

AFTER RECORDING RETURN TO:

Weyerhaeuser Company  
220 Occidental Avenue South  
Seattle, WA 98104



201804130007 \$87.00  
Skagit County Auditor  
4/13/2018 Page 1 of 14 9:08AM

**RECIPROCAL EASEMENT AGREEMENT**

GRANTORS: Weyerhaeuser Company  
City of Seattle

GRANTEES: Weyerhaeuser Company  
City of Seattle

Abbreviated Legal Description: Ptn of Sec. 14, 23, 25, 26 and 36, T35N-R7E  
Skagit County, Washington

Skagit County Assessor's Property Tax Parcel Account Number: P42598, P42601, P43148,  
P43163, P43231, P43207 and P43302

SKAGIT COUNTY WASHINGTON  
REAL ESTATE EXCISE TAX

APR 13 2018

Amount Paid \$  
Skagit Co Treasurer  
By *WLM* Deputy

COVER PAGE

## RECIPROCAL EASEMENT AGREEMENT

This Reciprocal Easement Agreement (this "**Agreement**") is effective as of 26<sup>th</sup> day of March, 2018, (the "**Effective Date**") by and between **WEYERHAEUSER COMPANY**, a Washington corporation, successor in interest to Weyerhaeuser Columbia Timberlands, LLC ("**Weyerhaeuser**"), and the **CITY OF SEATTLE**, a Washington municipal corporation, acting through its City Light Department ("**City**").

### RECITALS

WHEREAS, Weyerhaeuser owns certain real property located in Skagit County, Washington, being more particularly described as follows ("**Weyerhaeuser's Property**");

#### **TOWNSHIP 35 NORTH, RANGE 7 EAST, WILLAMETTE MERIDIAN:**

- Section 14:** Portion of Government Lot 7
- Section 23:** NE $\frac{1}{4}$ NW $\frac{1}{4}$ ; S $\frac{1}{2}$ NW $\frac{1}{4}$ ; N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ ; NE $\frac{1}{4}$ SE $\frac{1}{4}$
- Section 25:** SW $\frac{1}{4}$ NW $\frac{1}{4}$
- Section 26:** NW $\frac{1}{4}$ NE $\frac{1}{4}$ ; S $\frac{1}{2}$ NE $\frac{1}{4}$ ; NE $\frac{1}{4}$ NW $\frac{1}{4}$ ; N $\frac{1}{2}$ SE $\frac{1}{4}$ ; SW $\frac{1}{4}$ SE $\frac{1}{4}$

WHEREAS, City owns certain real property located in Skagit County, Washington, being more particularly described as follows ("**City's Property**");

#### **TOWNSHIP 35 NORTH, RANGE 7 EAST, WILLAMETTE MERIDIAN:**

- Section 14:** Portion of Government Lot 6
- Section 36:** SW $\frac{1}{4}$ NW $\frac{1}{4}$

WHEREAS, Weyerhaeuser and City desire to grant each other perpetual, non-exclusive easements over a certain road located on both Weyerhaeuser's Property and the City's Property that will provide both parties access to their respective properties.

NOW, THEREFORE, in consideration of the mutual covenants of Weyerhaeuser and City (individually, a "**Party**," and collectively, the "**Parties**") set forth in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

## AGREEMENT

### 1. Grant of Easements.

- a. Subject to the terms hereof, Weyerhaeuser, for and in consideration of the reciprocal easement granted in subsection (b) below, hereby grants and conveys to City a private, perpetual, non-exclusive right of way easement ("**City's Easement**") thirty (30) feet in width, being fifteen (15) feet on either side of the center line of the existing gravel road located upon Weyerhaeuser's Property (the "**Weyerhaeuser's Road**"), which City's Easement and Weyerhaeuser's Road are located approximately as shown on the map attached hereto as Exhibit A, with the City's Easement being composed of Road Segment "2.". City's Easement shall be subject and subordinate to all liens, leases, easements, servitudes, rights-of-way, prescriptive rights, reservations, conveyances and any and all other matters of record or apparent encumbering Weyerhaeuser's Property (the "**Weyerhaeuser's Permitted Encumbrances**"), it being distinctly understood and agreed by the Parties that Weyerhaeuser, by this grant, grants no greater rights than it is permitted to grant in view of any of the Weyerhaeuser's Permitted Encumbrances.
- b. Subject to the terms hereof, City, for and in consideration of the reciprocal easement granted in subsection (a) above, hereby grants and conveys to Weyerhaeuser a private, perpetual, non-exclusive right of way easement ("**Weyerhaeuser's Easement**") thirty (30) feet in width, being fifteen (15) feet on either side of the center line of the existing gravel road located upon City's Property (the "**City's Road**"), which Weyerhaeuser's Easement and City's Road are located approximately as shown on the map attached hereto as Exhibit A, with Weyerhaeuser's Easement being composed of Road Segments "1" and "4". Weyerhaeuser's Easement shall be subject and subordinate to all liens, leases, easements, servitudes, rights-of-way, prescriptive rights, reservations, conveyances and any and all other matters of record or apparent encumbering City's Property (the "**City's Permitted Encumbrances**"), it being distinctly understood and agreed by the Parties that City, by this grant, grants no greater rights than it is permitted to grant in view of any of the City's Permitted Encumbrances.
- c. Weyerhaeuser's Easement and City's Easement are sometimes hereinafter collectively referred to as the "Easements" and Weyerhaeuser's Road and City's Road are sometime hereinafter collectively referred to as the "Roads".
- d. The rights of City hereunder shall be appurtenant to and for the benefit of the City's Property and any conveyance of the City's Property shall include a conveyance of the City's Easement, regardless of whether the City's Easement is specifically identified in the instrument of conveyance. The rights of Weyerhaeuser hereunder shall be appurtenant to and for the benefit of the Weyerhaeuser's Property and any conveyance of the City's Property shall include a conveyance of the Weyerhaeuser's Easement.

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DRAFT  
EASEMENT

regardless of whether the Weyerhaeuser's Easement is specifically identified in the instrument of conveyance.

2. **Purpose of Easements.** City's Easement is conveyed by Weyerhaeuser for the right to use Weyerhaeuser Road Segments "2" in the Easement Area, as currently exist or may be reconstructed in the future without cost to the City for all lawful purposes deemed necessary or desirable in connection with the protection, administration, management and utilization of the City's Property over and across Weyerhaeuser's Road. City's use of Road Segments "2" shall be limited to passenger or light truck vehicles only and will not involve commercial hauling without the prior written approval of Weyerhaeuser.

Weyerhaeuser's Easement is conveyed by the City for the right to use City's Road Segment "1" and "4" in the Easement Area, as currently exist or may be reconstructed in the future without cost to Weyerhaeuser, for all lawful purposes deemed necessary or desirable in connection with the protection, administration, management, and utilization of Weyerhaeuser's Property and resources, including, but not limited to, transporting and hauling forest products, rock and other valuable materials to and from the Weyerhaeuser Property, over and across City's Road.

2.1. Either Party as grantee under this Agreement ("Grantee") may extend rights and privileges for use of the other Party's ("Grantor's") roads in the Easement Area to all of their respective tenants, agents, employees, affiliates, invitees, licensees, contractors, purchasers of timber or other valuable materials, and permittees (collectively, "Permittees"), provided that the use of the roads in the Easement Area by the Permittees shall not unreasonably interfere with the rights granted to the Parties in this Agreement. This shall not include general or recreational access to the public.

2.2. Each Grantee shall have the right to construct, reconstruct, and maintain roads within the Easement Area after prior written request to and approval of the applicable Grantor.

2.3. However, each Grantee shall have the right to cut timber on Grantor property within the Road Segment where it exists but only to the extent necessary for maintaining the road and only after prior written approval from Grantor. Said cut timber shall remain the property of the applicable Grantor, and shall be, to the extent reasonably feasible, cut to merchantable log lengths and decked so as to be accessible for log loading and hauling by such Grantor or its Permittees.

3. **Reservation of Rights.** The Parties reserve for themselves and their respective Permittees the right at all times for any purpose, to cross and recross their respective Roads in any manner that will not unreasonably interfere with the rights of the other Party.

4. **Parties Responsibilities.** The Parties shall:

- UNWITNESSED
- a. Take all reasonable precaution to prevent unauthorized persons from using the Roads;
  - b. Keep all existing gates, and any that may be installed on the Roads in the future, closed and locked; provided, however, that the Parties may, from time to time leave gates (if any) on the Roads open for reasonable extended periods during regular business hours in order to facilitate active timber harvest and other commercial operations of the Parties;
  - e. Not drive with excessive or unsafe speed upon the Roads;
  - f. Immediately report to each other any dangerous or defective condition with respect to any portion of the Roads;
  - g. Ensure that each Party and their respective Permittees comply with all applicable local, state and federal laws, rules and regulations (collectively, "**Applicable Laws**") with respect to the use of the Roads and exercise of the rights granted herein; and
  - h. Comply with all reasonable road rules, regulations and restrictions ("**Road Rules**") that each Party may, from time to time, promulgate in its sole and reasonable discretion, including (without limitation) restrictions on weight, speed and use during adverse weather or fire conditions reasonably necessary to protect the Roads and adjacent timber, provided that the other Party is given a prior written notice of such Road Rules and such Road Rules do not materially impair the other Party's use of the Roads.

5. **Road Maintenance.** The cost of road maintenance and resurfacing shall be allocated between the Parties on the basis of respective uses of the Roads. When any Party uses one or both Roads, that Party shall perform or cause to be performed, or contribute or cause to be contributed, that share of maintenance and resurfacing occasioned by such use as hereinafter provided. During periods when the Roads or portions thereof are solely used by one Party and/or the other Party's use is de minimis, such Party shall maintain all or portions of said Roads so used to the standards existing at the time use is commenced. During periods when more than one Party is using the Roads or portions thereof, the Parties hereto shall meet and establish necessary maintenance provisions. Such provisions shall include, but shall not be limited to (a) the appointment of a maintainer, which may be one of the Parties hereto or any third party, who will perform or cause to be performed at a reasonable and agreed upon rate the maintenance and resurfacing of the Roads or portions thereof being used; and (b) a method of payment by which each Party using said Roads or portions thereof, shall pay its pro rata share of the cost incurred by said maintainer in maintaining or resurfacing said Roads or portion thereof. For purposes of this Agreement, maintenance is defined as the work normally necessary to preserve and keep the roadway, road structure and road facilities as nearly as possible in their present condition or as hereafter improved.

6. **Road Damage; Improvements.** Each Party using any portion of the Roads shall repair, or cause to be repaired, at its sole cost and expense, that damage to the Roads occasioned by it which is

in excess of that which it would be caused through normal and prudent usage of said Roads in the ordinary course of each Party's business. Should inordinate damage to the Roads occur which is not caused by an authorized user of said Roads, the Parties hereto shall meet to agree upon the cost of replacement, the Party to undertake the replacement, and the shares of replacement cost to be borne by each user of said Roads, with the Parties taking into consideration, amongst other factors, the ownership of the affected Road Segment. Unless the Parties hereto agree in writing to share the cost of improvements in advance of such improvements being made, such improvements shall be solely at the cost of the improver.

7. **Timber.** Each Party reserves to itself all timber now on or hereafter growing within the portion of the Easements located on their respective properties.

8. **Road Gate Keys and Combinations.** Each Party shall provide the other with the combination for any gate that must be opened to access the Roads by entering a combination. Should the locks to any gate require a key, each Party shall provide the other Party with a key to such a gate. Each Party may change the gate combinations or key locks at any time, for any reason; provided, however, that at least forty-eight (48) hours prior to changing the combinations or keys, each Party shall notify the other of the new combination or the need to obtain a new key.

9. **Insurance.** The Parties shall maintain for themselves and their Permittees, policies of insurance with companies maintaining an AM Best Rating of A-VII or better, or appropriate self-insurance, in the following minimum amounts:

Automobiles		
	Bodily Injury	\$1,000,000 Each Occurrence
	Property Damage	\$1,000,000 Each Occurrence
Commercial General Liability		
	Bodily Injury	\$1,000,000 Each Occurrence- \$2,000,000 Aggregate
	Property Damage	\$1,000,000 Each Occurrence \$2,000,000 Aggregate
	Or Combined Single Limits	\$1,000,000 Each Occurrence

Minimum amounts of insurance shall be subject to such other limits as the Parties hereto may agree upon in writing from time to time. Commercial general liability insurance shall include coverage for: operations and completed operations; independent contractors; blanket contractual liability (including liability assumed under the indemnification paragraph of this Agreement); and automobile liability insurance covering owned, hired and non-owned vehicles (including, if applicable, the "pollution from autos endorsement," 150 Form No. CA 99 48). Each Party shall also maintain at all times State

or private industrial accident insurance covering such Party and their respective Permittees which shall fully comply with State and Federal employment and workers' compensation laws. Each Party shall deliver to the other a certificate or certificates (as applicable) from their respective insurer or insurers, or other appropriate proof of insurance, stating that all applicable insurance required hereunder is in full force and effect, and that the insurer or insurers (as applicable) will give to the other Party thirty (30) days written notice prior to any cancellation or modification of the applicable insurance together with evidence that all owned, non-owned vehicles to be used by a Party are covered by such insurance. The aggregate limits shall be specific to this Agreement. A one million dollar (\$1,000,000) Umbrella Policy may be used in lieu of per project aggregate. Upon the request of either Party, the road user shall deliver to the requesting Party certificates from the road user's insurance carrier evidencing the insurance coverage required under this Section. Prior to permitting its Permittees to exercise any rights granted herein for commercial purposes, each Party agrees it will require its Permittees to first obtain and maintain at all times while operating under this Agreement insurance coverage in the amounts not less than described above. Each Party further agrees it will require its Permittees to have available upon request a certificate from the insurer, or other appropriate proof of insurance, evidencing that such coverage is in force and that, in the event of cancellation or modification of such coverage, the insurer will give each Party at least ten (10) days' written notice prior to any cancellation or modification of such coverage.

10. **Assignment.** Neither Party may assign its rights and obligations under this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld, conditioned, or delayed. Any such permitted assignment shall provide that the assignee will assume all obligations of the assigning Party from and after the effective date thereof. Consent to assign shall not be unreasonably withheld, conditioned, or delayed upon a Party transferring title, in whole or in part, to lands owned by the assigning Party.

11. **Indemnity.** Each Party agrees to defend, indemnify, save, protect and hold harmless the other Party for, from and against all causes of action, litigation, cost, loss, liability, damage and expense (including attorneys' fees) for injury or death to persons, whomsoever, and damage to or loss of property, to whomsoever belonging, including (without limitation) the Parties' respective Permittees, arising out of or in any way connected with the use of each Party's respective Easements granted herein by such Party and its Permittees; unless such causes of action, litigation, cost, loss, liability, damage and expense results from the negligence or willful misconduct of the Party and/or its Permittees seeking indemnification. This indemnity shall survive the expiration or earlier termination of this Agreement.

12. **Environmental Matters.** The Parties are prohibited from managing, using, transporting, generating and disposing of any Hazardous Substance in violation of Environmental Laws or substances deemed illegal under Applicable Laws on the Easements, Roads, or the Parties' respective properties. For purposes of this Agreement, the term "Environmental Laws" means any federal, state, local law, statute, ordinance, rule, regulation or order and all amendments thereto pertaining to human or animal health, environmental conditions or Hazardous Substances applicable to Weyerhaeuser's Property and/or City's Property, including (without limitation) the Endangered

Species Act, 16 U.S.C. § 1531-1544 (1998) and any Amendments thereto (the "ESA"). For purposes of this Agreement, the term "**Hazardous Substances**" shall mean any hazardous or toxic substances, materials or wastes, or pollutants or contaminants as defined, listed or regulated by any Environmental Laws, Applicable Laws, or by common law decision including, without limitation, chlorinated solvents; petroleum products or by-products; asbestos; and polychlorinated biphenyl. In addition to all other indemnities set forth herein, each Party shall save, protect, defend, indemnify, and hold harmless the other Party, its respective property and Permittees, from and against any and all loss, damage, cost, expense, or liability (including reasonable attorney fees) and the reasonable costs of repairs and improvements necessary to return the Easements, Roads, the respective property or any other lands owned by such Party to the physical condition existing prior to undertaking any activity related to any Hazardous Substance to the extent arising out of or attributable to the indemnifying Party's and its respective Permittees' use, manufacture, storage, release, or disposal of a Hazardous Substances or other illegal substances thereupon in violating any Applicable Laws, including (without limitation) Environmental Laws. This indemnity shall survive the expiration or earlier termination of this Agreement.

13. **Notices.** All notices required or permitted to be given hereunder, or given in regard to this Agreement by one Party to the other, shall be in writing and the same shall be given and be deemed to have been served, given and received (i) if delivered by hand, when delivered in person, (ii) if sent by reputable overnight courier, on the next business day following the date on which it was sent, or (iii) if mailed, when placed in the United States mail, postage pre-paid, by certified mail, return receipt requested, addressed to the Party at the address hereinafter specified. Any Party may change its address for notices by giving five (5) days advance written notice to the other Party hereto in the manner provided for herein. Until changed in the manner provided herein, the Parties' respective addresses and facsimile numbers for notices hereunder are as follows:

If to Weyerhaeuser:

Weyerhaeuser Company  
P.O. Box 889  
Rainier, WA 98576-0889

With a copy to:

Weyerhaeuser Company  
Land Title Dept.  
220 Occidental Avenue South  
Seattle, WA 98104

If to City:

Seattle City Light  
Real Estate Services, SMT 3338  
700 – 5<sup>th</sup> Avenue, Suite 3200  
P.O. Box 34023  
Seattle, WA 98124-9871

14. **Severability; Relation to Existing Law.** If any provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any Party. Upon any such determination, the Parties hereto shall negotiate in good faith to modify this Agreement so as to affect the original intent of the Parties as closely as possible in an acceptable manner such that transactions contemplated hereby are fulfilled to the extent possible. Notwithstanding any other provision of this Agreement, the invalidation of any provision herein relating to the Parties' remedies shall not be interpreted to prevent an injured Party from seeking actual damages. If subsequent to the date of this Agreement state or federal laws or regulations governing the relationship between Weyerhaeuser and City take effect, this Agreement shall be considered to incorporate such laws or regulations so long as they shall be effective, and any provision of this Agreement in conflict therewith shall during such period be void.

15. **Waiver.** No failure of either Party to exercise any power given hereunder or to insist upon strict compliance with any obligations specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of any Party's right to demand strict compliance with the terms hereof; provided, however, that any Party may, at its sole option, waive any requirement, covenant or condition herein established for the benefit of such Party without affecting any of the other provisions of this Agreement. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

16. **Fire Suppression and Control.** Each Party warrants, represents and covenants that it shall:

- a. Maintain as part of its operation in good and useable condition all the tools and equipment necessary to prevent and suppress fires as required by all Applicable Laws;
- b. Dispose of all slashings and debris created by a Party on the Roads or their respective properties in a commercially reasonable manner;
- c. Maintain the Roads free of inflammable debris; and
- d. Upon discovery of fire in the vicinity of the Roads, a Party's operations, or on the Party's property, immediately notify the other Party and the nearest official forest officer in charge of forest fire control.

17. **Independent Contractor.** It is agreed that neither Party hereto is the agent, servant, employer, or employee of the other Party for any purpose whatsoever.

18. **Subordination.** Any mortgage or deed of trust affecting any portion of Weyerhaeuser's Easement or the City's Easement shall at all times be subject and subordinate to the terms and conditions of this Agreement, and any party foreclosing any such mortgage or deed of trust, or

acquiring title by deed in lieu of foreclosure or trustee's sale, shall acquire title subject to all the terms and conditions of this Agreement.

19. **Entire Agreement; Construction.** This Agreement sets forth the entire and complete agreement between the Parties with respect to the subject matter hereof. Any prior agreements, commitments, or representations, express or implied, between the Parties are superseded by this Agreement. This Agreement may be altered, amended, or repealed only by a written instrument executed by both Parties. No provisions of this Agreement shall be construed against or interpreted to the disadvantage of any Party hereto by any court or governmental or jurisdictional authority by reason of such Party having been deemed to have structured, written, drafted or dictated such provisions. The Recitals to this Agreement and the Exhibit attached to this Agreement are incorporated herein by this reference. The captions and headings of this Agreement are for convenience only and shall not define, limit, or describe the applicability, scope, meaning, or intent of any provision of this Agreement. Capitalized terms which are defined in the recitals hereof shall have the meaning given.

20. **Attorneys' Fees.** In the event any action, suit or legal proceeding is instituted by either Party to this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing Party both reasonable attorney fees and reasonable expert witness fees as determined by the court, both at trial and on appeal or review, and in bankruptcy, whether or not the matter in dispute involves an issue particular to federal bankruptcy law. Attorney fees and expert witness fees shall be in addition to other costs and disbursements allowed by law.

21. **Governing Law; Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington. In addition, the Parties agree that in the event of any dispute concerning this Agreement, venue for any cause of action arising out of, or having to do with, this Agreement shall be, and is, in State or Federal Court in Skagit County, Washington State.

22. **Amendment; Successors and Assigns.** This Agreement may be modified or amended only by a written agreement signed by both Parties, or their applicable permitted successors or assigns. All terms, conditions, representations, and covenants of this Agreement shall be binding upon and inure to the benefit of the Parties, their heirs, successors, and assigns.

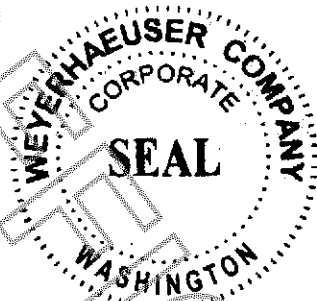
23. **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer on any person other than the Parties hereto and their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement.

24. **Force Majeure.** The Parties shall be free from any liability to one another for delays in delivery or failure to perform due to the failure, fault, or bankruptcy of a third party, acts of God, acts of default of any carrier, acts of any governmental authority, terrorism, suspension of any shipping facility, wars, riots, revolutions, strikes and other labor disputes, port congestion, fires, floods, perils of the sea, sabotage, nuclear incidents, earthquakes, storms, epidemics, or any other

contingency of any similar nature beyond the control of either Party. The foregoing shall apply even though any of such causes exist as of the date of this Agreement or occurs after performance is delayed for other causes.

*[Signatures and notary acknowledgments appear on the following pages]*

IN WITNESS WHEREOF, this Agreement is executed on the date of the acknowledgment below but shall be effective for all purposes as of the Effective Date.



WEYERHAEUSER COMPANY

By: [Signature]  
Its: James R. Johnston  
Vice President

STATE OF WASHINGTON )

COUNTY OF KING )

On this 26<sup>th</sup> day of March, 2018 before me personally appeared James R. Johnston to me known to be the Vice President of **WEYERHAEUSER COMPANY**, 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 s/he is authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

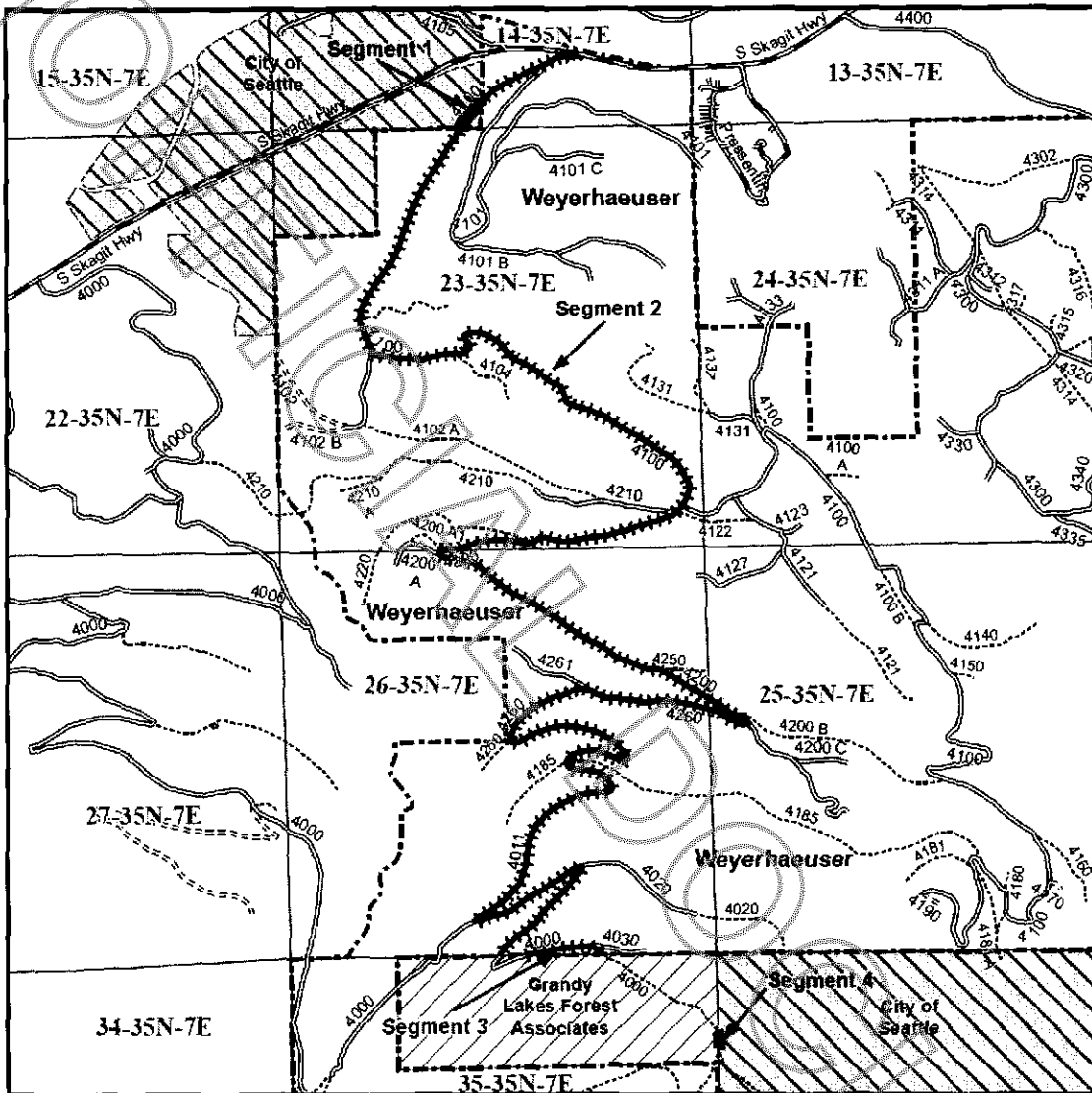
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above mentioned.



[Signature]  
Notary Public in and for the State of Washington  
Residing at: Federal Way  
Print Name: Teresa Tillman  
My appointment expires: Jan 05, 2021



# Exhibit A



**Weyerhaeuser Company**  
 Skagit County  
 T35N R07E  
 sec 14, 23, 25, 26, 35, 36

- |                                |                    |
|--------------------------------|--------------------|
| WY Property Line               | Paved              |
| City of Seattle (SCL)          | Gravel             |
| Grandy Lakes Forest Associates | Dirt               |
| <b>Reciprocal Easement</b>     | Closed/Undriveable |
| SCL to Weyerhaeuser            |                    |
| Weyerhaeuser to SCL            |                    |

1 inch = 2,100 feet      0    1,000    2,000    4,000 Ft      2/23/2018