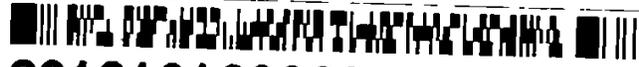


Recording Requested by, and
When Recorded Mail To:

Town of Lyman
Attn: Mr. Eddie Hills, Mayor
8405 S. Main Street
P.O. Box 1248
Lyman, WA 98263



201810160069

10/16/2018 12:08 PM Pages: 1 of 10 Fees: \$108.00
Skagit County Auditor

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

OCT 16 2018

Amount Paid \$ _____
Skagit Co. Treasurer
By *BT* Deputy

DOCUMENT TITLE: EMERGENCY ACCESS AND CONSTRUCTION EASEMENT

GRANTOR(S): Skagit County, a political subdivision of the State of Washington.

GRANTEE(S): Town of Lyman, a Washington municipal corporation.

**ASSESSOR'S TAX / PARCEL NUMBER(S): P41558 (XrefID: 350617-2-012-0006);
P126525 (XrefID: 350617-2-012-0100); and
P41342 (XrefID: 350617-0-029-0001);**

A portion of County recreational trail right-of-way approximately one thousand feet (1,000') in length located within the Town of Lyman (Cascade Trail) without an assigned parcel number, as partially located immediately adjacent to the above-described County-owned parcels, and more particularly described at Exhibit "A" attached hereto and incorporated by reference.

ABBREVIATED LEGAL DESCRIPTION:

A portion of County recreational trail right-of-way approximately one thousand feet (1,000') in length located within the Town of Lyman (Cascade Trail) without an assigned parcel number, as partially located immediately adjacent to the above-described County-owned parcels, and more particularly described at Exhibit "A" attached hereto and incorporated by reference.
Situate in County of Skagit, State of Washington.

EMERGENCY ACCESS AND CONSTRUCTION EASEMENT

The undersigned, **Skagit County**, a political subdivision of the State of Washington ("Grantor"), for good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, hereby grants to the **Town of Lyman**, a Washington municipal corporation ("Grantee"), a permanent, perpetual, non-exclusive emergency access and construction easement ("Easement"), as provided herein. Grantor and Grantee may be individually referred to herein as a "Party", and may be collectively referred to herein as the "Parties." The terms of this Easement are further provided as follows:

1. Nature and Location of Easement. The Easement hereby granted by Grantor herein shall be a permanent, perpetual, non-exclusive, emergency access and construction easement for the benefit of Grantee and Grantee's agents and/or contractor(s), over, upon, across, through, a portion of real property located within and upon Grantor's Property, such Easement area as legally described on *Exhibit "A"* and as further described and depicted on *Exhibit "B"*, attached hereto and incorporated herein by this reference, for the purpose of providing an emergency access and construction easement for the benefit of Grantee, for erosion control and slope stabilization work including, but not necessarily limited to, excavation, trenching, and the placement of approximately fifteen thousand (15,000) tons of riprap and/or other materials by Grantee and/or Grantee's contractor(s). A legal description for the Grantor's Property is attached hereto as *Exhibit "C"*, and is hereby incorporated by reference. The Easement and the covenants, terms, and conditions contained herein are perpetual in duration, and shall run with the Grantor's Property and shall be binding upon Grantee and Grantor and each party's respective successors (subject to Section 9.1, below).

2. Use of Easement. The Grantee shall have the right, upon providing reasonable notice Grantor, and at reasonable times (as determined by Grantor, except in the case of an emergency officially declared by Grantee), to enter upon the Grantor's Property within the Easement area (as described and depicted in *Exhibit "A" and "B"*) for purposes of using the Easement for the purpose of providing an emergency access route and construction area for the benefit of Grantee, including, but not necessarily limited to erosion control and slope stabilization work, involving excavation, trenching, and the placement of approximately fifteen thousand (15,000) tons of riprap and/or other materials by Grantee and/or Grantee's contractor(s). Grantee shall not have the right to unreasonably exclude Grantor or third parties the Easement area or from the Grantor's Property (without the revocable written permission of Grantor). To the extent possible, Grantee shall not unreasonably interfere with the Grantor's use of the Grantor's Property (including, but not limited to, Grantor's use of the property located within the Easement area, and the use of the property located within the Easement area by the general public as a non-motorized trail). Grantee accepts use of the Easement area on Grantor's property "as is", without any representations or warranties from Grantor whatsoever (express or implied). The Grantee specifically recognizes and agrees that Grantor is not obligated to make, construct, operate, maintain, or repair any particular improvements or facilities at (or within the vicinity of) Grantor's Property or the Easement area. The Grantee agrees that use of this Easement by Grantee shall be at the sole risk, cost, expense, and liability of the Grantee.

2.1 Grantee agrees to be responsible and liable for any damages or impact to Grantor's Property arising from Grantee's use of the Easement, and upon the request of Grantor the Grantee shall repair and restore the Grantor's Property to a substantially similar condition as existed before Grantee entered onto the Grantor's Property for the purposes described in this Easement (specifically including, but not necessarily limited to, the prompt and complete removal of any riprap and/or other erosion control or slope stabilization materials placed by Grantee). Prior to the commencement of any work within the Easement area, the Grantee shall coordinate with Grantor to attempt to avoid or minimize any disturbance, impact, or damage to facilities owned by Grantor at or within the Easement area (including, but not limited to, public non-motorized trail infrastructure owned and/or used by Grantor). To the extent possible, any work performed within the Easement area by Grantee shall be performed so as not to unreasonably interfere with the free passage of pedestrian and/or non-motorized vehicle traffic therein, or with the reasonable ingress or egress to Grantor's Property.

2.2 In the event that the Grantor performs (or contracts to have performed) work that the Grantor considers to be necessary (at the sole judgment and discretion of the Grantor) to repair and/or restore to a safe and/or usable condition any area, equipment, or facilities at or within Grantor's Property which are damaged or disturbed by Grantee (specifically including, but not necessarily limited to, the prompt and complete removal of any riprap and/or other materials placed by Grantee and/or Grantee's contractor[s]), the Grantor shall be reimbursed by the Grantee for the actual costs and expenses incurred by the Grantor for any such repair and/or restoration work (including, but not limited to, labor, materials, supplies, use of Grantor's equipment, and Grantor's staff time); and, in addition thereto, nine percent (9%) of the total actual costs and expenses incurred by the Grantor shall be added for overhead costs for accounting, billing, and administrative services, provided that the Grantor shall submit to the Grantee a certified statement of the costs, and within thirty (30) days thereafter, Grantee shall pay to the Grantor the amount of said statement.

3. Hold Harmless, Defense, & Indemnification. The Grantee hereby unconditionally releases, forever discharges, and holds harmless the Grantor (including the Grantor's elected officials, employees, volunteers, officers, and/or agents in both their official and individual capacities) from any and all past, present, and/or future claims, counterclaims, demands, judgments, debts, costs, liabilities, expenses, suits, and proceedings of any kind and nature, as arising from and/or related to the Grantee's use of this Easement. The Grantee agrees to be responsible for and to assume liability for all work performed by Grantee pursuant to this Easement, including, but not limited to, Grantee's own intentional, wrongful, and/or negligent acts or omissions or those of Grantee's officials, officers, agents, contractors, or employees to the fullest extent required by law, and further agrees to save, indemnify, defend, and hold the Grantor harmless from any such liability. It is further provided that no liability shall attach to the Grantor by reason of entering into this Easement except as expressly provided herein. The terms of this section shall survive any termination of this Easement, and shall continue in full force and effect.

Grantee has specifically reviewed and accepts the forgoing terms: SSW (initial).

4. Limitation of Liability. Any party having a claim against the Grantee, however arising, shall have recourse only to the extent of assets and property of the Grantee, and shall have no recourse against the Grantor, its appointed or elected officers, employees, volunteers or its/their assets or credits. The terms of this section shall survive any termination of this Easement, and shall continue in full force and effect.

Grantee has specifically reviewed and accepts the forgoing terms: SSW (initial).

5. Governing Law; Venue. This Easement shall be construed under the laws of the State of Washington. It is agreed by the Parties that the venue for any legal action brought under or relating to the term of this Easement shall be in Skagit County, State of Washington.

6. Compliance with Laws and Permits. Grantee shall, at Grantee's own cost, expense, and liability, obtain and comply with all applicable federal, state, and local laws, rules, and regulations, and any applicable permits and/or approvals, in using the Easement, and Grantee shall be solely and separately liable and responsible for any non-compliance with any applicable federal, state, and local laws, rules, regulations, permits and/or approvals. Grantee

shall be solely and separately responsible and liable for the costs of any mitigation (as determined to be needed by the permitting agency) to comply with any permit requirements.

7. No Third Party Beneficiaries. This Easement is not intended to nor does it create any third party beneficiary or other rights in any third person or party, including, but not limited to, the general public, third party property owner(s) and/or tenant(s) at or in the vicinity of the Easement area or Grantor's Property, any other organization or entity, or any agent, contractor, subcontractor, consultant, employee, volunteer, or other representative of any Party.

8. No Assignment. This Easement may not be assigned, contracted, and/or transferred to any other individual, firm, company, party, and/or other entity by Grantee without the express and duly authorized prior written approval of the County. Grantor may assign or transfer this Easement without the consent of Grantee.

9. Other Terms (Modifications; Neutral Authorship; Captions & Counterparts; Entire Agreement). This Easement may be changed, modified, amended or waived only by subsequent written agreement, duly executed by the Parties hereto. Waiver or breach of any term or condition of this Easement shall not be considered a waiver of any prior or subsequent breach. In the event any term or condition of this Easement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Easement which can be given effect without the invalid term, condition, or application. To this extent and end the terms and conditions of this Easement are declared severable. Each of the terms and provisions of this Easement have been reviewed and negotiated, and represents the combined work product of the Parties hereto. No presumption or other rules of construction which would interpret the provisions of this Easement in favor of or against the Party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Easement. Grantor (Skagit County) does not represent Grantee. The Parties represent and warrant that they have fully read this Easement, that they understand its meaning and effect, and that they enter into this Easement with full knowledge of its terms. The Parties have entered into this Easement without duress or undue influence. The captions in this Easement are for convenience and reference only and do not define, limit, or describe the scope or intent of this Easement. This Easement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Easement agreement. This Easement contains all the terms and conditions mutually agreed upon by the Parties. This Easement supersedes any prior oral statements, discussions, and/or understandings between the Parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Easement shall be deemed to exist or to bind any of the Parties hereto.

9.1 The parties recognize and agree that the Grantee's use of this Easement is conditioned upon and subject to Grantee's full compliance with the requirements of all applicable rail-banking law(s) and agreement(s), including, but not limited to, the National Trails Systems Act, 16 U.S.C., Section 1247(d), and Skagit County Contract Number 01775 (dated August 20, 1993). In the event that the terms of this Easement and the terms of the aforementioned rail-banking law(s) and agreement(s) are not consistent, the terms of the aforementioned rail-banking law(s) and agreement(s) shall prevail. Grantee recognizes and agrees that Grantee shall assume all risk associated with the possibility that the Grantor's Property (including the Easement area) could be converted back to railroad uses (and/or for other purposes), and Grantee agrees that the Grantor has no duty or obligation whatsoever to

attempt to prevent or oppose such other potential future uses of the Easement area. The Grantor may immediately terminate this Easement upon providing thirty (30) days written notice to Grantee (without penalty, liability, or recourse from Grantee), if the Grantor is required by court order, legislative action, and/or by other action of another governmental agency having jurisdiction over the Easement area, which would effectively limit, prohibit, eliminate, condition, and/or change either party's use of the Easement area. Grantee agrees to be solely and separately liable and responsible for any non-compliance with the aforementioned rail-banking law(s) and agreement(s) arising from or related to Grantee's use of this Easement, and the Grantee shall defend, indemnify, and hold the County harmless from any such claims, liability, and/or damages.

10. Recording. Upon mutual execution, this Easement shall be recorded with the Skagit County Auditor, and shall become effective immediately upon recording.

GRANTEE:

TOWN OF LYMAN, a Washington municipal corporation.

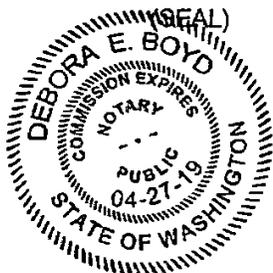
DATED this 12th day of October, 2018.

By: *Eddie Hills*
Eddie Hills, Mayor

STATE OF WASHINGTON }
COUNTY OF SKAGIT } ss.

I certify that I know or have satisfactory evidence that Eddie Hills, is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was duly authorized execute the instrument and acknowledged it as the Mayor of the Town of Lyman, to be the free and voluntary act of such party for the uses and purposes herein mentioned.

DATED this 12 day of October, 2018.



Debora E Boyd
Notary Public
Print name: Debora E Boyd
Residing at: Lyman
My appointment expires: April 27, 2019

GRANTOR:

DATED this 15 day of October, 2018.

**BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Kenneth A. Dahlstedt
Kenneth A. Dahlstedt, Chair

Lisa Janicki
Lisa Janicki, Commissioner

Ron Wesen
Ron Wesen, Commissioner

Attest:

Linda Hemmer
Clerk of the Board

Authorization per Resolution: R20050224

Recommended:

County Administrator

[Signature]
Department Head

Approved as to form:

[Signature] 10/15/18
Civil Deputy Prosecuting Attorney

Approved as to indemnification:

[Signature] (10-15-18)
Risk Manager

Approved as to budget:

[Signature]
Budget & Finance Director

STATE OF WASHINGTON }
COUNTY OF SKAGIT } ss.

I certify that I know or have satisfactory evidence that Kenneth A. Dahlstedt, Lisa Janicki, and/or Ron Wesen, is/are the person(s) who appeared before me, and said person(s) acknowledged that she/he/they signed this instrument, on oath stated that she/he/they was/were authorized execute the instrument and acknowledged it as Commissioner(s) of Skagit County, to be the free and voluntary act of such party for the uses and purposes herein mentioned.

DATED this 15 day of October, 2018.

(SEAL)

Linda Hammons

Notary Public

Print name: Linda Hammons

Residing at: Skagit County

My appointment expires: 10-01-2019

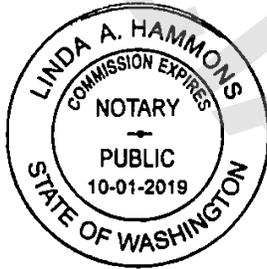


EXHIBIT "A"

EASEMENT AREA LEGAL DESCRIPTION

An easement, for Access and Construction purposes, located in that portion of the South $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section 17, Township 35 North, Range 06 East, W.M., described as follows:

Commencing at the Northwest Corner of the Northwest $\frac{1}{4}$ of the above mentioned Section 17; thence S $01^{\circ}56'35''$ W along the west line of the Northwest $\frac{1}{4}$, a distance of 2,225.38 feet to a point along said west line and the intersection of the south line of the abandoned Great Northern Railroad Right of Way, thence N $80^{\circ}40'49''$ E, along said south line of said Right of Way, a distance of 1,373.56 feet to the west line of the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 17, being the **TRUE POINT OF BEGINNING**.

Thence, N $80^{\circ}40'49''$ E, along the south Right of Way line, a distance of 500.00 feet, thence N $09^{\circ}19'11''$ W, a distance of 100 feet to the North Right of Way Line, thence S $80^{\circ}40'49''$ W, along the north Right of Way, a distance of 1,000.00 feet, thence S $09^{\circ}19'11''$ E, a distance of 100.00 feet to the South Right of Way line, thence N $80^{\circ}40'49''$ E, a distance of 500.00 feet to the **TRUE POINT OF BEGINNING** and the terminus of this description.

Situate in the County of Skagit, State of Washington

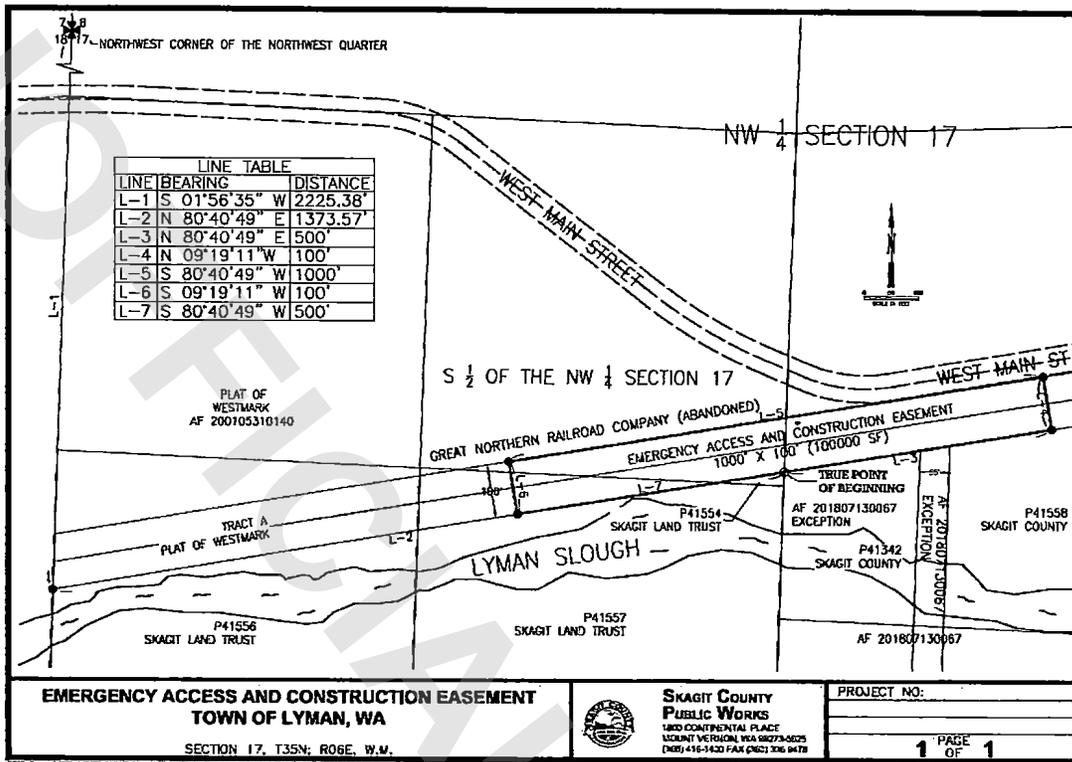


EXHIBIT "B"
 GRAPHIC DEPICTION OF EASEMENT AREA

**EMERGENCY ACCESS AND CONSTRUCTION EASEMENT
 TOWN OF LYMAN, WA**

SECTION 17, T35N; R06E, W.M.



**SKAGIT COUNTY
 PUBLIC WORKS**
 1400 COMMERCIAL PLACE
 SKAGIT WASHINGTON WA 98273-0025
 (509) 476-1433 FAX (509) 526-9478

PROJECT NO:

1 PAGE OF 1

EXHIBIT "C"
LEGAL DESCRIPTION OF GRANTOR'S PROPERTY

A portion of abandoned railway right-of-way assigned and conveyed by Burlington Northern Railroad Company, a Delaware corporation, to Skagit County, a political subdivision of the State of Washington, via Quitclaim Deed dated November 29, 1993, described in Exhibit "A" of said Quitclaim Deed and recorded under Auditor File #9312010036, dated December 1, 1993 and more generally described as;

All that portion of Burlington Northern Railroad Company's (formerly Great Northern Railway Company) Sedro-Woolley to Concrete, Washington Branch Line right of way, now discontinued, being of variable widths on each side of said Railroad Company's Main Track centerline as originally located and constructed upon, over and across Sections 19, 18, 17, 16, 15, 14 and 13, Township 35 North, Range 5 East and Sections 18, 17, 16, 15, 14, and 13, Township 35 North, Range 7 East, Sections 7, 8, 5, 9 and 10, Township 35 North, Range 8 East of the Willamette Meridian, Skagit County, Washington.

Situate in the County of Skagit, State of Washington