

Return  
Name and Address:

Ramona Monroe  
Stoel Rives LLP  
600 University Street, Suite 3600  
Seattle, WA 98101-3197



200202080092

Skagit County Auditor

2/8/2002 Page 1 of 18 11:34AM

Document  
Title:

SETTLEMENT AGREEMENT AND MUTUAL  
RELEASE

NAME OF  
GRANTOR:  
(Plaintiffs)

Johnson, Cynthia B.  
Wheeler, Mark F.

NAME OF  
GRANTEE:  
(Defendants)

Dowen, Robert N.  
Dowen, Amy  
Timmers, Henri  
Knutzen, Ronald C.  
Knutzen, Marilyn E.

LEGAL  
DESCRIPTION:

Ptn. of Govt. Lot 2, S33, T36N, R3E  
Skagit County, Washington

Complete legal description on Exhibit A of document.

ASSESSOR'S  
PROPERTY TAX  
PARCEL ACCOUNT  
NUMBER:

360333-0-003-0003

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This settlement Agreement and Mutual Release (hereinafter "Agreement") is entered into this 28<sup>th</sup> day of January by and between MARK F. WHEELER and CYNTHIA B. JOHNSON, ("Wheeler"); HENRI TIMMERS ("Timmers"); ROBERT N. DOWEN and AMY DOWEN ("Dowen"); and RONALD C. KNUTZEN and MARILYN E. KNUTZEN ("Knutzen").

### I. RECITALS

A. Wheeler purchased from Knutzen certain real property situated in Skagit County, Washington, more particularly described on Exhibit A attached hereto (the "Wheeler Property"). Shortly thereafter, Wheeler discovered that there were competing claims to portions of the Wheeler Property, particularly that portion which provided access to the main part of the Wheeler Property.

B. By default judgment dated June 17, 1996 (Skagit County Superior Court No. 96-2-00182-4), Wheeler quieted title against the heirs and successors of Margaret Durand to the property described on Exhibit B, attached hereto.

C. Timmers and Dowen own real property adjoining the Wheeler Property, more particularly described in Exhibits C and D, attached hereto, respectively (the "Timmers Property" and "Dowen Property", respectively).

D. These properties are subject to various claims as described in the Complaint to Quiet Title, Third Party Complaint, and counterclaims filed in Skagit County Superior Court, Docket No. 96-2-00182-4. With the exception of the claims between Third Party Plaintiff Timmers and Third Party Defendants Wayne C. and Bernice E.A. Spiller, and Samish Bay Properties, Inc. (collectively "Spiller"), the above-named parties have agreed to settle all disputes and claims, known and unknown, and to release one another from further claims, related to the ownership of the real property involved in the litigation arising under the Complaint to Quiet Title filed in Skagit County Superior Court, No. 96-2-00182-4 that have accrued as of the date of this Agreement.

### II. TERMS OF AGREEMENT

A. Effective Date. This Agreement shall be deemed effective as of the date last signed by a party to this Agreement.

B. Agreement Regarding Conveyances. It is the intent of the parties that, as a result of the implementation of this Agreement, Wheeler will not have title to any property south of the east-west centerline of Section 33 but will have an easement for ingress and egress along the existing roadway south of that line. Dowen will acquire Wheeler's interest,



200202080092

Skagit County Auditor

if any, in the property that adjoins the Downen Property and lies to the north and east of the existing drainage ditch, including the property on which the ditch is located, subject to the interests of the Drainage District. Timmers will acquire Wheeler's interest, if any, in the property that adjoins the north and east boundaries of the Timmers Property, the northern adjoining property extending to the bank of the existing drainage ditch and the quarter section line west of the ditch. In exchange, Timmers will grant to Wheeler a nonexclusive access easement along the existing access road that lies along the east and north sides of the Timmers Property and all parties will release one another from any further claims. These conveyances are depicted in Figure 1, attached hereto.

The quitclaim deeds from Wheeler to Timmers and Downen are not intended to, and do not, create ownership interests. Rather, the conveyances from Wheeler to Timmers and Downen transfer only those interests held by Wheeler, if any, and are subject to encumbrances of record.

To effectuate this intent, the parties agree as follows:

1. Survey. A survey was completed by David R Downing & Associates at the request of Wheeler and filed with the Skagit County Auditor on January 6, 1997, in book 19 of Surveys, Page 41 under Auditor's File No. 97-1-60021. The parties hereto agree to the points on the ground established by the aforementioned survey.

2. Conveyance from Wheeler to Timmers. Wheeler will grant a quitclaim deed to Timmers for the following described property located in Skagit County, State of Washington:

A portion of Government Lot 2, Section 33, Township 36 North, Range 3 East, W.M., Skagit County, Washington, described as follows:

Commencing at the meander corner post in the right bank of the North Samish River where the west line of said Section 33 crosses said North Samish River; thence along said west line North 00°25'38" East a distance of 347.82 feet to the northwest corner of that certain tract of land conveyed to Henri Timmers by deed recorded under File No. 9306210137 in the Office of the Auditor, said county and state, and the point of beginning. Said point also bears South 00°25'38" West a distance of 53.01 feet from a 2" brass cap on a pipe marking the west quarter corner of said Section 33; thence along the said west line of Section 33, North 00°25'38" East a distance of 53.01 to the said west quarter corner; thence along the north line of said Government Lot 2, North 89°36'36" East a distance of 53.83 feet to a curve to the left, having a



200202080092

Skagit County Auditor

radius of 46.49 feet, a central angle of  $66^{\circ}47'19''$ , an arc distance of 54.20 feet and a radius point which bears North  $74^{\circ}55'19''$  East from the last described point; thence South  $81^{\circ}52'00''$  East a distance of 116.78 feet to a curve to the right, having a radius of 50.22 feet, a central angle of  $75^{\circ}52'26''$ , an arc distance of 66.50 feet and a tangent which bears the last described course; thence along said curve to the east line of that certain tract of land conveyed to Mark Wheeler and Cynthia Johnson by Recording No. 9508160055 said county and state; thence along said east line South  $00^{\circ}34'02''$  East a distance of 170.23 feet to the North Samish River; thence westerly along said North Samish River to an intersection with the east line of said Timmers tract projected southerly; thence north along said projected line to the southeast corner of said Timmers property; thence along the boundary of said Timmers property the following 2 courses and distances; thence North 161.04 feet; thence West 204.60 feet to the northwest corner of said Timmers property and the point of beginning

Except any portion thereof lying within the diking district and drainage district right of ways

Subject to all easements, weather of record or apparent.

3. Grant of Non-Exclusive Easement by Timmers. Timmers will grant a non-exclusive easement for ingress, egress and utilities over, under, and across the following described property for the use and benefit of the Wheeler Property:

An easement for ingress and egress over a portion of Government Lot 2, Section 33, Township 36 North, Range 3 East, W.M., Skagit County, Washington, described as follows:

A 12.00-foot wide parcel of land lying 6.00 feet on each side of the following described line:

Commencing at the west quarter corner of said Section 33; thence along the north line of said Government Lot 2, North  $89^{\circ}36'36''$  East a distance of 33.43 feet to the point of beginning; thence along a curve to the left, having a radius of 73.18 feet through a central angle of  $68^{\circ}45'19''$  an arc length of 87.82 feet and a radius point which bears North  $75^{\circ}31'22''$  East from the last described point; thence South  $83^{\circ}13'58''$  East a distance of 106.10 feet to a curve to the right, having a radius of 37.50 feet through a central angle of  $82^{\circ}39'59''$  an



200202080092

Skagit County Auditor

arc length of 54.11 feet and a tangent which bears the last course; thence South  $00^{\circ}33'59''$  East a distance of 162 feet more or less to the north bank of the Samish River and the point of ending. The sidelines of the above described description to be shortened or lengthened to terminate at the said north line of Government Lot 2, and the said north bank of the Samish River.

4. Conveyance from Wheeler to Downen. Wheeler will grant a quitclaim deed to Downen for the following described property located in Skagit County, State of Washington:

A portion of the southwest quarter of the northwest quarter and Government Lot 2, Section 33, Township 36 North, Range 3 East, W.M., Skagit County, Washington, described as follows:

Commencing at the west quarter corner of said Section 33; thence along the north line of said Government Lot 2, North  $89^{\circ}36'36''$  East a distance of 53.83 feet; thence North  $74^{\circ}55'19''$  East a distance of 46.49 feet; thence South  $88^{\circ}49'03''$  West a distance of 46.49 feet to the point of beginning

And a curve to the left, having a radius of 46.49 feet, a central angle of  $80^{\circ}41'03''$ , an arc distance of 65.47 feet and a radius point which bears the last described course; thence South  $81^{\circ}52'00''$  East a distance of 116.78 feet to a curve to the right, having a radius of 50.22 feet, a central angle of  $75^{\circ}52'26''$ , an arc distance of 66.50 feet and a tangent which bears the last described course; thence along said curve to the east line of that certain tract of land conveyed to Mark Wheeler and Cynthia Johnson by Recording No. 9508160055 said county and state; thence along said east line North  $00^{\circ}34'02''$  West a distance of 196.29 feet to an angle point in the boundary of said Wheeler tract; thence along the boundary of said Wheeler tract and extension thereof North  $87^{\circ}03'00''$  West a distance of 198.74 feet; thence South  $01^{\circ}10'56''$  East a distance of 100.47 feet to the point of beginning

Except any portion thereof lying within the diking district and drainage district right of ways

Subject to all easements, weather of record or apparent.

5. Amendment of Judgment. Wheeler quieted title against the heirs and successors of Margaret Durand as to the property described in Exhibit "B," attached hereto (i.e. The Durand tract) by a default judgment dated June 17, 1996, in Skagit



200202080092  
Skagit County Auditor

County Superior Court File No. 96-2-00182-4. The parties to this Agreement recognize that the legal description in the default judgment does not close and that this is due to a scrivener's error. The parties agree to use their best efforts to obtain an amendment of the aforementioned judgment to correct the legal description so that it closes. Wheeler shall file the necessary motion requesting said amendment. The parties further agree that if the amendment is denied by the court, the ambiguity will remain in the legal description and this Agreement shall not be affected by said ambiguity.

6. Boundary Line Adjustment. The parties agree to cooperate and use best efforts to obtain approval of a boundary line adjustment from Skagit County to approve the transfers of property contemplated herein. The costs of the boundary line adjustment shall be borne by Wheeler.

7. Costs. Each party shall bear its own expenses and attorney's fees. All costs associated with recording documents required under this Agreement will be borne by Wheeler.

8. Dismissal. With the exception of the claims between Third Party Plaintiff Timmers and Third Party Defendants Spiller all claims alleged in *Wheeler v. Timmers, et al.* (Skagit County Docket No. 96-2-00182-4) shall be dismissed with all deliberate speed upon the execution of this Agreement. Knutzen's counsel will prepare and circulate a Stipulation and Order of Dismissal consistent with the terms of this Agreement.

C. Mutual Releases. The parties hereby release and forever discharge each other and their directors, officers, partners, employees, independent contractors, agents, heirs, attorneys, vendees, and assigns (including any voluntary or involuntary assignment in bankruptcy or assignment by law), from any and all actions, causes of action, claims or demands, representations or warranties, whether known or unknown, fixed or contingent, based upon or related to any matter, cause, act, event, or fact whether or not now known, for damages of any type, including claims that may have accrued as of the date of this Agreement. With the exception of the claims between Third Party Plaintiff Timmers and Third Party Defendants Spiller, this Agreement addresses and resolves all disputes and claims between these parties, all of which have merged into this Agreement.

D. Complete Stipulation. This Settlement Agreement is a full and complete integration of the parties' agreement and there are no promises, covenants, or representations concerning the subject of this stipulation not contained herein.

E. Consultation with Counsel. Each party hereto acknowledges and represents that he/she has consulted with legal counsel before effecting this settlement and executing this Agreement and that he/she understands its meaning and expressly consents



200202080092

Skagit County Auditor

2/8/2002 Page 6 of 18 11:34AM

that this Settlement Agreement shall be given full force and effect according to each and all of its express terms and provisions.

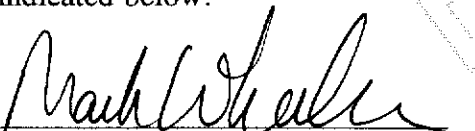
F. Duty to Execute Documents. The parties hereto agree to cooperate in effecting the terms of this Agreement, including the duty to execute all documents necessary to effect the terms and intent of this Agreement.

G. Venue. This Agreement shall be deemed to have been ratified, signed and delivered within the State of Washington, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington.

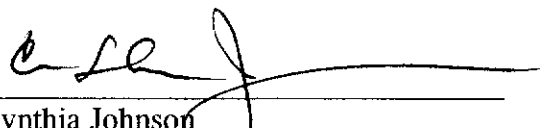
H. Modification. This Agreement may not be modified or amended except by the written agreement of the parties.

I. Attorney Fees and Costs. The parties hereto agree that if a dispute arises out of this Agreement, the substantially prevailing party is entitled to recover all actual attorney fees and costs incurred in enforcing this Agreement.

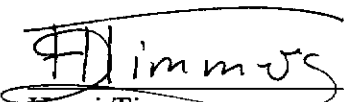
IN WITNESS WHEREOF, the undersigned have executed this Agreement on the dates indicated below:

  
Mark Wheeler

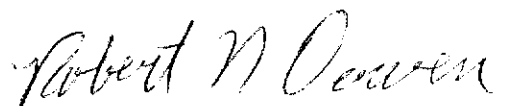
Date: 1/11/02

  
Cynthia Johnson

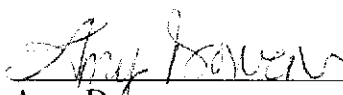
Date: 1/11/02

  
Henri Timmers

Date: 12-19-01

  
Robert N. Dowen

Date: 11/21/01

  
Amy Dowen

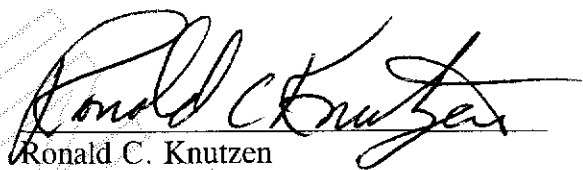
Date: 11/21/01



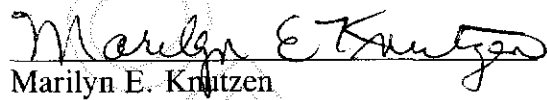
200202080092

Skagit County Auditor

2/8/2002 Page 7 of 18 11:34AM

  
Ronald C. Knutzen

Date: 12/19/01

  
Marilyn E. Knutzen

Date: 12/19/01



200202080092  
Skagit County Auditor



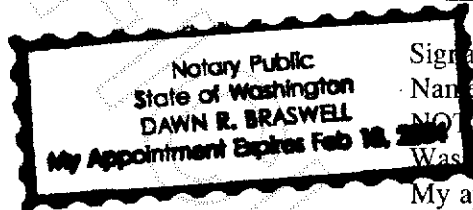
STATE OF WASHINGTON

SS:

County of ~~Skagit~~ King

On this day personally appeared before me Mark Wheeler, to me known to be the individual or individuals described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes mentioned.

Given under my hand and official seal this 11 th day of January 2002.



Signature: [Signature]

Name (Print): Dawn R. Braswell

NOTARY PUBLIC in and for the State of Wash  
Washington, residing at Bothe 11

My appointment expires: 2/18/04

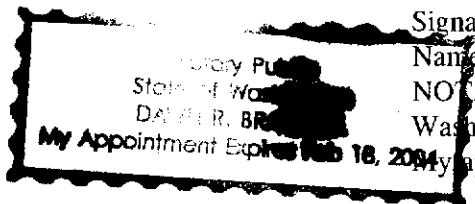
STATE OF WASHINGTON

SS:

County of ~~Skagit~~ King

On this day personally appeared before me Cynthia Johnson, to me known to be the individual or individuals described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed, for the uses and purposes mentioned.

Given under my hand and official seal this 11 th day of January 2002.



Signature: [Signature]

Name (Print): Dawn R. Braswell

NOTARY PUBLIC in and for the State of Wash  
Washington, residing at Bothe 11

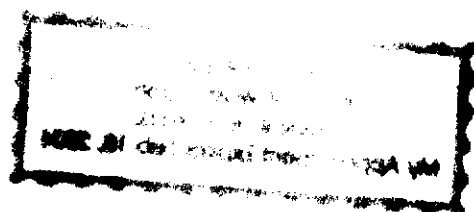
My appointment expires: 2/18/04



200202080092

Skagit County Auditor

2/8/2002 Page 9 of 18 11:34AM



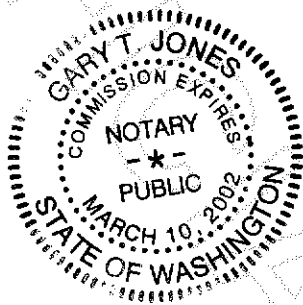
STATE OF WASHINGTON

SS:

County of Skagit

On this day personally appeared before me Henri Timmers, to me known to be the individual or individuals described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes mentioned.

Given under my hand and official seal this 19th day of Dec, 2001.



Signature: Gary T. Jones

Name (Print): GARY T. JONES

NOTARY PUBLIC in and for the State of

Washington, residing at Mount Vernon

My appointment expires: 3/10/2002

STATE OF WASHINGTON

SS:

County of Skagit

On this day personally appeared before me Robert N. Dowen, to me known to be the individual or individuals described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes mentioned.

Given under my hand and official seal this 21th day of NOVEMBER, 2001.

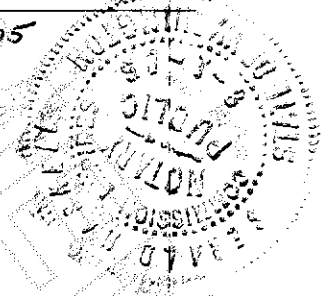
Signature: Gerald Maskell

Name (Print): GERALD MASKELL

NOTARY PUBLIC in and for the State of

Washington, residing at Bow

My appointment expires: 9/1/05



200202080092

Skagit County Auditor

STATE OF WASHINGTON

SS:

County of Skagit

On this day personally appeared before me Amy Dowen, to me known to be the individual or individuals described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed, for the uses and purposes mentioned.

Given under my hand and official seal this 21 th day of November, 2001.

Signature: [Signature]

Name (Print): GERALD MASKELL

NOTARY PUBLIC in and for the State of

Washington, residing at Ba

My appointment expires: 9/1/05

STATE OF WASHINGTON

SS:

County of Skagit

On this day personally appeared before me Ronald C. Knutzen, to me known to be the individual or individuals described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes mentioned.

Given under my hand and official seal this 19 th day of December, 2001.

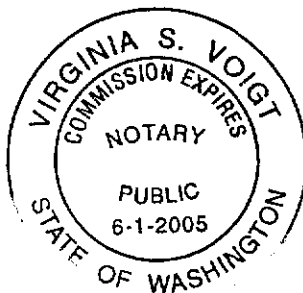
Signature: [Signature]

Name (Print): VIRGINIA S. VOIGT

NOTARY PUBLIC in and for the State of

Washington, residing at Mount Vernon

My appointment expires: 6-1-2005



200202080092

Skagit County Auditor

2/8/2002 Page 11 of 18 11:34AM

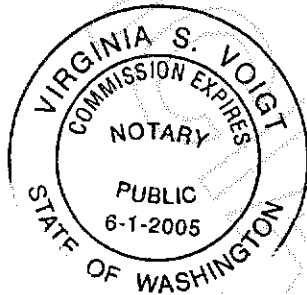
STATE OF WASHINGTON

SS:

County of Skagit

On this day personally appeared before me Marilyn E. Knutzen, to me known to be the individual or individuals described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed, for the uses and purposes mentioned.

Given under my hand and official seal this 19 th day of December, 2001.



Signature: Virginia S. Voigt

Name (Print): Virginia S. Voigt

NOTARY PUBLIC in and for the State of

Washington, residing at Mount Vernon

My appointment expires: 6-1-2005



200202080092

Skagit County Auditor

2/8/2002 Page 12 of 18 11:34AM

## EXHIBIT A

### Wheeler Property

#### Parcel A:

Government Lots 4 and 5 and all of the South  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  of Section 28, Township 36 North, Range 3 East, W.M.,

EXCEPT roads,

AND EXCEPT ditch rights of way along the South line of the Southeast  $\frac{1}{4}$  and along the North Line thereof.

Situate in the County of Skagit, State of Washington.

#### Parcel B:

Government Lot 1 and Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 33, Township 36 North, Range 3 East, W.M.,

EXCEPT roads, private or public, and rights of way therefor, and ditch rights of way,

ALSO that portion of Government Lot 2 and of the Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 33, Township 36 North, Range 3 East, W.M., described as follows:

Beginning on the North line of the Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  188.2 feet East of the Northwest corner; thence South 54 degrees 05' West 167 feet to a point 53 feet East of the West line of said Section 33; thence South 1,145.3 feet; thence South 87 degrees 03' East 195.9 feet; thence South 0 degrees 34' East 220 feet, more or less, to the North Samish River; thence Westerly along the Samish River to the Southeast corner of a tract in Lot 2, deeded to Margaret A. Durand, dated May 18, 1912 and recorded in Volume 89 of Deeds, page 193; thence North along the East line 2.94 chains; thence West to a point 33 feet East of the West line of Section 33; thence North to base of



200202080092

Skagit County Auditor

Dike District No. 4; thence Northeasterly along base of Dike to the North line of said Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$ ; thence East 69 feet to the point of beginning.

EXCEPT that portion of said premises, if any, lying within the dike right of way, and within road rights of way, public or private, other than that conveyed to Henry J. Roehl, et al, by deeds recorded in Volume 187 of Deeds, pages 88 and 90.

Situate in the County of Skagit, State of Washington.

SUBJECT TO Easement for transmission line recorded December 29, 1958 under Auditor's File No. 574634; Conditions contained in Contract of sale recorded under Auditor's File No. 603406 and any prohibition of or limitation of use, occupancy or improvement of land resulting from the rights of the public.

ALSO SUBJECT TO farms and agricultural tax classification disclosed by notice recorded February 2, 1973 and December 6, 1974, under Auditor's File Nos. 780181 and 810862, respectively, and are subject to the provisions of RCW 84.34, which tax classification the Grantees herein agree to continue according to the terms and conditions thereof.



200202080092

Skagit County Auditor

## EXHIBIT B

### Durand Tract

That portion of the Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  and of Government Lot 2, Section 33, Township 36 North, Range 3 East, W.M., described as follows:

Beginning at a point on the Section line between Sections 32 and 33, said Township and Range, said point being North 347.82 feet from the meander corner on the right bank of the North Samish River; thence North along said Section line to the North  $\frac{1}{16}$ <sup>th</sup> Section corner of the Northwest corner of said Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$ ; thence East 33 feet; thence South to a point due East of the point of beginning; thence West 33 feet to the point of beginning.

ALSO, beginning at a point, said point being North 347.82 feet and East 33 feet from the meander corner on the right bank of the North Samish River between Section 32 and 33, said Township and Range; thence East 171.60 feet; thence South 161.04 feet to the North Samish River; thence East 33 feet; thence North 194.04 feet; thence West 171.60 feet; thence South 33 feet to the point of beginning,

EXCEPT a right of way for Dike District No. 4 as condemned and taken in Skagit County Superior Court Cause No. 5959 filed October 30, 1945.

Situate in the County of Skagit, State of Washington.





## EXHIBIT C

### Timmers Property

That portion of Government Lot 2, Section 33,  
Township 36 North, Range 3 East, W.M., Skagit  
County, Washington, described as follows:

Beginning at a point 82.5 feet North of the meander  
corner post in the right bank of the North Samish River  
where the section line between Sections 32 and 33  
crosses said North Samish River; thence North 265.32  
feet; thence East 204.6 feet; thence South 161.04 feet;  
thence South 63° West, 229.68 feet, more or less, to  
the point of beginning.

Situate in the County of Skagit, State of Washington.



200202080092

Skagit County Auditor

2/8/2002 Page 16 of 18 11:34AM

## EXHIBIT D

### Dowen Property

Tracts 2 and 3 of Short Plat #69-79, approved April 7, 1980 and recorded April 10, 1980, in volume 4 of Short Plats, page 67, under Auditor's File number 8004100002; being a portion of the South  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  and government Lots 2 and 11 in Section 33, Township 36 North, Range 3 East, W.M. except that portion of Tract 3 lying Southerly of the Westerly extension of the North line of Lot 1, short Plat #69-79. Together with those certain easement rights as set forth in instrument recorded March 28, 1981, under Auditor's file number 8103260051, as follows:

"Together with continuing rights with others to use right of way easements over adjacent lands for purposes of ingress, egress and utilities. . ."



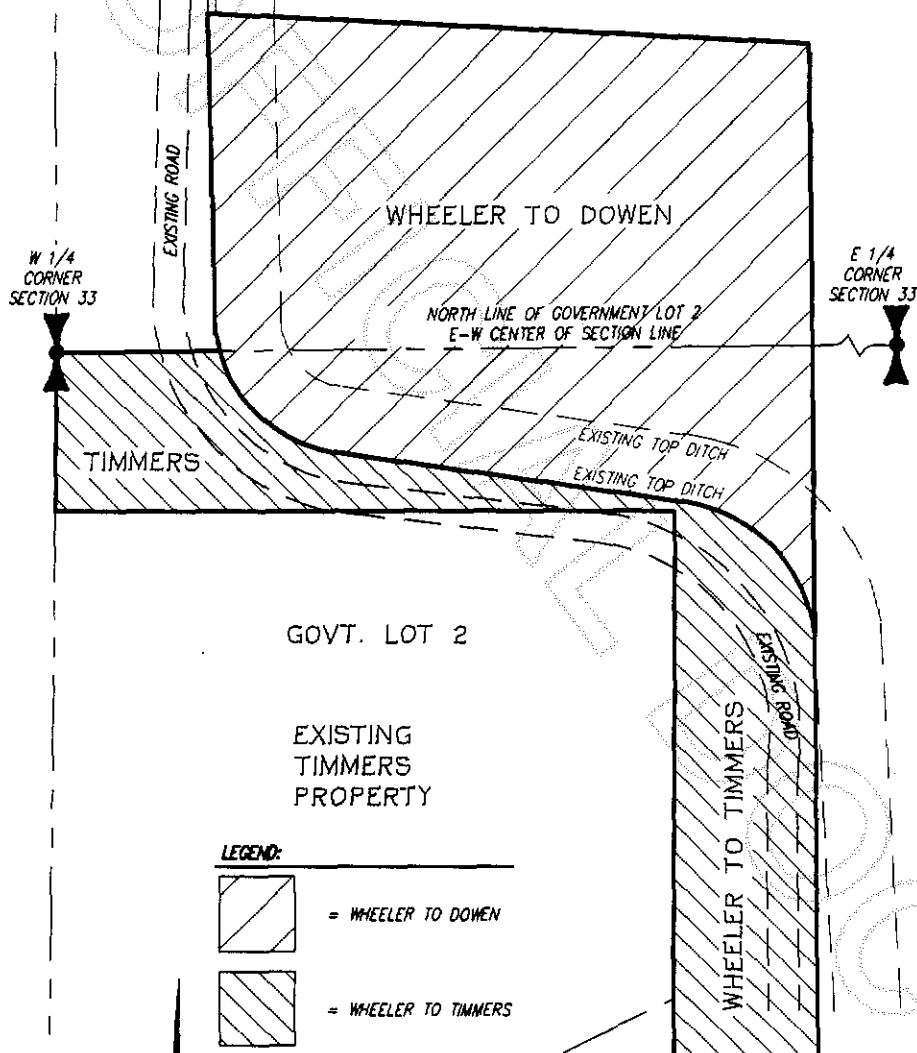
200202080092

Skagit County Auditor

2/8/2002 Page 17 of 18 11:34AM

A PORTION OF SECTION 33  
TOWNSHIP 36N. RANGE 3E. W.M.  
SKAGIT COUNTY, WASHINGTON

SW 1/4 OF THE NW 1/4



LEGEND:



= WHEELER TO DOWEN



= WHEELER TO TIMMERS



( IN FEET )

1 inch = 50 ft.



200202080092

Skagit County Auditor

2/8/2002 Page 18 of 18 11:34AM

DAVID R. DOWNING & ASSOCIATES  
PROFESSIONAL LAND SURVEYORS  
4229 76th ST. N.E. SUITE 104  
MARYSVILLE, WA., 98270

FIGURE 1

(360) 653-5385

DATE: 11/02/01

SCALE: 1" = 50'

JOB# 95043

SH 1 OF 1