

Draft template

GRANT OF AGRICULTURAL CONSERVATION
EASEMENT AND DEVELOPMENT RIGHTS

THIS GRANT OF AN AGRICULTURAL
CONSERVATION EASEMENT AND
DEVELOPMENT RIGHTS (hereinafter "Easement") is
made this ____ day of _____, 2005, by
_____ (hereinafter
"Grantor(s)") to Snohomish County (hereinafter
"Grantee" or "County") in perpetuity as holder of the
easement and development rights pursuant to RCW
64.04.130.

Return to:

Snohomish County
Auditor's Office
3000 Rockefeller Avenue
Everett, WA 98201

Parcel Identification Nos.:

WITNESS THAT:

A. WHEREAS, Grantors are sole owners in fee simple of certain real property (hereinafter "Protected Property") located in _____ Township, Snohomish County in the State of Washington described in a deed to Grantors, dated _____ and recorded at Book ____, Page ____, at Snohomish County Registry of Deeds; and

B. WHEREAS, the Protected Property is further described and depicted in Exhibit A, which is incorporated herein by reference as though set forth in full; and

C. WHEREAS, Grantors warrant that they have good legal title to the Protected Property, as well as the right to convey this Easement, and that the Protected Property is free and clear of any encumbrances; and

D. WHEREAS, Grantors warrant that Grantors have no actual knowledge of a release or threatened release of hazardous substances or waste; and

E. WHEREAS, 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; and

F. WHEREAS, the Protected Property has significant long-term value to the commercial production of agriculture in Snohomish County and, pursuant to RCW 36.70A.170, is designated Riverway Commercial Farmland under the Snohomish County GMA Comprehensive Plan ("GMACP"), as adopted by Ordinance No. 94-125 and as thereafter amended; and

G. WHEREAS, downturns in the agricultural economy have made it increasingly difficult to make a living through farming, which has in turn resulted in substantial pressure to develop agricultural lands with non-agricultural uses; and

H. WHEREAS, in order to preserve agricultural land of long-term commercial significance and to alleviate the economic hardship experienced by farmers, the Snohomish County Council authorized the County Executive, by Motion 03-451, to sign a cooperative agreement between the United States of America Commodity Credit Corporation and Snohomish County for the implementation of the Farm and Ranch Lands Protection Program (FRPP) and to negotiate offers for the purchase of conservation easements from priority commercial farmland property owners; and

I. WHEREAS, on September 24, 2003, the Snohomish County Executive signed a Cooperative Agreement with the United States Department of Agriculture Natural Resources Conservation Service (NRCS or also generally referred to herein as the United States), on behalf of the Commodity Credit Corporation, to allow the County to receive FRPP funds for the acquisition of the United States' interests in conservation easements; and

J. WHEREAS, this Easement is authorized by RCW 64.04.130, the provision of state law governing conservation easements used to restrict the use of agricultural lands; and

K. WHEREAS, Grantors desire and intend for this Easement to preserve and maintain the maximum agricultural production capability of the Protected Property in order to assure the availability of the Protected Property for agricultural uses *in perpetuity*; and

L. WHEREAS, the Grantors and the Grantee 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 continue as a servitude running with the land, and authorizing Grantee to monitor and enforce such restrictions, as described herein; and

M. WHEREAS, to document the present condition of the Protected Property so that Grantee or its assigns are able to monitor future uses and assure compliance with the terms of this Easement, Grantee has, at its expense, prepared baseline data consisting of reports, maps, photographs, and other documentation contained in Exhibit B and incorporated herein by reference as though set forth in full; and

N. WHEREAS, the Grantors and the Grantee have executed a statement, attached as Exhibit C and incorporated herein by reference as though set forth in full, verifying that the baseline data included in Exhibit B accurately represents the condition of the property at the time this Easement is signed; and

O. WHEREAS, as indicated in the baseline data included in Exhibit B, approximately ___% of the soils on the Protected Property have been classified as _____ farmland, and ___% have been classified as _____ farmland by the NRCS; and

P. WHEREAS, subject to the restrictions contained in this Easement, it is the intent of the Grantors and the Grantee to allow the continuation of legal uses existing as of the date this Easement is signed, but to allow no uses that are prohibited under applicable county zoning requirements; and

Q. WHEREAS, Snohomish County, as the Grantee of this Easement, agrees to honor the intent of the Grantors stated herein and to preserve and protect in perpetuity the maximum agricultural production capability of the Protected Property; and

R. WHEREAS, Snohomish County, as the Grantee of this Easement, is a qualified holder of conservation easements under RCW 64.04.130 and applicable requirements of federal law; and

S. WHEREAS, this Easement is being purchased with funds provided, in part, by the Conservation Futures Program pursuant to RCW 84.34.200, RCW 84.34.210, and RCW 84.34.220, which authorizes Snohomish County to purchase conservation easements for the purpose of protecting agricultural land through restrictions on non-agricultural uses of land, and, in part, by the FRPP, 16 U.S.C. 3838h and 3838i. Under the FRPP, the Secretary of Agriculture, acting through the NRCS, is authorized to purchase conservation easements for the purpose of protecting topsoil by limiting non-agricultural uses of land.

NOW, THEREFORE, for and in consideration of the above recitals and the mutual covenants, terms, conditions, and restrictions contained herein and in payment of _____ dollars by Grantee Snohomish County, and pursuant to the laws of the State of Washington, including chapter 64.04 of the Revised Code of Washington, Grantors hereby voluntarily grant and convey with general warranty of title, to Grantee and its successors and assigns, this Conservation Easement, to have and to hold, in perpetuity over the Protected Property subject to the provisions set forth herein.

I. 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 soil 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;
- 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; and

- E. fulfill the “conservation purpose” of protecting farmland within the meaning of Section 170(h)(4)(A) of the Internal Revenue Code.

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.

II. Permitted Uses and Activities. As owners of the Protected Property, the Grantors retain the right to perform any act consistent with the applicable zoning which is not specifically prohibited or limited by 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. Further, the Grantors retain the right to use the Protected Property for any agricultural use, and to carry on all normal agricultural practices, including but not limited to the following:

- A. uses and activities that are consistent with the purpose of this Easement and not expressly prohibited in Section III, below, or by the applicable requirements of the Snohomish County zoning code;
- B. any legal use or activity existing at the time this Easement is signed as documented in the baseline documentation and which has been determined to be consistent with the conservation purposes protected herein;
- C. repair or replacement of existing agricultural buildings, structures and improvements, such as drainage and fences, at their current location and in their current footprint, as identified in Exhibit B;
- D. construction of new buildings and improvements within a building envelope identified in Exhibit B, to be used solely for agricultural purposes, including the sale, storage, packaging, and processing of agricultural products produced on the Protected Property;
- E. maintenance and repair of existing facilities for egress, ingress, internal circulation, and parking, as identified in Exhibit B;
- F. construction of new facilities for egress, ingress, internal circulation, and parking that are necessary for agricultural operations on the Protected Property;
- G. construction of new facilities for egress, ingress, internal circulation, and parking that are located within the building envelope identified in Exhibit B, regardless of whether such facilities are for agricultural use;

- H. customary rural enterprises that are incidental to agricultural uses and conducted within existing structures on the Protected Property;
- I. non-residential subdivisions which are viable for agricultural uses as determined by Grantee, in accordance with all applicable requirements of county code; and
- J. accessory, non-developed and low-impact recreational activities including hunting, fishing, bicycling, and educational activities are permitted as long as such activity does not adversely impact the soils and/or agricultural operations on the Protected Property.

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

- A. the construction of residential dwelling units;
- B. the continuation, creation, expansion or intensification of any use or activity that is contrary to the purpose of this Easement or prohibited in this section or by applicable provisions of county code;
- C. any use or activity that removes or degrades the soil from the conditions identified in Exhibit B or impairs the ability to conduct agricultural practices on the Protected Property;
- D. industrial or commercial uses or activities, except to the extent they are authorized as agricultural activities by applicable provisions of county code, consistent with the conservation purposes of Section I and in accordance with the requirements of Section II, above;
- E. boundary line adjustments (BLAs), except where a BLA is used to correct technical errors made in the survey or legal description and does not change the size of any existing legal lot by more than two acres and is approved in advance by Grantee;
- F. athletic fields, golf courses or driving ranges, commercial airstrips, helicopter pads, motocross, and biking, or any other improvement or activity inconsistent with current or future agricultural production capability;
- G. mining or extraction of soil, sand, gravel, oil, natural gas or other mineral, except that Grantors may extract no more than one acre of soil, sand, and gravel solely for permitted uses in a manner consistent with the conservation purposes of this Easement and subject to the extraction and reclamation requirements of county code and state law;

- H. dumping or accumulation of trash or refuse, except that by-products generated by agricultural uses on the Protected Property may be stored subject to all applicable requirements of county code;
- I. the installation of new utilities, unless the installation is consistent with applicable zoning requirements and the utility is necessary for agricultural uses authorized under Section II, above, and the installation is done in a manner which minimizes, to the greatest extent possible, impacts to soils;
- J. the use of motorized vehicles except for those necessary to conduct the uses permitted under this Easement;
- K. any construction, expansion, repair or other development activity that would result in more than two percent (2 %) of the area of the Property being covered with impervious surfaces, including, without limitation, asphalt, concrete, gravel, buildings, or ponds, except that animal waste holding ponds and impervious surfaces in the home site are excluded; and
- L. the conversion of the Protected Property, or any parcel resulting from a non-residential subdivision of the Protected Property, into a wetland such that the agricultural uses sought to be protected by this easement are diminished, impaired or interfered with in any way.

IV. Water Rights. Grantors shall retain all water rights necessary for present or future agricultural production on the Protected Property. Due to the varying water requirements of crops grown in Snohomish County and in order to allow additional income for farmers, the lease of water rights from the Protected Property to another property or nonpermanent use is allowed. This lease is limited to a maximum of two (2) years and may be renewable as long as there is no negative impact on the agricultural viability of the Protected Property.

V. Compliance with Conservation Plan. As required by section 1238I of the Food Security Act of 1985, as amended, the Grantors, their heirs, successors, or assigns, shall conduct all agricultural operations on the Protected Property in a manner consistent with a conservation plan prepared in consultation with NRCS and approved by the Snohomish Conservation District. This conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 C.F.R. part 12, as they are in effect on the date this Easement is signed unless those standards are changed by direct congressional action. However, the Grantor may develop and implement a conservation plan that proposes a higher level of conservation than required by the conservation plan and is consistent with the NRCS Field Office Technical Guide standards and specifications. NRCS shall have the right to enter upon the Protected Property, with advance notice to the Grantor, in order to monitor compliance with the conservation plan.

In the event of noncompliance with the conservation plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantors a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantors do not comply with the conservation plan, NRCS will inform Grantee of the Grantors' noncompliance. The Grantee shall take all reasonable steps, including efforts at securing voluntary compliance and, if necessary, appropriate legal action, to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan; (b) NRCS has worked with the Grantor to correct such noncompliance; and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for highly erodible land are revised after the date of this Grant based on an act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised conservation plan. The provisions of section 1238I apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject.

VI. Enforcement & Monitoring. Grantee Snohomish County 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, 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 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 baseline documentation included in Exhibit B as a basis for enforcing the provisions of this Easement, but is not limited to the use of the baseline documentation to show a change of conditions.

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

VIII. Contingent Right in the United States. In the event that Snohomish County fails to enforce any of the terms of this Easement, as determined at the sole discretion of the Secretary of the United States Department of Agriculture (hereinafter "Secretary"), the Secretary, as well as his or her designees, successors and assigns, shall have the right to enforce the terms of the Easement through any and all authorities available under federal or state law. In the event that Snohomish County attempts to terminate, transfer, or otherwise divest itself of any rights, title, or interests of this Easement or extinguish this Easement without the prior consent of the Secretary and payment of consideration to the United States, then, at the option of the Secretary, all right, title, and interest in this Easement shall become vested in the UNITED STATES OF AMERICA.

IX. Extinguishment. This Easement may only be terminated or extinguished by a court of competent jurisdiction upon a request to terminate made by the Grantor, the Grantee, and the United States Department of Agriculture, 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 fulfill the conservation purposes of the Easement.

X. 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. _____. The beneficiary of the mortgage or deed of trust has agreed by separate instrument, as set forth in attached Exhibit D, which is incorporated herein by reference as though set forth in full, to subordinate its rights in the Protected Property to this Easement to the extent necessary to permit Grantees 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.

XI. 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. Attorneys fees and costs for enforcement. If the Grantee commences and successfully prosecutes an enforcement action pursuant to Section VII,

above, the Grantors shall pay all costs and expenses associated with the enforcement action, including but not limited to, reasonable attorneys fees.

- C. Hold harmless. This Easement does not alter the Grantor's 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. Grantor shall hold harmless, indemnify, and defend the Grantee and the United States 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.

XII. Transfer or Assignment of the Easement. Grantee Snohomish County may not transfer or assign this Easement to any third party, including but not limited to public agencies or non-profit organizations qualified under section 170(h) of the Internal Revenue Code or its successor provision.

XIII. Proceeds from Extinguishment or Condemnation. If this Easement is extinguished, terminated or condemned, in whole or in part, then Grantee and the USDA are entitled to their proportional share each of ____ percentage 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 determined by an appraisal at the time of Easement execution. The proportional shares of the Grantee and the USDA are ____% and __%, respectively, representing the proportion each party contributed to the purchase price of the Easement. Due to the federal interest in this Easement, the United States must consent to any condemnation actions.

XIV. Transfer of the 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.

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

XVI. 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:

Snohomish County Executive Office
3000 Rockefeller Avenue, M/S #407

Everett, WA 98201

INSERT ADDRESS OF OWNER OF PROTECTED PROPERTY

USDA-Natural Resources Conservation Service
on behalf of the Commodity Credit Corporation
316 W. Boone Avenue, Suite 450
Spokane, WA 99201-2348

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

XVII. General Provisions.

- A. Amendment. If circumstances arise under which an amendment to this Easement would be appropriate, the Grantors, including the United States, and Grantee may jointly amend this Easement by a written instrument to be recorded with the Snohomish County Auditor, provided that such an amendment does not diminish the effectiveness of this Easement in carrying out its purpose to permanently preserve and protect in perpetuity the maximum agricultural production capability of the Protected Property.
- B. Controlling Law. The interpretation or performance of this Easement shall be governed by the laws of the State of Washington and the Laws of the United States. Any legal proceeding regarding this Easement shall be initiated in Snohomish County Superior Court and shall not be removed to federal district court. The United States shall be exempt from any legal proceeding regarding this Easement.
- 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 Grantees for consideration and approval of such use.
- D. Definitions. Any masculine term used in this Easement shall include the female gender. 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.

- 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 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.
- J. No merger. If Grantee at some future time acquires the underlying fee title in the Protected Property, the interest conveyed by this Deed will not merge with fee title but will continue to exist and be managed as a separate estate.

XVIII. Environmental Warranty

“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 protections, 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.

Grantor warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any

Approved as to form:

Brent D. Lloyd
Deputy Prosecuting Attorney