373.20 FEET;
THENCE NORTH 84°17'56" WEST, A DISTANCE OF 307.01 FEET;
THENCE NORTH 76°59'53" WEST, A DISTANCE OF 930.91 FEET TO A POINT ON
THE WEST LINE OF PARCEL E PER REAL ESTATE CONTRACT RECORDED
UNDER A.F. NO. 200005120678, WHICH POINT BEARS NORTH 09°15'15" EAST A

DISTANCE OF 470.76 FEET FROM A POINT ON THE SOUTH LINE OF SAID SECTION 11;
THENCE SOUTH 09°15'15" WEST A DISTANCE OF 470.76 FEET TO A POINT ON SAID SOUTH LINE WHICH BEARS NORTH 89°25'15" EAST A DISTANCE OF 785.40 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 11;
THENCE NORTH 89°25'15" EAST A DISTANCE OF 1881.24 FEET TO THE TRUE POINT OF BEGINNING.

ALSO TOGETHER WITH GOVERNMENT LOT 2, SECTION 14, TOWNSHIP 27 NORTH, RANGE 6 EAST, W.M.;
EXCEPT THAT PORTION OF SAID GOVERNMENT LOT 2 DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 2;
THENCE SOUTH 89°19'25" EAST A DISTANCE OF 1052.93 FEET TO THE TRUE POINT OF BEGINNING;
THENCE SOUTH 00°03'46" EAST A DISTANCE OF 146.00 FEET;
THENCE SOUTH 59°20'45" EAST A DISTANCE OF 326.88 FEET;
THENCE NORTH 90°00'00" EAST A DISTANCE OF 144 FEET, MORE OR LESS, TO THE WESTERLY BANK OF THE SKYKOMISH RIVER;
THENCE NORTHERLY, ALONG SAID BANK, TO THE NORTH LINE OF SAID SECTION 14;
THENCE NORTH 89°19'25" WEST, ALONG THE NORTH LINE OF SAID SECTION 14, A DISTANCE OF 477 FEET, MORE OR LESS, TO THE POINT OF BEGINNING;
ALSO EXCEPT ANY PORTION SAID GOVERNMENT LOT 2 LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:
COMMENCING AT THE CENTER OF SECTION 14, TOWNSHIP 27 NORTH, RANGE 6 EAST, W.M.;
THENCE NORTH 02°59'09" EAST, ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 14, A DISTANCE OF 478.50 FEET TO THE TRUE POINT OF BEGINNING;
THENCE NORTH 87°59'09" EAST A DISTANCE OF 825.00 FEET;
THENCE SOUTH 34°00'51" EAST A DISTANCE OF 1155.00 FEET AND THE TERMINUS OF SAID LINE.

CONTAINS 172 ACRES, MORE OR LESS

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

100' BUFFER DESCRIPTION

(DESCRIPTION OF 100' BUFFER EASEMENT ALONG THE SOUTH LINE OF SEGREGATION PARCEL 1)

A STRIP OF LAND, 100 FEET WIDE, THE SOUTHERLY LINE OF WHICH IS DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 27 NORTH, RANGE 6 EAST, W.M.; THENCE SOUTH 89°25'15" WEST, ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 59.82 FEET; THENCE NORTH 51°07'07" WEST, A DISTANCE OF 283.56 FEET; THENCE NORTH 85°44'42" WEST, A DISTANCE OF 373.20 FEET; THENCE NORTH 84°17'56" WEST, A DISTANCE OF 307.01 FEET; THENCE NORTH 76°59'53" WEST, A DISTANCE OF 930.91 FEET TO THE TRUE POINT OF BEGINNING OF SAID SOUTHERLY LINE, WHICH IS A POINT ON THE WEST LINE OF PARCEL E PER REAL ESTATE CONTRACT RECORDED UNDER A.F. NO. 200005120678, WHICH POINT BEARS NORTH 09°15'15" EAST A DISTANCE OF 470.76 FEET FROM A POINT ON THE SOUTH LINE OF SAID SECTION 11 WHICH POINT IS 785.40 FEET, NORTH 89°25'15" EAST FROM THE SOUTHWEST CORNER THEREOF; THENCE SOUTH 76°59'53" EAST, A DISTANCE OF 307.01 FEET; THENCE SOUTH 85°44'42" EAST, A DISTANCE OF 373.20 FEET; THENCE SOUTH 51°07'07" EAST, A DISTANCE OF 283.56 FEET TO THE SOUTH LINE OF SAID SOUTHWEST QUARTER; THENCE NORTH 89°25'15" EAST, ALONG SAID SOUTH LINE, A DISTANCE OF 59.82 FEET TO THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER; THENCE SOUTH 89°19'25" EAST, ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 11, A DISTANCE OF 1052.93 FEET; THENCE SOUTH 00°03'46" WEST A DISTANCE OF 146.00 FEET; THENCE SOUTH 59°20'45" EAST A DISTANCE OF 326.88 FEET; THENCE NORTH 00°00'00" EAST A DISTANCE OF 144 FEET, MORE OR LESS, TO THE WEST BANK OF THE SKYKOMISH RIVER AND THE TERMINUS OF SAID SOUTHERLY LINE.

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.