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AFTER RECORDING RETURN TO:
Washington State Department of Natural Resources
Asset Management & Protection Division
ATTN: Riparian Open Space Program
PO Box 47014
Olympia, WA 98504-7014

RIPARIAN OPEN SPACE CONSERVATION EASEMENT

Grantor(s):

Grantee(s): State of Washington, acting by and through the Department of Natural Resources

Abbreviated
Legal Desc:

Tax Parcel #:

THIS GRANT of a Riparian Open Space Conservation Easement is made on this ___ day of, 2005, by _____ ("Grantor"), to and in favor of the State of Washington, acting by and through the Department of Natural Resources ("Grantee");

WHEREAS, Grantor is the owner in fee simple of the real property described in Exhibit A, including the trees thereon, located in _____ County, Washington (the "Property"), which lies within an Unconfined Avulsing Channel Migration Zone of the _____ River.

WHEREAS, the Parties wish to put into effect the provisions of the Riparian Open Space Program authorized by the Forest Practices Salmon Recovery Act, ESHB 2091, Laws of 1999, ch.4, ("Salmon Recovery Act");

WHEREAS, the purposes of the Salmon Recovery Act include implementation of a comprehensive, coordinated statewide program for restoration and maintenance of riparian values; satisfaction of the requirements of the Endangered Species Act (16. U.S.C. Sec. 1531, et. seq.) and the Clean Water Act (33 U.S.C. Section 1251, et. Seq.); and compensation for certain landowners impacted by the provisions of the Salmon Recovery Act;

WHEREAS, the State of Washington, acting by and through the Department of Natural Resources, has the authority to acquire interests in areas within Unconfined Avulsing Channel Migration Zones to implement the Riparian Open Space Program pursuant to RCW 76.09.040(3);

WHEREAS, the Property possesses certain natural values of importance to the people of the State of Washington as documented in an inventory of relevant features of the Property as of the date of this Easement ("Baseline Documentation") which includes reports, maps, photographs, and other documentation that the parties agree provide an accurate representation of the Property at the time of this grant, which is intended to serve as an objective, though non-exclusive, information baseline for monitoring compliance with the terms of this grant, which is on file at the Department of Natural Resources, Olympia, Washington, and which is specifically incorporated as a material part of this Easement. The parties agree that the Grantee shall gather the Baseline Documentation prior to the date of this Easement, and that the Baseline Documentation gathered by Grantee shall represent a fair and accurate inventory of the Property's relevant features at the time of the grant, and;

WHEREAS, the Parties intend to provide for the management of the Property for ecological protection and fisheries enhancement; ensure legal access to the Property, and allow continuation of existing uses of the Property that do not significantly impair or interfere with the purposes of the Easement,

NOW THEREFORE,

SECTION 1 CONVEYANCE AND CONSIDERATION

In consideration _____ dollars and the mutual covenants contained herein, the Grantor does hereby grant, convey and warrant to Grantee an Easement over, in and upon the Property in perpetuity as follows:

(a) A conservation easement, together with

(b) A non-exclusive Access Easement legally described as set forth in Exhibit B, for the purpose of accessing the Property. The Access Easement is to be thirty (30) feet wide and location as shown in Exhibit B.

SECTION 2 DEFINITIONS

2.1. **"Channel Migration Zone"** means the area where the active channel of a stream is prone to move and this results in a potential near-term loss of riparian function and associated habitat adjacent to the stream, except as modified by a permanent levee or dike. For this purpose, near-term means the time scale required to grow a mature forest.

2.2 **"Danger Tree"** means any tree reasonably perceived to pose an imminent danger to life or property.

2.3. "**Hazardous Materials**" means any substance designated as hazardous substances by the Washington Model Toxics Control Act, Chapter 70.105D RCW.

2.4. "Unconfined Avulsing Channel Migration Zone" means the area within which the active channel of an unconfined avulsing stream is prone to move and where the movement would result in a potential near-term loss of riparian forest adjacent to the stream. Sizeable islands with productive timber may exist within the zone as set forth in RCW 76.09.020(21).

SECTION 3 AUTHORIZED USES BY GRANTOR

Grantor reserves all rights accruing from its ownership of the Property and the trees thereon that are consistent with the terms of this Easement.

SECTION 4 RESTRICTIONS ON USE OF THE PROPERTY BY GRANTOR

The following use of, or activities on, the Property are prohibited, except as expressly provided herein, and Grantor acknowledges and agrees that it will not conduct, engage in or permit any such use or activity.

4.1. Trees and Downed Logs. Harvest, cutting or removal of such trees or downed logs, except for activities associated with Danger Trees, re-construction or maintenance of existing road crossings, or the use of existing yarding corridors, all of which shall be addressed as provided herein.

(a) Roads and Yarding Corridors. Grantor shall provide Grantee written notice of activities relating to road crossings and yarding corridors at the time of submission of a forest practices application or at least thirty days before an application for any federal, state or local government permit required for such activities, or thirty (30) days before conducting such activities if no permit is required. Notice shall include a detailed description of the proposal including the plan of operation. Grantor shall not harvest any trees on the Property pursuant to this paragraph without prior approval from the Grantee, which shall be at the Grantee's sole discretion.

(b) Danger Trees. Grantor may fell, but not remove, Danger Trees growing on the Property. Grantor shall notify Grantee within thirty (30) days that a Danger Tree has been felled.

(c) Salvage and Removal. Salvaging or removing from the Property any trees or downed logs is prohibited. If any part of a tree has fallen outside the Property as the result of activities permitted under this Easement, the Grantor shall move the entire tree inside the Property.

4.2. Construction. Constructing, reconstructing or maintaining any building, temporary or permanent, on the Property, including but not limited to dams and impoundments if it would impair the ecological protection, fisheries enhancement, or riparian values of the Property. Grantor shall provide Grantee written notice of any proposed new construction at least thirty (30) days before submission of an application for any federal, state or local government permit required for such activities, or thirty (30) days before conducting such activities if no permit is required and shall obtain Grantee's approval before any new construction or associated harvest occurs. Such approval shall be at Grantee's sole discretion. Grantor's notice to Grantee shall include a detailed description of the proposal including the plan of operation.

4.3. Hydrology. Conducting any activities on the Property that would change the hydrology of the Property including without limitation activities changing the course of, or affecting the quality or quantity of, water.

4.4. Mineral Development. Mining, excavating or mineral development of any kind in or upon the Property, including without limitation development of minerals or common varieties of surface mineral resources such as sand, gravel, stone and clay, or the mining of organic materials such as peat without prior approval from Grantee. Such approval shall not be unreasonably withheld.

4.5. Waste Disposal and Hazardous Materials. Using any portion of the Property for dumps, landfills, or the storage or deposit of waste materials of any kind, or transporting over or keeping on or around the Property any Hazardous Materials for use, disposal, treatment, generation, storage or sale.

SECTION 5 USE OF THE PROPERTY BY THE GRANTEE

Grantee shall have the right, but not the obligation, to use the Property as provided herein.

5.1. Entry. To enter upon the Property, or to allow Grantee's employees, agents and contractors including without limitation any experts consulted by the Grantee in exercising its rights under this Easement to so enter, in order to monitor Grantor's compliance with this Easement, to mitigate or terminate any violation by Grantor, and to exercise any other rights granted under this Easement.

5.2. Protection, Enhancement and Research. To undertake any action necessary to restore, enhance, preserve, protect, maintain and manage the Property to promote ecological protection, fisheries enhancement and riparian values. Grantee may conduct research activities to further the purposes of this Easement.

5.3. Signs and Notices. To post signs and notices to survey, mark and monument the boundaries of the Property; to identify and interpret natural environmental features; to promote on-site activities permitted on the Property, and to control unauthorized activities as described herein.

5.4. Vegetation. To plant new trees and shrubs and prune, mark, cut, and remove trees and shrubs that are dead, dying, diseased, or insect-infested for the purposes of ecological protection and fisheries enhancement.

SECTION 6 PUBLIC ACCESS.

No right of public access to or across, or any public use of, the Grantor's Property is conveyed by this Easement.

SECTION 7 DISPUTE RESOLUTION AND ENFORCEMENT

7.1. Dispute Resolution. The parties may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay fifty (50) percent of the costs for services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from compliance with the terms of this Easement**.** The dispute resolution provided for in this paragraph is optional, not obligatory, and shall not be required as a condition precedent to any remedies for enforcement of this Easement.

7.2. Enforcement. Grantee may bring any action at law or in equity to enforce the terms of the Easement, including without limitation enjoining any violation or threatened violation (*ex parte*, as necessary) by temporary or permanent injunction, recovering any damages, and requiring restoration of the Property to the satisfaction of Grantee. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Grantee's rights under this paragraph shall apply equally in the event of either actual or threatened violations of the terms of this Easement.

(a) Damages and Restoration. If Grantor undertakes any activities that impair the condition or health of the trees on the Property including without limitation harvesting such trees, or removes trees from the Property or causes another to engage in such activities, Grantee shall be entitled to damages or restoration, or both, at the sole discretion of the Grantee.

i Damages. Damages shall be calculated at triple stumpage value, not to exceed the maximum amount of damages as calculated according to the following formula:

Maximum Damages = 3*Sv*(C/Vq)

Where:

Sv = The stumpage value of the timber that is cut or removed from the Property at the time the damage was done;

C = The compensation paid by the state to the Grantor at the time the Easement became effective;

Vq = The original value of trees at the time the Easement became effective.

In addition the Grantor shall pay interest from the date of breach on the amount of the damages at the maximum interest rate allowable by law. Grantee's rights to damages under this section shall survive termination.

ii. Restoration. Restoration of trees on the Property may include replanting trees, as determined by Grantee, in its sole discretion, to be appropriate. Replanting shall be by nursery transplant seedlings approved by Grantee with subsequent silvicultural treatment including without limitation weed control and fertilization approved by Grantee. If Grantor fails to restore the Property, Grantee may elect to itself take action to restore the riparian values or trees and shall be entitled to its costs incurred for such restoration.

(b) Costs of Enforcement. The costs, including reasonable attorneys fees, of enforcing this Easement and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor unless Grantor prevails in any action to enforce the terms of this Easement, in which case costs shall be borne by Grantee.

(c) Waiver. Enforcement of this Easement against the Grantor is at the sole discretion of the Grantee. Any forbearance by Grantee to exercise its rights hereunder in the event of a breach by Grantor shall not be deemed a waiver by the Grantee of the term being breached or of a subsequent breach of the same or any other term of this Easement or of any other of the rights of the Grantee under this Easement. No delay or omission by the Grantee in exercising its rights shall impair such right or remedy or be construed as a waiver.

7.3. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from fire, flood, storm, earth movement, or other causes beyond Grantor's control.

SECTION 8 GENERAL TERMS AND CONDITIONS

8.1. Successors and Assigns. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon and inure to the benefit of the Grantor, Grantee, and their respective successors and assigns and shall continue as a servitude running with the Property.

8.2. Extinguishment. If circumstances arise that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, in whole or in part, by mutual agreement of the parties or through judicial proceedings brought by one of the parties. Grantee shall be entitled to the value of the Easement as such value is determined as of the date the Easement is extinguished, as determined by the agreement of the parties or a court of competent jurisdiction.

8.3. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement. This instrument supersedes all other and prior discussions, negotiations, understandings, or agreements of the parties.

8.4. Amendment. All amendments must be in writing and signed by authorized representatives. Grantee shall record any such amendments in timely fashion in the official records of Jefferson County, Washington. All amendments shall be consistent with the purposes of this Easement.

8.5. Transfer or Assignment.

(a) Grantee. Grantee may transfer or assign its interest in the Property by a recorded instrument to another state agency, a local government within which the Property lies, or a private nonprofit nature conservation corporation (as defined in RCW 64.04.130 as now or hereinafter amended), or to any entity provided for by subsequent provisions of law pertaining to Riparian Open Space Conservation Easements. Such transfer shall occur under any circumstances in which Grantee determines, in its sole discretion, that such transfer is in the best interests of the state. Grantee shall give written notice to Grantor within thirty (30) days of such conveyance, assignment, or transfer (provided that failure to give such notice shall not affect the validity of the assignment, conveyance, or transfer).

(b) Grantor. Grantor may assign, convey, or otherwise transfer without restriction its interest in the Property.

8.6. Termination

(a) By Grantee. Grantee may unilaterally terminate this Easement if it determines, in its sole discretion, that termination is in the best interests of the State of Washington. Grantee shall provide thirty (30) days written notice to Grantor of such termination. In the event Grantee unilaterally terminates this Easement, it shall not be entitled to any compensation for such termination.

(b) Of Grantor's Rights and Obligations. The Grantor's personal rights and obligations under this Easement terminate upon transfer of the Grantor's interest in the Property as to that portion of the Property transferred, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

8.7. Management. Grantee may contract with another state agency, a local government within which the Property lies, or a private nonprofit nature conservation corporation (as defined in RCW 64.04.130), or to any entity provided for by subsequent provisions of law pertaining to Riparian Open Space Conservation Easements, to exercise its management authority over the Property. Any such contract will include provisions fully advising the contracting party of the rights of the Grantor under applicable law and this Easement. Grantee shall notify Grantor of any transfer of Grantee's management responsibilities for the Property, provided that failure to so notify the Grantor shall not affect the validity of the transfer.

8.8. Controlling Law. Interpretation and performance of this Easement shall be governed by the laws of the state of Washington.

8.9. Liberal construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purposes of this Easement. If any provision in this instrument is found to be ambiguous an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. The parties acknowledge that each has had an opportunity to have this Easement reviewed by an attorney and agree that the terms shall not be presumptively construed against either party.

8.10. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

8.11. Severability. If any provision in this Easement, or the application hereof to any person or circumstance, is found to be invalid, the remainder of this Easement, or the application hereof to other persons or circumstances shall not be affected thereby and shall remain in full force and effect.

8.12. Compliance with Applicable Law. Any activity pertaining to or use of the Property shall be consistent with applicable federal, state, or local law.

8.13. Exhibits All exhibits referenced herein are incorporated into this Easement as part of this Easement.

8.14. Notice. Notices given pursuant to or in relation to this Easement shall be in writing and delivered personally or by first class mail (postage pre-paid), addressed as follows:

(a) If to Grantor: _____

(b) If to Grantee: Department of Natural Resources
Asset Management and Protection Division
ATTN: Riparian Open Space Program
Omroa Bhagwandin, Program Manager
PO Box 47014
1111 Washington Street, 4th Floor
Olympia, WA 98504-7014

Each party shall notify the other of any change of address thirty (30) days before the change becomes effective.

Any notice required to be given hereunder is considered as being received: (i) if delivery in person, upon personal receipt by the person to whom it is being given; or (ii) if delivered by first class U.S. mail and properly addressed, three (3) days after deposit into the U.S. mail; or (iii) if sent by U.S. mail registered or certified, upon the date receipt is acknowledged by the recipient.

IN WITNESS WHEREOF the Grantor and Grantee have executed this easement on the day and year written.

GRANTOR:

_____
Name

Dated: _____ By: _____
Name
Title

GRANTEE:
STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____ By: _____
Doug Sutherland
Commissioner of Public Lands

Affix the Seal of the Commissioner
of Public Lands

State of Washington
Approved as to Form this ____ day of

_____, 20___.

_____
Assistant Attorney General
State of Washington

CORPORATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
COUNTY OF _____)

On this _____ day of _____, 2005, personally appeared before me _____ to me known to be the _____ of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument for said corporation and that the seal affixed is the corporate seal of the said corporation.

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

_____
Notary Public in and for the State of Washington,
residing at _____.

My appointment expires _____.

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

On this _____ day of _____, 20___, personally appeared before me Doug Sutherland, to me known to be the Commissioner of Public Lands, State of Washington, who executed the within and foregoing instrument on behalf of the State of Washington, and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the official seal of the Commissioner of Public Lands for the State of Washington.

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

_____
Notary Public in and for the State of Washington,
residing at _____.

My appointment expires _____.

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STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

EXHIBIT A

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

EXHIBIT B