

After Recording Return to:

Kitsap County
Department of Community Development
TDR Program Manager
614 Division St., MS-36
Port Orchard, Washington 98366

**TRANSFER OF DEVELOPMENT RIGHTS
CONSERVATION EASEMENT**

Grantor:

Grantee:

Kitsap County Department of Community Development
Attn: Transfer of Development Rights Program Manager

Abbreviated Legal Description:

Full Legal Description:

See page

Assessor’s Tax Parcel Number(s):

Reference Auditor File Number(s):

(entered after recording occurs)

THIS TRANSFER OF DEVELOPMENT RIGHTS CONSERVATION EASEMENT (hereinafter, “Easement Agreement”) is made this _____ day of _____, 20____ by _____ (“Grantor”) to Kitsap County (“Grantee” or “County”), a political subdivision of the State of Washington, acting in its governmental capacity.

1. RECITALS

1.1 Chapter 17.580 of the Kitsap County Code (“KCC”) authorizes the transfer of development rights (“TDR”) from “sending sites” with natural resource and open space values to “receiving sites” where development is encouraged, consistent with the Kitsap County Comprehensive Plan.

1.2 Development rights are transferred from sending sites through the issuance of Transfer of Development Rights Conservation Easement

“TDR certificates” pursuant to chapter 17.580 KCC, a process which requires the grant of a conservation easement that restricts future development of the sending site, including the prohibition of any subdivision not identified in the TDR application and the construction of any new residential units.

1.3 Grantor is the owner in fee simple of approximately _____ acres of real property located in Kitsap County, Washington, more particularly described in Exhibit A: Legal Description and shown in Exhibit B: Sending Site Map attached to this Easement Agreement and incorporated herein by this reference (“Protected Property”). Grantor submitted an application to Kitsap County to obtain TDR certificates (hereinafter, “TDR Certificate Application”) for the Protected Property on the _____ day of _____. The legal description of the Protected Property contained in Exhibit A encompasses the entire sending site that was the subject of the TDR Certificate Application.

1.4. The County issued a TDR Certificate Letter of Intent on _____. In the letter, the County agreed to issue Grantor Transfer of Development Right Certificates, to be numbered _____, provided that Grantor grant a conservation easement on the Protected Property consistent with the requirements of chapter 17.580 KCC.

1.5 As of the date of this Easement Agreement, the following dwelling units are in existence on the Protected Property, as described in the TDR Certificate Application: _____ (collectively, the “Pre-Existing Residences”).

1.6 Pursuant to RCW 64.04.130 and RCW 84.34.220, the Washington legislature has authorized counties and other governmental entities to hold or acquire development rights, easements, covenants, restrictions, or other similar rights constituting less than the fee simple to, among other things, protect, preserve, limit the future use of, or conserve for open space purposes, any land or improvement on the land.

1.7 Subject to the specific terms of this Easement Agreement, Grantor and Grantee intend and have the common purpose of placing restrictions on future development of the Protected Property that may be enforced by the county, which shall run with the land and bind the Protected Property in perpetuity unless development rights are reinstated pursuant to KCC 17.580.130, ‘Reinstating development rights of a sending site.’

2. PURPOSE AND INTERPRETATION

The purpose of this Easement Agreement is to conserve natural resource and open space lands for the use and enjoyment of future generations by restricting development of the Protected Property through the transfer of development rights from the Protected Property to lands considered more

appropriate for development. The Parties intend that this Easement Agreement be interpreted in a manner consistent with its purpose.

3. CONSERVATION EASEMENT

For the reasons stated above, to permit the transfer of certified development rights from the Protected Property, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby voluntarily grants, conveys and warrants to Grantee a perpetual, appurtenant easement in gross over, under, across and upon the Protected Property (“Conservation Easement”). The Conservation Easement consists of the relinquishment of certain development rights, as more fully described in Section 4 below (the “Development Rights”), and certain restrictive covenants made by Grantor, as more fully described in Section 5 below (the “Restrictive Covenants”), subject only to the terms and restrictions of this Easement Agreement and to title matters of record found in the title report dated _____. The Restrictive Covenants are hereby severed from Grantor’s fee title and conveyed to Grantee, as the beneficiary of the Conservation Easement. The Conservation Easement touches and concerns the Protected Property and shall run with the Protected Property in perpetuity.

4. DEVELOPMENT RIGHTS

The following development rights (collectively, the “Development Rights”) are hereby severed from Grantor’s fee interest in and to the Protected Property and transferred to the holder of Transferable Development Rights Certificates to be issued by Kitsap County pursuant to the TDR Certificate Letter of Intent issued on _____, pursuant to chapter 17.580 KCC:

- 4.1 The right to subdivide or otherwise segregate the Protected Property.
- 4.2 The right to alter or adjust any boundary lines of or pertaining to the Protected Property.
- 4.3 The right to construct any new dwelling unit on the Protected Property except for the following:
 - 4.3.1 Accessory dwelling unit, accessory living quarters, or guest house that is subordinate to Pre-Existing Residences and that otherwise are consistent with applicable law;
 - 4.3.2 Farm worker dwellings that are subordinate to Pre-Existing Residences and that otherwise are consistent with applicable law; and
 - 4.3.3 Temporary dwellings that are subordinate to Pre-Existing Residences and that otherwise are consistent with applicable law.

Grantor voluntarily relinquishes the Development Rights for all time, notwithstanding any future changes that may occur to the zoning of the Protected Property or to other land use laws applicable to the Protected Property. Grantor may transfer and convey any or all of the Certificates of Transferable Development Rights identified in Section 1.4 of this Easement Agreement consistent with chapter 17.580 KCC.

5. RESTRICTIVE COVENANTS

As part of the Conservation Easement, Grantor makes the following covenants to Grantee, which shall run with the Protected Property and bind Grantor and Grantor's successors in title for all time:

5.1 Grantor shall not attempt to exercise any of the Development Rights relinquished in Section 4 of this Easement Agreement.

5.2 Grantor shall not attempt to make any use of the Protected Property that would impair or diminish the functions and values of the property that comprise the public benefit conferred by the Conservation Easement, which, depending on the property will include agricultural or forest use, and may include the watershed function, habitat or open space use.

5.3 Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to ownership, operation, upkeep, and maintenance of the Protected Property.

5.4 Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Protected Property.

6. RIGHTS RETAINED BY GRANTOR

As fee owner of the Protected Property, Grantor retains and reserves for itself, its successors and assigns, all rights to possess, use and enjoy the Protected Property in any manner consistent with this Easement Agreement and applicable law. These 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 Grantor chooses, subject to Section 11 of this Easement Agreement. Grantor may, consistent with applicable law, maintain any Pre-Existing Residences. Also, as fee owner of the Protected Property, Grantor remains subject to all obligations and responsibilities associated therewith, including the payment of all taxes, costs, or liens, etc.

7. ENFORCEMENT AND INSPECTION

Grantee has the right, but not the obligation, to enforce the Easement Agreement. To fulfill this responsibility, Grantor further grants to Grantee the following rights:

7.1 Grantee shall have the right to enter the Protected Property for the purpose of

inspecting it for alleged violations of this Easement Agreement when reasonable advance notice is given to the Grantor. Additionally, Grantee shall have the right to enter the Protected Property at least once per year, at a mutually agreed time, or more if needed to monitor for and address compliance with the Easement Agreement.

7.2 Grantee may use any available legal or equitable remedy to ensure compliance with this Easement Agreement, including but not limited to seeking injunctive relief and/or specific performance requiring the Grantor to cease and desist all activity in violation of this Easement Agreement and to return the Protected Property to its condition prior to any such activity. Grantee shall give the Grantor written notice of any violation by U.S. mail. The Grantor shall have thirty (30) days from the deposit of the written notice in the U.S. mail in which to take corrective action before Grantee may commence any legal action.

8. NO ACCESS BY GENERAL PUBLIC

This Easement Agreement does not create any right of entry or access in favor of the general public in, on, over or to any portion of the Protected Property.

9. SUBORDINATION OF MONETARY ENCUMBRANCES

At the time of recording of this Easement Agreement, the Protected Property is subject to a [mortgage/deed of trust/other lien] dated _____, and recorded under Kitsap County Auditor's File No. _____ ("Monetary Encumbrance"). The beneficiary of the Monetary Encumbrance agrees, by affixing its signature to this Easement Agreement, to subordinate its rights in the Protected Property to the Conservation Easement to the extent necessary to permit Grantee to enforce the purpose of the Easement Agreement in perpetuity and to prevent any modification or extinguishment of the Conservation Easement by exercising any rights of the beneficiary under the Monetary Encumbrance.

10. INDEMNIFICATION

This Easement Agreement does not grant the Grantee any possessory interest in or to the Protected Property. Nor does the Easement Agreement provide the County with any right to direct, manage, control or supervise the use of or activities conducted on the Protected Property. Instead, all such rights remain with Grantor. Accordingly, Grantor agrees to hold harmless, indemnify, and defend the Grantee from and against all liabilities, penalties, costs, losses, damages, claims, or judgments in any way connected to injury to or the death of any person, or damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property, except to the extent the same is due to the sole negligence of Grantee.

11. TRANSFER OF THE PROTECTED PROPERTY

For any transfer of the Protected Property, or any portion thereof or right relating thereto, Grantor agrees to: (1) incorporate by express reference the terms of this Easement Agreement in any deed

or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property; and (2) describe the Conservation Easement in, and append it to, any executor contract for the transfer of any interest in the Protected Property. Written notice of the transfer, together with any conveyance document, shall be provided to Grantee within thirty (30) days of the date of transfer. The failure of the Grantor to perform any act required by this section shall not impair the validity of the Easement Agreement or limit its enforceability in any way.

12. ASSIGNMENT

Grantee shall have the right, at any time and in its sole discretion, to assign and transfer its interest, or authority to monitor, in and to the Conservation Easement to any entity that is then-authorized by Washington law to hold the beneficiary’s interest in and to the Conservation Easement. Any such assignment shall be in writing, and shall be duly recorded in the real property records of Kitsap County, Washington.

13. FUTURE CHANGE IN CIRCUMSTANCES

The parties intend for the conservation purposes of this Easement Agreement to be carried out forever. Grantor acknowledges and agrees that Grantor has received Certificates of Transferable Development Rights for the future development potential of the Protected Property. Accordingly, notwithstanding the occurrence of any future events or changes in circumstance that might otherwise provide a basis for termination of this Easement Agreement at law or in equity (including but not limited to economic hardship on the part of Grantor or an unanticipated increase in value of the Conservation Easement granted by this Easement Agreement), this Easement Agreement shall nonetheless be upheld and liberally construed to accomplish its objectives if at all possible.

14. 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 Agreement shall be in writing and either served at or mailed to:

Grantee	Grantor
Kitsap County Department of Community Development	
Attn: TDR Program Manager	
614 Division Street, MS-36	
Port Orchard, WA 98366	

Notwithstanding section 15.2 below, any party may designate a new contact name or address at any time by providing written notice to the other party.

15. GENERAL PROVISIONS

15.1 Recordation. This Easement Agreement shall be recorded in the Office of the Kitsap County Auditor and may re-record it at any time.

15.2 No Alteration or Amendment. If circumstances arise under which an amendment to or modification of this Easement Agreement would be appropriate, Grantor and Grantee may amend the Easement Agreement by written instrument, properly executed, acknowledged and recorded as long as the amendment or modification does not diminish the effectiveness of this Easement Agreement in accomplishing its conservation purposes.

15.3 Controlling Law. The interpretation or performance of this Easement Agreement shall be governed by the laws of the State of Washington. Venue for any dispute involving this Easement Agreement shall be the Superior Court in and for the County of Kitsap, State of Washington.

15.4 Rules of Construction.

5.4.1 The terms “Grantors” and “Grantee,” wherever used in this Easement Agreement, 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.

5.4.2 References in this Easement Agreement to chapters or sections of the Kitsap County Code or the Revised Code of Washington shall be deemed to include any amendments thereto which are adopted following execution of this Easement Agreement, provided that such amendments are not contrary to the purposes of this Easement Agreement. Amendments to code chapters or sections referenced herein shall not affect the legality or enforceability of this Easement Agreement unless such amendments clearly and expressly state or necessarily imply an intent by the legislative body to do so.

15.5 Entire Agreement. This Easement Agreement 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.

15.6 No Waiver or Abandonment. Grantee has no affirmative obligations under this Easement Agreement. Accordingly, no inaction or silence on the part of Grantee shall be construed as abandonment of the Conservation Easement granted by this Easement Agreement. The waiver by Grantee of any term, covenant or condition contained in this Easement Agreement or any breach

thereof in one instance shall not be deemed to be a permanent waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition contained in this Easement Agreement.

15.7 No Third Party Beneficiaries. This Easement Agreement is for the sole benefit of Grantor and Grantee. No other persons or parties shall be deemed to have any rights in, under or to this Easement Agreement.

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

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

15.10 Multiple Originals. This Agreement may be executed in multiple copies, each of which shall be deemed an original.

(signatures on following pages)

IN WITNESS WHEREOF the parties have set their hands as of the day and year first stated above.

GRANTOR [IF INDIVIDUAL or JOINT]:

Signature

Printed Name

Signature

Printed Name

STATE OF WASHINGTON)

) ss.

COUNTY OF KITSAP)

On this the _____ of _____, 20____, I hereby certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that they signed this instrument and acknowledged it be their free and voluntary act for the uses and purposes mentioned in the instrument.

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

Signature

Printed Name: _____

NOTARY PUBLIC in and for the State of Washington,
residing at _____

My Commission Expires: _____

GRANTOR [IF REPRESENTATIVE]:

Signature

Printed Name

STATE OF WASHINGTON)

) ss.

COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument; on oath stated that (he/she) was authorized to execute the instrument; and acknowledged it, as the _____ of _____, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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

Signature

Printed Name: _____

NOTARY PUBLIC in and for the State of Washington,
residing at _____

My Commission Expires: _____

GRANTEE [Kitsap County]:

Signature

Printed Name, Director
Kitsap County Department of Community
Development

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument; on oath stated that (he/she) was authorized to execute the instrument; and acknowledged it, as the Director of the Department of Community Development to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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

Signature

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

APPROVED AS TO FORM:

Deputy Prosecuting Attorney

**BENEFICIARY OF MONETARY
ENCUMBRANCE:**

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument; on oath stated that (he/she) was authorized to execute the instrument; and acknowledged it, as the _____ of _____, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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

Signature

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

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B
SENDING SITE MAP