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Skagit County Auditor

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RETURN TO:

Port of Skagit County
P. O. Box 348
Burlington, WA 98233

Document Title: Restated Interlocal Agreement

Reference number: N/A

Grantor(s): Port of Skagit County

Grantee(s): Town of LaConner

Abbreviated Legal Description: (Full legals attached as Exhibits 1, 2, 3, and 4)

That portion of the unplatted first class tidelands abutting Tracts 2 and 3, Plate No. 20, La Conner Harbor in Section 31, Township 34 North, Range 3 East W.M.

Assessor Parcel/Tax I.D. Number: P119186

RESTATED INTERLOCAL AGREEMENT

WHEREAS, the Port of Skagit County, a Washington municipal corporation, ("PORT") and the Town of LaConner, a fourth class Washington municipality, ("TOWN") entered into an "INTERLOCAL AGREEMENT" dated December 11, 1996 and recorded under Skagit County Auditor's Number 9612310198; and

WHEREAS, the TOWN has constructed and expanded sewage collection and treatment facilities, has need for area for disposal and utilization of sludge generated by said facilities, has constructed a public works shop and storage yard and has need to expand the same, and fulfillment of the needs of the TOWN above referenced enables the TOWN to furnish sewage collection and treatment services and other public services to the PORT at reasonable and economic rates, and the same is of need to the PORT; and

WHEREAS, the INTERLOCAL AGREEMENT provides an easement to the TOWN on approximately 8.4 acres of PORT-owned property for wastewater treatment facilities, sludge utilization and a public works shop and storage yard; and

WHEREAS, the TOWN desires to build and maintain a constructed wetlands and associated surface water management facilities on property owned by the PORT and to which the TOWN will require access; and

WHEREAS, the TOWN and the PORT have determined that construction and maintenance of such surface water management facilities and/or constructed wetlands will provide a direct, tangible benefit to portions of PORT owned property within the TOWN and assist the PORT in the management of its surface waters on portions of property located within the TOWN; and

WHEREAS, the parties recognize that the construction and maintenance of such wastewater treatment facilities, public works facilities, constructed wetlands and associated surface water management infrastructure will be a benefit to the citizens of the TOWN and patrons of the PORT and be of general benefit to the local, county and statewide environment; and

WHEREAS, the PORT'S North Basin lies outside of the TOWN'S drainage basin and will therefore never be connected to the TOWN'S drainage system; and

WHEREAS, the Port has agreed to contribute to the TOWN'S stormwater utility account based on the use of the public roads within the Town by traffic associated with the North Basin; and

WHEREAS, the TOWN and PORT will take full responsibility for the obligations in the attached MEMORANDUM OF UNDERSTANDING re DRAINAGE FEES; and



WHEREAS, the PORT and TOWN wish to clarify access rights to the property and their agreement with respect to the PORT'S drainage responsibilities for its North Basin;

THE PARTIES HEREBY AGREE that the INTERLOCAL AGREEMENT shall be, upon execution of this "RESTATED INTERLOCAL AGREEMENT," terminated as written and replaced by the provisions which follow:

Section 1. Purpose and Consideration:

The purpose of this RESTATED INTERLOCAL AGREEMENT is to provide sewage treatment, sludge management, surface water management, retention, detention and treatment, public access for recreational and educational purposes and public works facilities for the TOWN and the PORT in accordance with requirements of law and in a manner, which is economical for both parties.

Consideration for this Agreement is the benefit to each party derived therefrom and the benefits to and promises derived by each party pursuant to the terms of the MEMORANDUM OF UNDERSTANDING re DRAINAGE FEES executed of even date.

Section 2. Easement and Reservation of Rights:

The PORT hereby grants to the TOWN three easements as set forth in subparagraphs A, B and C below, in and to a portion of the real property described in that certain deed (Exhibit "1" hereto) from the state of Washington to the PORT dated August 25, 1970 and recorded under Skagit County Auditor's Number 743223.

A. Town Easement. The Port grants to the Town an exclusive "Town Easement" as legally described in Exhibit "2" hereto that shall be for purposes of construction, maintenance and operation of sewage treatment facilities, disposal and utilization of sludge generated by the sewage treatment facilities, construction, maintenance and utilization of surface water conveyance infrastructure and facilities for the management, detention, retention and treatment of surface water and construction, public access for recreational and educational purposes, maintenance and operation of a public works shop and storage yard.

B. Access Easement. The PORT grants to the TOWN a non-exclusive "Access Easement" for ingress and egress over that real property legally described in Exhibit "3" said "Access Easement" shall include the right to install, maintain and utilize said easement for public parking and out fall piping (to cross) as may be needed to serve the surface water management facilities constructed pursuant to the Town Easement;

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RESTATED INTERLOCAL AGREEMENT

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provided, that no parking shall be permitted on the east thirty (30) feet of the easement and any out fall piping shall be installed and maintained so as to not unreasonably interfere with the utilization of the Access Easement area by the PORT and its assignees or invitees.

C. Access and Utility Easement. The PORT grants to the TOWN a non-exclusive "Access and Utility" Easement for ingress and egress to the Wastewater Treatment Plant and public works shop and for the utilities associated therewith and associated with the surface water facilities located in the Town Easement, all as legally described in Exhibit 4 hereto.

The map, attached as Exhibit "5" for illustrative purposes only, depicts the Town Easement, the Access Easement and the Access and Utility Easement.

Section 3. Environmental Impacts:

For any project undertaken by the TOWN related to the property, which is the subject of this RESTATED INTERLOCAL AGREEMENT, the TOWN hereby assumes the responsibility to assure compliance with the State Environmental Policy Act ("SEPA"). The PORT agrees to assist and cooperate with the TOWN in complying with SEPA, but the TOWN shall be responsible for all costs connected therewith. All rights granted to the TOWN hereunder are contingent upon the TOWN's compliance with SEPA.

Section 4. Permits:

For any project undertaken by the TOWN related to the property which is the subject of this RESTATED INTERLOCAL AGREEMENT, all permits necessary to effect the purposes of this RESTATED INTERLOCAL AGREEMENT shall be obtained in a timely manner by and at the expense of the TOWN, *provided*, that the PORT shall, upon request by the TOWN, assist and cooperate in obtaining such permits, *provided*, however, that the PORT shall have no responsibility to share in the cost of such permits.

Section 5. Financing:

The TOWN agrees to be solely responsible for all financial arrangements necessary for the operation, maintenance and construction of sewage collection and treatment and public works facilities, *provided*, however, that the PORT shall only be required to pay a fair, reasonable and non-discriminating rate for sewage treatment services provided to it.



Section 6. Maintenance:

The TOWN shall be solely responsible for the maintenance and upkeep of the easement area described in Exhibits "2" and "4" and all improvements thereon.

Section 7. Limitation of Use:

The TOWN shall at all times comply with applicable guidelines, rules and standards for operation and maintenance of its wastewater treatment facilities, for operation and maintenance of the facilities for management, detention, retention and treatment of surface water and for treatment of sludge established by the Washington State Department of Ecology (WSDOE), the Federal Environmental Protection Agency (EPA) and the Skagit County Health Department (SCHD) and other applicable regulations.

Section 8. Release and Indemnity:

The PORT does release, indemnify and promise to defend and save harmless the TOWN from and against any and all liability, loss, damage, expense, actions and claims, including costs and reasonable attorney's fees incurred by the TOWN in the defense thereof, asserting or arising directly or indirectly or on account of or out of acts or omissions of the PORT or the PORT's servants, agents, employees and contractors in the exercise of the rights granted herein. The PORT further agrees to purchase and maintain during the entire existence of this RESTATED INTERLOCAL AGREEMENT a policy of public liability insurance with minimum limits of One Million Dollars (\$1,000,000.00) for bodily injury and/or property damage. The PORT agrees, if requested by the TOWN, to provide the TOWN with evidence of said insurance.

The TOWN does release, indemnify and promise to defend and save harmless the PORT from and against any and all liability, loss, damage, expense, actions and claims, including costs and reasonable attorney's fees incurred by the PORT in the defense thereof, asserting or arising directly or indirectly or on account of or out of acts or omissions of the TOWN or the TOWN's servants, agents, employees and contractors in the exercise of the rights granted herein. The TOWN's duties to defend and save harmless the PORT shall include liabilities stemming from a breach of the duties set forth in Section 7. The TOWN further agrees to purchase and maintain during the entire existence of this RESTATED INTERLOCAL AGREEMENT a policy of public liability insurance with minimum limits of One Million Dollars (\$1,000,000.00) for bodily injury and/or property damage. The TOWN agrees, if requested by the PORT, to provide the PORT with evidence of said insurance.



The parties' obligations in this Section 8, shall survive termination of this RESTATED INTERLOCAL AGREEMENT for any act or omission or series thereof occurring in whole or in part during the term of this RESTATED INTERLOCAL AGREEMENT.

Section 9. Duration:

The duration of this RESTATED INTERLOCAL AGREEMENT shall be for fifty (50) years from September 01, 2002, unless automatically terminated beforehand on account of breach of this RESTATED INTERLOCAL AGREEMENT by either party.

Section 10. Validity of Agreement:

The parties acknowledge that the property subject to this RESTATED INTERLOCAL AGREEMENT was acquired by the PORT from the State of Washington by virtue of a special act of the legislature and a deed executed pursuant thereto, and in the event that any court declares this RESTATED INTERLOCAL AGREEMENT invalid for want of the power of the PORT to execute this RESTATED INTERLOCAL AGREEMENT, the PORT shall have no liability or obligation to the TOWN, and the TOWN agrees to indemnify and hold the PORT harmless from any such liability.

Section 11. Termination for Breach:

In the event that the TOWN breaches or fails to perform or observe any of the terms or conditions herein or fails to cure such breach or default within ninety (90) days of the PORT's giving the TOWN notice thereof, or if not reasonably capable of being cured within such ninety (90) days or within such other period of time as may be reasonable in the circumstances, the PORT may terminate the TOWN's rights under this RESTATED INTERLOCAL AGREEMENT in addition to and not in limitation of any other remedy of the PORT at law or in equity, and the failure of the PORT to exercise such right at any such time shall not waive the PORT's right to terminate for any breach or default. However, any remedy obtained by the PORT shall allow for the uninterrupted maintenance, operation and repair of the LaConner Waste Water Treatment Plant by the TOWN.

Section 12. Termination for Cessation of Use:

In the event the TOWN ceases to use the property for a period of twenty-four (24) consecutive months, all of the rights of the TOWN pursuant to this RESTATED INTERLOCAL AGREEMENT shall terminate and revert to the PORT.



Section 13. Termination and Disposition of Improvements:

The parties agree that the ownership of all buildings and improvements erected on the subject premises by the TOWN shall remain with the TOWN, and at the time of termination of this RESTATED INTERLOCAL AGREEMENT, for any reason, the TOWN shall have the right to remove said buildings and improvements.

Section 14. Notices:

All notices required under this RESTATED INTERLOCAL AGREEMENT shall be in writing and delivered to the Executive Director of the PORT, in the case of the PORT, or the Mayor of the Town, in the case of the TOWN, at the regular business addresses within the time frame required herein.

Section 15. Modification:

The terms and conditions of this RESTATED INTERLOCAL AGREEMENT may be modified only upon mutual written agreement hereto, signed and dated by each party, and attached hereto.

Section 16. Release of Obligation or Termination:

The termination of this RESTATED INTERLOCAL AGREEMENT shall not release a party from any liability or obligation with respect to any matter occurring prior to such termination.

Section 17. Assignment:

The parties agree that neither shall have the right to sell, assign or transfer the benefits of this RESTATED INTERLOCAL AGREEMENT without the prior written consent of the other party.

Section 18. Force Majeure:

If either municipality is rendered unable, wholly or in part, by Force Majeure or any other cause of any kind not reasonably within its control to perform or comply with any obligation or condition of this RESTATED INTERLOCAL AGREEMENT, upon giving written notice to the other party, such obligation or condition shall be suspended during the continuance of the inability so caused and such party shall be relieved of any liability during such period. The term "Force Majeure" shall include, without limitation by the following enumeration, acts of God, Federal, State, County, or Municipal orders, regulations or directives of any governmental authority or persons purporting to act therefor, or when the supply



of product or any facility of production, manufacture/storage, transportation, distribution or delivery contemplated by either party is interrupted, unavailable, or inadequate because of Acts of War or the public enemy, riots, other disturbances, earthquakes, hurricanes, strikes, or lockouts of any class of workmen, or stoppage of labor, or damage to piers or essential equipment, floods, fire, explosion, or destruction from any cause of any character either similar or dissimilar to the foregoing and reasonably beyond the control of the party failing to perform.

Section 19. Filing Requirements:

The PORT agrees to file this RESTATED INTERLOCAL AGREEMENT with the County Auditor.

Section 20. Administration:

Both municipalities shall timely undertake the appropriate procedural steps required by each to implement this RESTATED INTERLOCAL AGREEMENT, including the identification of the undersigned as the individuals responsible for administering this joint and cooperative undertaking.

Section 21. Representation of the Parties:

The TOWN was represented in the preparation and negotiation of this MOU by Bradford E. Furlong. The PORT has consulted with independent counsel concerning the issues addressed herein. The general common law rule of construction against the party drafting a contract shall not apply against any party to this RESTATED INTERLOCAL AGREEMENT in the interpretation hereof.

Section 22. Effectiveness:

This RESTATED INTERLOCAL AGREEMENT shall become immediately effective September 01, 2002 and upon completion of the last of all the following actions, whichever is later:

A. Execution by the PORT of this RESTATED INTERLOCAL AGREEMENT and MOU following adoption of a motion authorizing the execution by the president of the Board of Commissioners;

B. Execution by the TOWN of this RESTATED INTERLOCAL AGREEMENT and MOU following adoption of a motion authorizing the execution by the Mayor;

C. Filing of a duplicate original of this RESTATED INTERLOCAL AGREEMENT with the Skagit County Auditor.

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IN WITNESS WHEREOF, we have hereunto set our hands and seals this 2ND day of AUGUST 2002.

PORT OF SKAGIT COUNTY

TOWN OF LACONNER

By:

Jerry Kaufman
Jerry Kaufman, President
Board of Commissioners
Attestation:

By:

Eron Berg
Eron Berg, Mayor
Attestation:

Glenn B. Allen
~~Kevin Ware, Secretary~~ U.P.
Board of Commissioners

Debby Malarchick
Debby Malarchick, Town Clerk

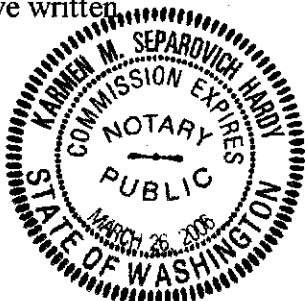
Approved as to form:

BE Furlong
Bradford E. Furlong
Town Attorney

STATE OF WASHINGTON)
: ss
COUNTY OF SKAGIT)

On this 2ND day of AUGUST 2002, personally appeared JERRY KAUFMAN and GLENN B. ALLEN, to me known to be the President and ~~Secretary~~ ^{VICE PRESIDENT}, respectively, Board of Commissioners, Port of Skagit County, a municipal corporation, 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 was duly authorized to execute the same and that the seal affixed is the corporate seal of said corporation.

In witness whereof I have hereunto set my hand and official seal the day and year first above written.



Karmen M. Separovich Hardy
Notary Public in and for the state of
Washington, residing in: ANACORTES
My appointment expires: 3/26/06

Printed Name: KARMEN M. SEPAROVICH HARDY
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EXHIBIT 1

DEED—FIRST CLASS TIDE LANDS sold subsequent to June 1, 1911.

743223

STATE OF WASHINGTON

IN CONSIDERATION OF CHAPTER 127, SESSION LAWS OF 1969

the State of Washington does hereby grant, bargain, sell and convey unto

PORT OF SKAGIT COUNTY, a municipal corporation, its

heirs and assigns, the following described tide washes lands of the first class, situate in front of the City of La Conner in Skagit County, Washington, to-wit:

The unplatted tidelands of the first class, owned by the State of Washington, situate in front of, adjacent to, or abutting upon Tracts 1, 2, 3, 4 and 5, La Conner Tide Lands, in Section 31, Township 34 North, Range 3 East, W.M., said Tracts 1, 2, 3, 4 and 5 being as shown on Plate 20 of the official maps of La Conner Tide Lands on file in the office of the Commissioner of Public Lands at Olympia, Washington.

Subject, however, to an easement for a right of way for a County Road granted to Skagit County on December 4, 1945, under Application No. 1790.

Subject, however, to an easement for a right of way for a storm drain channel granted to Skagit County Drainage District No. 15 on November 19, 1968, under Application No. 33044.

Whenever the Port of Skagit County, a municipal corporation, shall cease to hold and use said tidelands for public port purposes, the grant of said tidelands shall be terminated thereby, and said tidelands shall revert to the State.

The above described lands are sold subject to all the provisions of Chapter 317 of the Revised Laws of 1969, to which reference is hereby made, and which shall be as valid upon the grant and may survive in interest of said grantee as though set out at length hereon and subject, in any case or cases that may arise or be created in consequence of or pursuant to the provisions of an act of the Legislature of the State of Washington, entitled "An Act prescribing the ways in which waterways for the use of navigation may be created by private contract, approved March 4, 1961, being chapter 86 of the Revised Laws of 1961.

TO HAVE AND TO HOLD the said premises, with their appurtenances, unto the said

PORT OF SKAGIT COUNTY, a municipal corporation, its heirs and assigns forever.

WITNESS the Seal of the State, affixed this 27th

day of August, 1969

Signature of Governor

Signature of Secretary of State

[Seal]



App. No. 2273

Cont. No. dl

State record of Tide Land Deeds, Volume 24, Page 468



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EXHIBIT "2"

April 22, 2002

LEGAL DESCRIPTION FOR: Town Easement Parcel, Port of Skagit County

That portion of the unplatted first class tidelands abutting Tracts 2 and 3, Plate No. 20, La Conner Harbor in Section 31, Township 34 North, Range 3 East, W.M., as shown on the official Tide and Shorelands map on file in the office of the Washington State Commissioner of Public Lands, described as follows:

Commencing at a point on the West line of said Section 31 which lies North $1^{\circ}24'28''$ East, 128.44 feet from the West quarter corner of said Section; **thence** South $88^{\circ}24'45''$ East, 462.64 feet; **thence** South $80^{\circ}34'37''$ East, 120.06 feet to a point on the Easterly line of said Tract 3; **thence** South $10^{\circ}22'24''$ West, along said Easterly line, 30.00 feet to a point on the South line of that certain easement for a right of way for county road known as Chilberg Road granted to Skagit County on December 4, 1945, under Washington State Department of Public Lands Application No. 1790 and recorded under Skagit County Auditor's File No. 387326; **thence** South $80^{\circ}34'37''$ East, along said South line, 250.83 feet; **thence** South $14^{\circ}46'18''$ West, 72.32 feet to a fence line as it existed September 19, 2001 and the **TRUE POINT OF BEGINNING**; **thence** South $80^{\circ}43'11''$ East, along said fence line, 112.58 feet **thence** South $13^{\circ}31'48''$ West, 320.76 feet; **thence** South $3^{\circ}30'57''$ East, 665.40 feet; **thence** North $60^{\circ}31'37''$ West, 222.84 feet; **thence** North $43^{\circ}23'02''$ West, 236.85 feet; **thence** North $68^{\circ}59'17''$ West, 61.12 to a point on the Easterly line of said Tract 2; **thence** North $3^{\circ}20'29''$ West, along said Easterly line, 160.38 feet; **thence** North $10^{\circ}21'18''$ East, along said Easterly line, 573.35 feet; **thence** North $10^{\circ}22'24''$ East, along said Easterly line of Tract 3, a distance of 6.01 feet; to a point on the Westerly projection of said fence line; **thence**, South $80^{\circ}43'11''$ East, along said Westerly projection and said fence line, 245.29 feet to the **TRUE POINT OF BEGINNING**.

(Containing 7.40 Acres.)

Situate in the County of Skagit, State of Washington.



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EXHIBIT "3"

April 22, 2002

LEGAL DESCRIPTION FOR: Access Easement, Port of Skagit County

That portion of the unplatted first class tidelands abutting Tracts 2 and 3, Plate No. 20, La Conner Harbor in Section 31, Township 34 North, Range 3 East, W.M., as shown on the official Tide and Shorelands map on file in the office of the Washington State Commissioner of Public Lands, described as follows:

Commencing at a point on the West line of said Section 31 which lies North 1°24'28" East, 128.44 feet from the West quarter corner of said Section; **thence** South 88°24'45" East, 462.64 feet; **thence** South 80°34'37" East, 120.06 feet to a point on the Easterly line of said Tract 3; **thence** South 10° 22' 24" West, along said Easterly line, 30.00 feet to a point on the South line of that certain easement for a right of way for county road known as Chilberg Road granted to Skagit County on December 4, 1945, under Washington State Department of Public Lands Application No. 1790 and recorded under Skagit County Auditor's File No. 387326; **thence** South 80° 34' 37" East, along said South line, 250.83 feet to the **TRUE POINT OF BEGINNING**; **thence** South 14°46'18" West, 72.32 feet to a fence line as it existed September 19, 2001; **thence** South 80°43'11" East, along said fence line, 112.58 feet; **thence** South 13° 31' 48" West, 320.76 feet; **thence** South 3° 30' 57" East, 665.40 feet; **thence** North 37° 59' 27" East, 45.27 feet; **thence** North 3° 30' 57" West, 627.00 feet; **thence** North 13° 31' 48" East, 390.33 feet to a point on said South line of Chilberg Road; **thence** North 80° 34' 37" West, along said South line, 141.07 feet to the **TRUE POINT OF BEGINNING**.

(Containing 39,168 Square Feet)

Situate in the County of Skagit, State of Washington.



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Skagit County Auditor

EXHIBIT "4"

April 22, 2002

LEGAL DESCRIPTION FOR: Access & Utility Easement, Port of Skagit County

That portion of the unplatted first class tidelands abutting Tracts 2 and 3, Plate No. 20, La Conner Harbor in Section 31, Township 34 North, Range 3 East, W.M., as shown on the official Tide and Shorelands map on file in the office of the Washington State Commissioner of Public Lands, described as follows:

Commencing at a point on the West line of said Section 31 which lies North 1°24'28" East, 128.44 feet from the West quarter corner of said Section; **thence** South 88°24'45" East, 462.64 feet; **thence** South 80°34'37" East, 120.06 feet to a point on the Easterly line of said Tract 3; **thence** South 10° 22' 24" West, along said Easterly line, 30.00 feet to a point on the South line of that certain easement for a right of way for county road known as Chilberg Road granted to Skagit County on December 4, 1945, under Washington State Department of Public Lands Application No. 1790 and recorded under Skagit County Auditor's File No. 387326, and the **TRUE POINT OF BEGINNING**; **thence** South 80° 34' 37" East, along said South line, 250.83 feet; **thence** South 14°46'18" West, 72.32 feet to a fence line as it existed September 19, 2001; **thence** North 80° 43' 11" West, along said fence line and its Westerly projection, 245.29 feet; to a point on said Easterly line of Tract 3; **thence** North 10° 22' 24" East, along said Easterly line, 72.62 feet to the **TRUE POINT OF BEGINNING**.

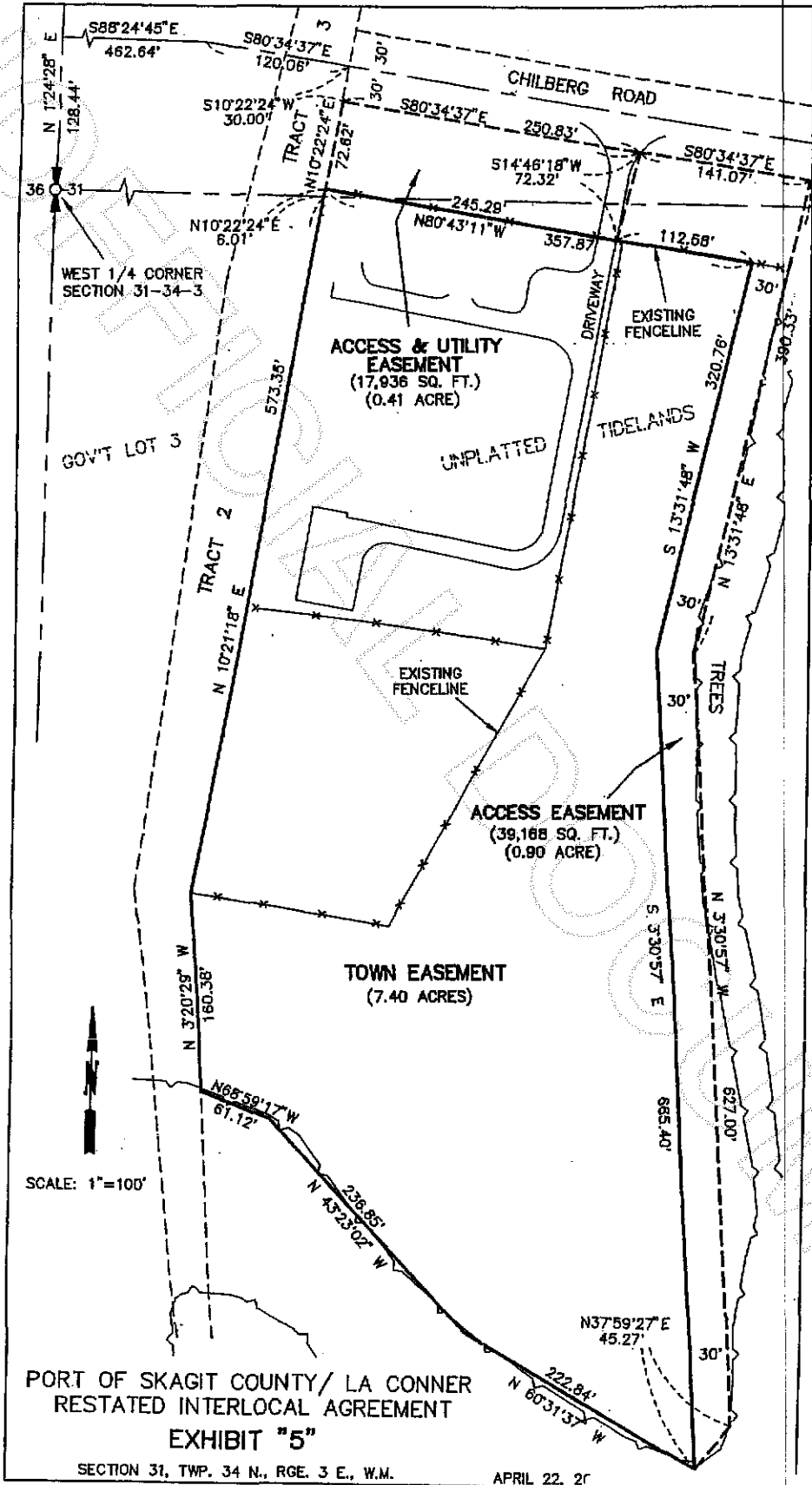
(Containing 17,936 Square Feet.)

Situate in the County of Skagit, State of Washington.



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Skagit County Auditor



PORT OF SKAGIT COUNTY/ LA CONNER
RESTATED INTERLOCAL AGREEMENT
EXHIBIT "5"

SECTION 31, TWP. 34 N., RGE. 3 E., W.M.

APRIL 22, 2002



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Skagit County Auditor