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Skagit County Auditor

Recording Requested By And
When Recorded Mail To:

Skagit County
Public Works Department
Attn: Emily Derenne
1800 Continental Place
Mount Vernon, Washington 98273

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

JUL 08 2019

Amount Paid \$
Skagit Co. Treasurer
By *mlm* Deputy

DOCUMENT TITLE: **TEMPORARY EASEMENT**

REFERENCE NUMBER OF RELATED DOCUMENT: *Not Applicable*

GRANTOR(S): **Erik D. Noste** and **Lisa E. Noste**, a married couple

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

ABBREVIATED LEGAL DESCRIPTION: A temporary easement located within PTN SW ¼ SW ¼ AKA
LT 2 S/P 58-80 AF#8005270032

ASSESSOR'S TAX / PARCEL NUMBER(S): **P16683** (Xref ID: 330416-3-003-0414)

TEMPORARY EASEMENT

(For riparian restoration work under the Natural Resource Stewardship Program project)

The undersigned, **Erik D. Noste** and **Lisa E. Noste**, a married couple, (herein "Grantors" or "Landowners"), for good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, hereby grants to **Skagit County**, a political subdivision of the State of Washington (herein "Grantee" or "County"), a temporary, non-exclusive easement ("Temporary Easement"), as provided herein. Landowners and County may be individually referred to herein as a "party", and may be collectively referred to herein as the "parties." The terms of this Temporary Easement are further provided as follows:

1. Nature and Location of Easement. The Temporary Easement hereby granted by Landowners herein shall be a temporary easement to allow the County, the County's agents, employees, and contractors over, upon, across, through, a portion of real property located within and upon Landowners' Property, such Temporary 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 a temporary easement (and any related appurtenances thereto), including the right of ingress and egress with all necessary equipment for construction of the riparian restoration work, including the removal of invasive vegetation, bank stabilization large woody debris (LWD), and installation of native plantings under the Skagit County Natural Resource Stewardship Program (NRSP) as described in *Exhibit "C"*, attached hereto and incorporated by reference (herein referred to as the "Project"). A legal description for the Landowners' Property is attached hereto as *Exhibit "D"*, and is hereby incorporated by reference.

1.1 The County, through its Department of Public Works (Natural Resources Division), will perform the Project as described in *Exhibit "C"* under its Natural Resources Stewardship Program (NRSP) for the protection, improvement, and enhancement of water quality in Skagit County streams for the benefit of downstream saltwater shellfish habitat.

1.2 Landowners represent and warrant to the County that the Landowners are the legal owners of the property described in Exhibit "D" (the "Landowners' Property"), and further represent and warrant to the County that there are no outstanding rights which interfere with this Temporary Easement agreement. The Landowners also acknowledge that a change in property ownership will not change the encumbrance of the Landowners' Property created by the terms of this Temporary Easement, and the Landowners agree to inform any future owner of Landowners' Property of this Temporary Easement prior to sale or transfer of the Landowners' Property during the term of this Temporary Easement (as the terms of this Temporary Easement shall be binding on any subsequent owner[s] of the Landowners' Property for the duration of this Temporary Easement). The Landowners agree to notify the County, within thirty (30) days of transfer, of changes in ownership during the term of this Temporary Easement.

1.3 Landowners agree to inform the County (and the County's agents, employees, and contractors) of all known safety hazards on Landowners' Property prior to the commencement of the activities described in Exhibit "C".

1.4 Except as provided to the contrary by the terms of this Temporary Easement, the Landowners retain the right to control trespass on Landowners' Property, and Landowners shall retain all responsibility for taxes, assessments, and for any claims for damages to Landowners' Property.

1.5 Landowners recognize and agree that participation in the County's Natural Resource Stewardship Program does not eliminate or abrogate any jurisdictional authority, code requirements, or obligations required by any government entity including Skagit County.

2. Use of Easement. The County, County's employees, agents, and contractors shall have the right, with a forty-eight (48) hour notice, (or with such other notice as may be otherwise mutually agreed in writing by and between the parties), and during daytime hours, Monday through Saturday (unless otherwise arranged between the parties), to enter upon the Landowners' Property within the area of the Temporary Easement (as described and depicted in Exhibit "A" and Exhibit "B"), for the purpose of constructing and implementing the Project (described at Exhibit "C") within the area of the Temporary Easement. Landowners shall not have the right to exclude the County, County's employees, agents, and/or contractors from the area of the Temporary Easement.

2.1 **Project Components.** This temporary easement includes the following components, as described in Exhibit "C": (1) initial site work, (2) monitoring and maintenance, and (3) project preservation.

2.1.1 **Initial Site Work.** The initial site work includes site preparation, removal of invasive vegetation and installation of livestock exclusion fencing, off-channel watering device, livestock crossing, and native riparian planting as described in Exhibit "C". Initial site work will be conducted within one (1) year of mutual execution of this agreement.

2.1.2 **Monitoring and Maintenance.** A Restoration and Maintenance Plan (Plan) has been developed for the Project and is included as Exhibit "C". In accordance with the Plan, Skagit County shall provide maintenance of vegetation for three (3) years after planting. The Landowners shall be responsible for plant preservation, not to include active maintenance, following this three (3) year period.

2.1.3 **Project Preservation.** Landowners agree to preserve the Project in the same condition as exists at the time of Project completion and agrees to refrain from cutting, damaging, or otherwise harming any of the vegetation planted as part of the Project or in any way intentionally compromising the integrity of the Project for a period of ten (10) years from the date of mutual execution of this Temporary Easement agreement. Except as provided in Section 2.1.2, the Landowners shall be responsible for all riparian restoration preservation required as part of the Project. Landowners may be required to reimburse the County for Project costs funded by the County in the event that the Landowners do not preserve the Project in accordance with the terms of this Temporary Easement.

2.2 The Landowners acknowledge that Landowners are voluntarily participating in the County's NRSP for riparian restoration (as described in Exhibit "C") that is the subject of this Temporary Easement and is permitting the Landowners' Property to be used for such purposes pursuant to the terms of this Temporary Easement. The Landowners agree that the Project, when completed, will not now or in the future result in damages to the Landowners' Property, and that the County is not liable for any impacts to Landowners' Property resulting from the Project. The terms of this Section 2.2 shall survive the termination or expiration of this Temporary Easement.

2.3 The County agrees to be responsible for any damage arising from negligent acts of its employees, agents, or representatives on Landowners' Property in exercise of County's rights herein granted by this Temporary Easement. The County assumes no liability for any alleged damage to Landowners' Property resulting from this Temporary Easement, or from any source other than as may be expressly set forth herein.

3. Termination of Temporary Easement. The Project shall be considered complete following the completion of the activities described in Exhibit "C", including project maintenance activities. This Temporary Easement shall otherwise expire by its own terms ten (10) years from the date of mutual execution.

4. Governing Law; Venue. This Temporary 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 terms of this Temporary Easement shall be in Skagit County, State of Washington.

5. Entire Agreement. This Temporary Easement contains the entire agreement between the parties hereto and incorporates and supersedes all prior negotiations or agreements. This Temporary Easement may not be modified or supplemented in any manner or form whatsoever, either by course of dealing or by parol or written evidence of prior agreements and negotiations, except upon the subsequent written agreement of the parties. Waiver or breach of any term or condition of this Temporary Easement shall not be considered a waiver of any prior or subsequent breach.

GRANTOR:

Erik D. Noste
Erik D. Noste

DATED this 6 day of June, 2019.

GRANTOR:

Lisa E. Noste
Lisa E. Noste

DATED this 6th day of June, 2019.

STATE OF WASHINGTON }
COUNTY OF SKAGIT } ss.

I certify that I know or have satisfactory evidence that **Erik D. Noste** and **Lisa E. Noste**, a married couple, are the person(s) who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they executed the forgoing instrument as their duly authorized free and voluntary act for the uses and purposes herein mentioned.

DATED this 6th day of June, 2019.



Sarah Nuanes
Notary Public
Print name: Sarah Nuanes
Residing at: Mt Vernon, WA
My commission expires: 11-29-20

DATED this 2nd day of July, 2019.

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

Lisa Janicki, Chair

Ron Wesen, Commissioner

Kenneth A. Dahlstedt, Commissioner

Attest:

Clerk of the Board

Authorization per Resolution R20050224:

Luisa Yegre
County Administrator

Recommended:

[Signature]
Department Head

Approved as to form:

[Signature] 6/24/19
Civil Deputy Prosecuting Attorney

Approved as to indemnification:

[Signature] (7-2-19)
Risk Manager

Approved as to budget:

Luisa Yegre
Budget & Finance Director

EXHIBIT "A"
TEMPORARY EASEMENT AREA LEGAL DESCRIPTION

A TEMPORARY EASEMENT FOR THE PURPOSE OF RESTORATION AND MAINTENANCE WITHIN PARCEL NUMBER P16683 MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING ON THE NORTHWESTERN END OF TAX PARCEL P16683;
THENCE EASTERLY ± 133 FEET;
THENCE SOUTHERLY ± 186 FEET;
THENCE SOUTHWESTERLY ± 40 FEET;
THENCE NORTHEASTERLY ± 60 FEET TO THE TOP OF THE HILL;
THENCE SOUTHEASTERLY ± 178.5 FEET;
THENCE SOUTHWESTERLY ± 202 FEET TO THE SOUTHERN PROPERTY LINE;
THENCE WESTERLY ALONG THE ± 87 FEET ALONG THE SOUTHERN PROPERTY LINE;
THENCE NORTHWESTERLY ± 210 FEET TO THE WESTERN PROPERTY LINE;
THENCE NORTHERLY ± 289 FEET ALONG THE WESTERN PROPERTY LINE, RETURNING TO THE TRUE POINT OF BEGINNING.
BEING AN AREA OF ± 2.14 ACRES
SITUATE IN SKAGIT COUNTY, STATE OF WASHINGTON.

EXHIBIT "B"
GRAPHIC DEPICTION OF TEMPORARY EASEMENT AREA



This temporary easement includes the above-depicted shaded area required for installation of bank stabilization, removal of invasive vegetation, and planting riparian vegetation.

Parcel Number: P16683
Address: 20825 Bulson Road
Mount Vernon, WA 98274
Situate in the County of Skagit, State of Washington

EXHIBIT "C" RIPARIAN RESTORATION AND MAINTENANCE PLAN SCOPE OF WORK

OVERVIEW

The restoration Project site at Landowners' Property is located along Bulson Creek (Figure 1). The Project goal is to reduce erosion along the eastern bank of the creek, install large woody debris (LWD) for the purposes of bank stabilization, remove invasive vegetation, and replant with native plants in an effort to stabilize the bank and improve water quality on site for the protection, improvement, and enhancement of downstream saltwater shellfish habitat. Skagit County is contracting with Skagit Fisheries Enhancement Group to complete all of the work except for the installation of LWD to be completed by Skagit County crews.

SITE PREPARATION

Invasive Species Control

SFEG will work with the Landowners to control invasive weeds on the site in preparation for planting starting in the summer of 2019. Weeds of concern that have been identified at this site include Himalayan blackberry and reed canary grass.

Himalayan Blackberry: Blackberry grows in a thick monoculture along the west facing slope from the house down to the creek. In 2019 SFEG staff will brush-cut blackberry along the hillside, and brush-cut any clumps that are found scattered elsewhere on site. SFEG field staff will let the blackberry grow for approximately 6-8 weeks to about shin-height, then spray them with 5% glyphosate herbicide with non-ionic surfactant. Areas within 25 feet of running water will be sprayed with the aquatic formula of glyphosate to reduce environmental impact. This treatment will be repeated in 2020 to ensure complete control prior to planting.

Reed Canary Grass (RCG): RCG is prevalent in the wetland zones throughout the property. RCG is difficult to eradicate without extensive spraying or scalping, which is very disruptive and costly. However, RCG can eventually be reduced by establishing a canopy to provide shade. To combat RCG at this site, we recommend planting 6ft willow whips which will eventually shade out the grass over the course of 20 years, minimizing maintenance but providing long-term control.

SFEG controls invasive weed species that can impede establishment and growth of native plants at riparian restoration sites in a manner that is cost effective and consistent with accepted ecological restoration methods. We minimize use of herbicides to the maximum extent practical. Herbicide is applied under the supervision of a licensed applicator, with a licensed operator on site at all times during work. Operators are licensed to work in and around water and in a terrestrial environment. Herbicide will be applied in accordance with guidelines designated by the Environmental Protection Agency on appropriate herbicides for fish bearing streams. No herbicide application is conducted when rain is predicted within 6-hours or winds speeds are greater than 10mph. SFEG applies for and receives an NPDES permit to treat invasive weeds in Washington State each year, and the Pesticide Applicator for SFEG reports to NPDES yearly on our herbicide applications.

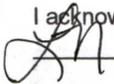
SFEG proposes to use the following herbicides at this site:

Cornerstone Plus: file:///P:/USERS/Projects/SKCO-27%20NRSP/Plans%20and%20Designs/SKCO_27-46%20Samish%20View%20Lane/MSDS%20sheets/MSDS_Cornerstone_Plus.pdf

Roundup Custom: file:///P:/USERS/Projects/SKCO-27%20NRSP/Plans%20and%20Designs/SKCO_27-46%20Samish%20View%20Lane/MSDS%20sheets/RoundupCustomMSDS.pdf

Material Safety Data Sheets (MSDS) PDF links are included above. If chemicals proposed for use change SFEG will notify the landowner in writing, provide updated MSDS sheets and obtain approval prior to utilization. Landowners will be notified by phone at least 48 hours prior to any herbicide treatment.

I acknowledge that I have been informed of and agree to use of herbicide at my property.

 (Landowner initials)

Washington State Class A weeds are those species where control is required when these species are found. SFEG will conduct an annual training session to teach SFEG staff and contractors to recognize all state Class A invasive weeds that could be present in our work areas. If encountered in the field SFEG will report Class A weeds to the landowner in writing, and will provide information on state control requirements and recommended methods. If approved by the landowner, SFEG will control these weeds using recommended methods, and will report infestations to the appropriate Cooperative Weed Management Area (CWMA).

Washington State Class B weeds are those species where control is recommended by the state and/or recommended/required by the county noxious weed board. If encountered at a work site, SFEG staff will inform the landowner of the presences of Class B species and provide information on recommended means of control. Control of Class B weeds will not be conducted as part of this restoration project. The following Class C weeds are considered to be a threat to successful riparian restoration if they occur within restoration sites:

- Himalayan blackberry (*Rubus armeniacus*)
- Evergreen blackberry (*Rubus laciniatus*)
- Morning glory (*Convolvulus arvensis*)
- English ivy (*Hedera spp.*)
- Old man's beard/Travelers joy (*Clematis vitalba*)
- Reed canary grass (*Phalaris arundinacea*)

The above class C weeds will be controlled as part of restoration site preparation and maintenance when they occur within the restoration area. The above weeds will be controlled within the restoration area for the duration of the contract.

RIPARIAN PLANTING

Following two years of site preparation, SFEG will begin planting in the winter of 2021. SFEG crew members will plant native trees and shrubs along Bulson Creek (see maps). Plantings in the forested riparian understory will be mainly conifer, with the exception of the hillside which will be primarily short shrubs that can be trimmed without adverse impacts to the plant, allowing the landowner to maintain views over the long-term. The Landowners may choose to hedge the roses planted near the house to further maintain sight lines and a tidy appearance. Plants will be spaced 20 ft apart where the overstory is

established, 6ft apart on the hillslope next to the house, and 4ft apart in the wetland where live stakes will be used. The wetland will be planted with a mix of willow and red osier dogwood to shade out reed canary grass, avoiding areas where healthy wetland plants are already growing (swamp lantern, etc.). Protectors will not be used in the planting due to concerns about flooding and eventual washout from the site.

Approximately 1,540 plants will be installed. There will be a total of three planting areas. Planting zone A is approximately 22,568 ft², zone B is approximately 13,357 ft², and zone C is approximately 7,870 ft². The spacing of the plants will be 15 feet on center for trees, 6 feet on center for shrubs, 2 feet on center for ground-cover and 15 feet on center for underplantings. At least 30% of the total installed plants will be conifers.

Plant species may include the following:

Big Leaf Maple (<i>Acer macrophyllum</i>)	Red alder (<i>Alnus rubera</i>)
Cascara (<i>Rhamnus purshiana</i>)	Red flowering currant (<i>Ribes sanguineum</i>)
Cottonwood (<i>Populus trichocarpa</i>)	Salmonberry (<i>Rubus spectabilis</i>)
Crab Apple (<i>Malus fusca</i>)	Salal (<i>Gaultheria shallon</i>)
Red Osier Dogwood (<i>Cornus stolonifera</i>)	Scouler's Willow (<i>Salix scouleriana</i>)
Douglas fir (<i>Pseudotsuga menziesii</i>)	Serviceberry (<i>Amelanchier</i> spp.)
Red Elderberry (<i>Sambucus racemosa</i>)	Sitka spruce (<i>Picea sitchensis</i>)
Grand fir (<i>Abies grandis</i>)	Snowberry (<i>Symphoricarpos albus</i>)
Hazelnut (<i>Corylus cornuta</i>)	Spirea (<i>Spirea douglasii</i>)
Highbush cranberry (<i>Virbumum opulus</i>)	Sweetgale (<i>Myrica spalic</i>)
Indian plum (<i>Oemleria cerasiformis</i>)	Thimbleberry (<i>Rubus parviflorus</i>)
Kinnikinnick (<i>Arctostaphylos uva-ursi</i>)	Twinberry (<i>Lonicera involucrate</i>)
Mock orange (<i>Philadelphus lewisii</i>)	Vine maple (<i>Acer circinatum</i>)
Nine bark (<i>Physocarpus capitatus</i>)	Western hemlock (<i>Tsuga heterophylla</i>)
Nootka rose (<i>Rosa nutkana</i>)	Western red cedar (<i>Thuja plicata</i>)
Oceanspray (<i>Holodiscus discolor</i>)	Willow species (<i>Salix</i> spp.)
Oregon Ash (<i>Fraxinus latifolia</i>)	Woodland strawberry (<i>Fragaria vesca</i> L.)
Paper birch (<i>Betula papyrifera</i>)	

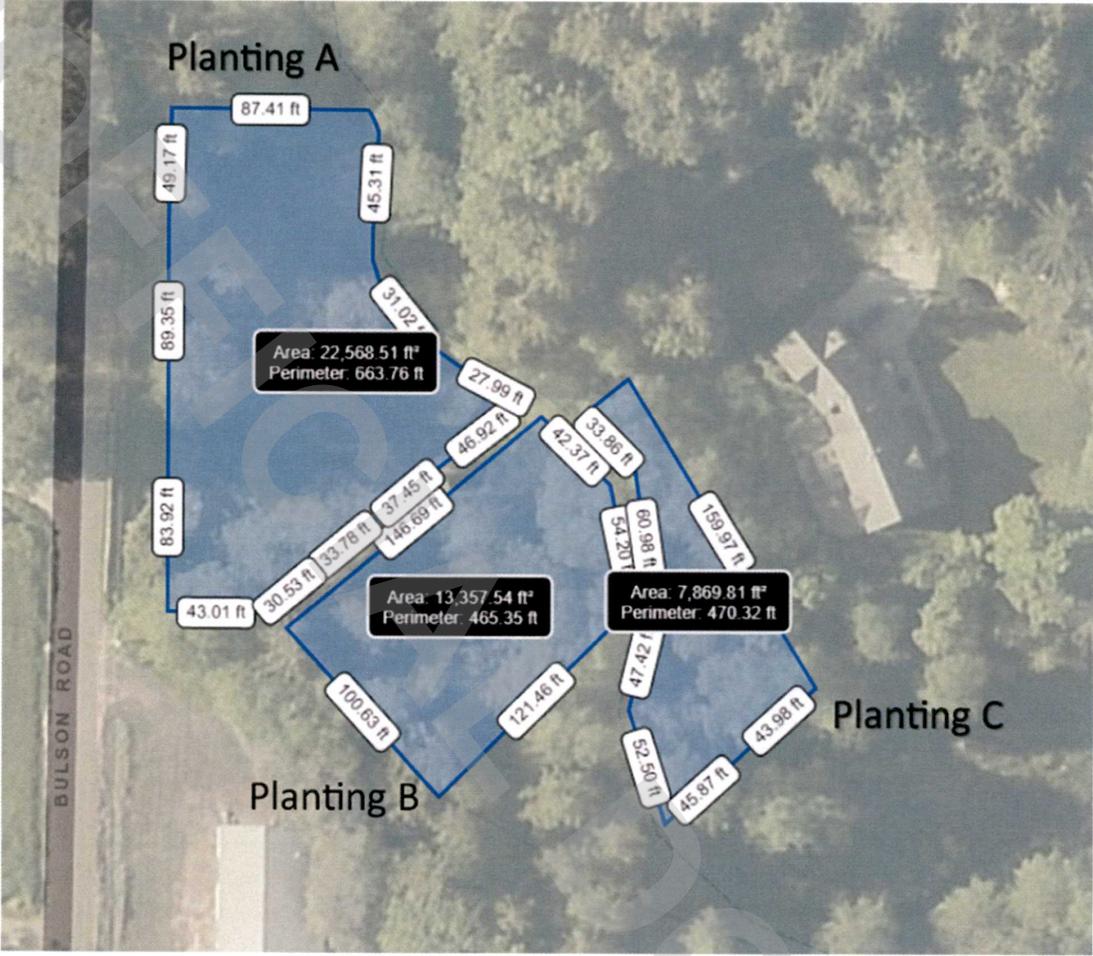


Figure 1. Three planting areas showing in more detail in Figures 2, 3 and 4.



Figure 2. Planting area A. 0.52 acres.



Figure 3. Planting area B. 0.31 acres.



Figure 4. Planting area C. 0.18 acres.



Figure 2. View of blackberry covered hillside, taken from the bridge.



Figure 3. Southeast facing view of Bulson Creek.

MAINTENANCE

After planting, SFEG will transition to manual removal of blackberry where feasible. While our goal is to be able to maintain the site without using herbicide, this goal is dependent on the weed load and site specific conditions. If dense re-growth occurs we may utilize a combination of spot spraying and manual control. SFEG crews will continue to visit the site at a minimum of once per year to maintain the planting area until the final year of the grant in 2023.

MONITORING

Revegetation success will be monitored following SFEG's standard monitoring protocol. SFEG's vegetation monitoring protocol involves establishing 1/10th acres circular plots per one acre to represent 10% of the population. Planting sites are monitored for 10-years following establishment, by staff during the time when the project is active, and by volunteers in subsequent years. Plots are sampled in years 1, 2, 3, 5, 7 and 10.

Plant mortality, health, and herbivory or other damage is recorded to derive an overall site condition each year. SFEG evaluates both survival percentage (compared to the original number of plants installed) and tree-stocking (total trees per acre including both planted and naturally recruited trees) in each year that monitoring occurs. These data are used to determine the need for revegetation; SFEG will ensure that at least 80% of the plants originally installed are live at the end of the grant, or that 190 shrubs per acre stocking is met in the wetland portion of the planting. The need for re-planting will be evaluated in the summer of 2022.

For this site, two plots will be established; one on the hillside and one in the wetland. In addition, SFEG staff will spot check the understory to determine if conifer survival is acceptable. If the monitoring data shows that a replant is required, the revegetation will occur in the fall of 2023, the final year of the grant. NRSP sites are monitored while funding is current, and are visited for the first three years after planting.

TIMELINE

2019													2020											
Project Tasks	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
Site Preparation																								
Planting																								
Maintenance																								
Monitoring																								
2021													2022											
Project Tasks	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
Site Preparation																								
Planting																								
Maintenance																								
Monitoring																								
2023																								
Project Tasks	J	F	M	A	M	J	J	A	S	O	N	D												
Site Preparation																								
Planting																								
Maintenance																								
Monitoring																								

EXHIBIT "D"

LEGAL DESCRIPTION OF LANDOWNERS' PROPERTY

Lot 2 and that portion of Lot 1 of Skagit County Short Plat No. 58-80, recorded in Volume 4 of Short Plats, page 102, under Auditor's File No. 8005270032, being a portion of the Southwest 1/4 of the Southwest 1/4 of Section 16, Township 33 North, Range 4 East, W.M., described as follows:

Beginning at the Northeast corner of Lot 2 of said Short Plat No. 58-80; thence South 89 degrees 07'18" East 169.71 feet along the North line of Lot 1 of said Short Plat No. 58-80, said line also being the North line of the Southwest 1/4 of the Southwest 1/4 of said Section 16, to the Northeast corner of the West 1/2 of the Southwest 1/4 of the Southwest 1/4; thence South 2 degrees 21'00" West 466.84 feet along the East line of said West 1/2 of the Southwest 1/4 to the Southwest 1/4; thence North 89 degrees 07'18" West 172.98 feet parallel with the North line of said Lot 1 to the Southeast corner of said Lot 2; thence North 2 degrees 45'02" East 466.94 feet along the East line of said Lot 2 to the Point of Beginning.