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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

REVIEWED BY
SKAGIT COUNTY TREASURER
DEPUTY Bena Thompson
DATE 10.19.23

DOCUMENT TITLE: TEMPORARY EASEMENT

REFERENCE NUMBER OF RELATED DOCUMENT: Not Applicable

GRANTOR(S): Iaccino Holdings Inc, a Texas Limited Liability Company.

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

ABBREVIATED LEGAL DESCRIPTION: A temporary easement located within CU F&A #301 AF#792567 1975 TRNSF AF#807327: LT 4, SECTION 25, TOWNSHIP 35 NORTH, RANGE 4 EAST, W.M., S OF HARTS SLO & N OF SKAGIT RIV LESS HWY & RT#0-021-01

ASSESSOR'S TAX / PARCEL NUMBER(S): P37612, P37614, P37635, and P37636
(Xref ID: 350425-0-019-0005, 350425-0-021-0001, 350425-0-039-0100, and 350425-0-039-0209).

TEMPORARY EASEMENT

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

The undersigned, **Iaccino Holdings Inc**, a Texas Limited Liability Company (herein "Grantor" or "Landowner"), 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. Landowner 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 Landowner 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 Landowner's 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 creosote pilings, 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 Landowner's 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 Landowner represents and warrants to the County that the Landowner is the legal owner of the property described in *Exhibit "D"* (the "Landowner's Property"), and further represents and warrants to the County that there are no outstanding rights which interfere with this Temporary Easement agreement. The Landowner also acknowledges that a change in property ownership will not change the encumbrance of the Landowner's Property created by the terms of this Temporary Easement, and the Landowner agrees to inform any future owner of Landowner's Property of this Temporary Easement prior to sale or transfer of the Landowner's 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 Landowner's Property for the duration of this Temporary Easement). The Landowner agrees to notify the County, within thirty (30) days of transfer, of changes in ownership during the term of this Temporary Easement.

1.3 Landowner agrees to inform the County (and the County's agents, employees, and contractors) of all known safety hazards on Landowner's 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 Landowner retains the right to control trespass on Landowner's Property, and Landowner shall retain all responsibility for taxes, assessments, and for any claims for damages to Landowner's Property.

1.5 Landowner recognizes and agrees 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 Landowner's 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. Landowner 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 creosote pilings and installation of 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 Landowner shall be responsible for plant preservation, not to include active maintenance, following this three (3) year period.

2.1.3 Project Preservation. Landowner agrees to preserve the Project in a substantially similar 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 Landowner shall be responsible for all riparian restoration preservation required as part of the Project. Landowner may be required to reimburse the County for Project costs funded by the County in the event that the Landowner does not preserve the Project in accordance with the terms of this Temporary Easement.

2.2 The Landowner acknowledges that Landowner is 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 Landowner's Property to be used for such purposes pursuant to the terms of this Temporary Easement. The Landowner agrees that the Project, when completed, will not now or in the future result in damages to the Landowner's Property, and that the County is not liable for any impacts to Landowner's 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 Landowner's Property in exercise of County's rights herein granted by this Temporary Easement (including for the workplace safety of the County's employees, agents, or representatives while performing Project work on the Landowner's Property). The County assumes no liability for any alleged damage to Landowner's Property resulting from this Temporary Easement, or from any source other than as may be expressly set forth herein.

2.4 The terms of this temporary easement agreement shall not negatively interfere with or impact other potential future County projects at the Landowner's Property, and accordingly the parties further agree as follows:

2.4.1 The County and Landowner anticipate that during the ten (10) year term of this temporary easement agreement, other County project(s) to be performed at or adjacent to, and potentially involving, and/or related to the Landowner's Property may be mutually necessary or desirable to implement, specifically including, but not necessarily limited to, bridge debris removal from the Skagit river, and/or the demolition and removal of a currently unused railroad bridge crossing the Skagit river located adjacent to the Landowner's Property ("other County projects").

2.4.2 The parties recognize and agree that the terms of this temporary easement agreement are not intended to be and shall not interfere with the design, permitting, construction, maintenance and/or use of any other County projects as may be performed by the County at and/or in the vicinity of Landowner's Property. In the event that other County projects require such work to be performed, the terms of this temporary easement agreement shall not be interpreted or construed to be inconsistent with such future work to be performed as arising from and/or related to other County projects.

2.4.3 If requested by the County, terms of a separate subsequent temporary construction easement agreement for such other County projects (consistent with the County's current standard terms and format for such agreements as of the date of execution of this temporary easement agreement) will be separately discussed and negotiated by and between the parties, independently from this temporary construction easement. If determined by the County to be necessary or appropriate to facilitate other County projects (involving bridge debris removal and/or the demolition or removal of the unused railroad bridge), upon request of the County, the parties shall reasonably cooperate to discuss, negotiate, and implement subsequent written amendment(s) to this temporary easement agreement (duly executed by the parties). The parties shall reasonably cooperate in good faith concerning the forgoing terms of this Section 2.4.3.

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 arising from 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:**Iaccino Holdings Inc**, a Texas Limited Liability CompanyBy: Larry Lee Iaccino, Governing PersonDATED this 25th day of September, 2023.**STATE OF WASHINGTON**

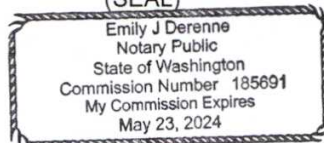
} ss.

COUNTY OF SKAGIT

I certify that I know or have satisfactory evidence that **Larry Lee Iaccino**, as a Governing Person of **Iaccino Holdings Inc**, a Texas Limited Liability Company, is the person who appeared before me, and said person acknowledged that he signed this instrument, and on oath stated that he executed the forgoing instrument as his duly authorized free and voluntary act for the uses and purposes herein mentioned.

DATED this 25th day of September, 2023.

(SEAL)



Notary Public

Print name: EMILY DERENNEResiding at: Bellingham WAMy commission expires: May 23, 2024

DATED this 12 day of October, 2023.

BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON

Ron Wesen, Chair

Lisa Janicki, Commissioner

Peter Browning, Commissioner

Attest:

Clerk of the Board

Recommended:



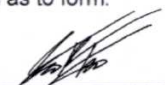
Department Head

Authorization per Resolution R20160001:



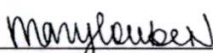
County Administrator

Approved as to form:

 10/11/23

Civil Deputy Prosecuting Attorney

Approved as to indemnification:



Risk Manager

Approved as to budget:



Budget & Finance Director

EXHIBIT "A"
TEMPORARY EASEMENT AREA LEGAL DESCRIPTION

A temporary easement for the purpose of restoration and maintenance within the Skagit County tax parcels P37612, P37614, P37635, and P37636, easement area described more particular as follows:

"Hart Slough Area:"

A strip of land 100.00 feet in width, lying South of the center of Hart's Slough (AKA Batey's Slough);

Easement area containing 3.6± acres, more or less.

"State Route 9 Area"

Together with a strip of land 150 feet in width, lying easterly of the East margin of State Route 9;

Easement area containing 3.6± acres, more or less.

"Skagit River Area"

Together with a strip of land with varying widths, lying south of constructed Diamond Road (Private Road) and north of the right bank of the Skagit River;

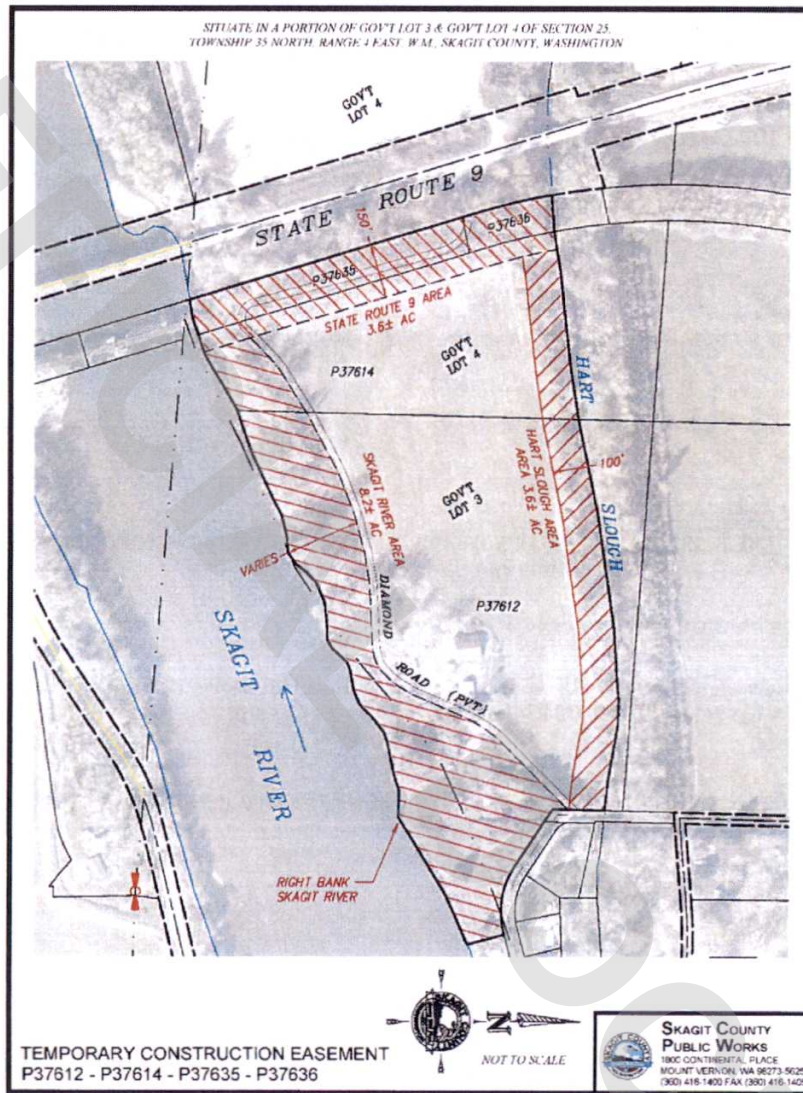
Easement area containing 8.2± acres, more or less.

All within portions of Parcels 'A' 'B' 'C' as described in the Bargain and Sale Deed filed under Auditor's file No. 202112300154, records of Skagit County, WA; Also Exhibit "D" of this document.

Subject to all covenants, conditions, restrictions, reservations, agreements, easements, provisions, and assessments of record, if any.

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 the Project.

Address: 23430 Diamond Road
 Sedro Woolley, WA 98284
 Situate in the County of Skagit, State of Washington

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

SITE DESCRIPTION

General location: Lower Skagit Watershed
Total planting area (acres): 3.9 acres

OVERVIEW

This privately owned restoration site on Landowner's property is located along Hart Slough, an off-channel feature of the Skagit River near Sedro-Woolley. The goal of this project is to remove an approximately 3.9-acre monoculture of invasive vegetation (particularly Himalayan blackberry and knotweed) growing in the riparian zone and install native plants. The riparian buffer along Hart Slough will be enhanced to an average width of 100 feet. This project will support the establishment of 1,700 native trees and shrubs over 3.9 acres to improve approximately 1,700 linear feet of Hart Slough. A small portion of invasive species control will occur along the Skagit River. Hart Slough supports documented populations of Chinook, coho, chum, pink and sockeye salmon as well as resident cutthroat trout and steelhead and has been identified as water quality impaired for Fecal Coliform, pH, and Dissolved Oxygen. Removal of invasive plant species in favor of a diverse mixture of native trees and shrubs will help to improve water quality on site for the protection, improvement, and enhancement of downstream saltwater shellfish habitat.

SITE PREPARATION

Invasive Species Control

Control invasive weeds on the site in preparation for planting will start in the summer of 2023. The primary weeds of concern that have been identified at this site are Himalayan blackberry and Japanese knotweed.

Himalayan blackberry: Blackberry grows in a dense monoculture throughout the understory of the site. In 2023 blackberry will be mowed where it occurs throughout the site. Blackberry will regrow for approximately 6-8 weeks to approximately shin-height and then be sprayed with 2% glyphosate herbicide with non-ionic surfactant as a foliar spray. Areas within 25 feet of running water will be sprayed with the aquatic formula of glyphosate in accordance with product label requirements. Transition to manual removal of blackberries may occur after one year of treatment; however, a foliar spray treatment may be repeated in 2024 to ensure complete control prior to planting.

Japanese knotweed: Knotweed control will occur along the Skagit River as well as Hart Slough. Knotweed grows in a dense patch along the Skagit and in patches and scattered individuals in the Hart Slough planting area – particularly towards the western end of the site. Herbicide application is the most reliable and cost-effective control method for knotweed. In concurrence with blackberry treatment during the summer of 2023, a 1% imazapyr solution mixed with a non-ionic surfactant will be applied as a foliar spray to knotweed. Staff will continue to monitor the regrowth of existing knotweed patches and retreat with the same spray mixture in subsequent years.

NRSP 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 10 mph. The County applies for and receives an NPDES permit to treat invasive weeds in Washington State each year, and the Pesticide Applicator for staff reports to NPDES yearly on our herbicide applications.

The following herbicides are proposed for use at this site:

Roundup Custom:

https://labelsds.com/images/user_uploads/Roundup%20Custom%20SDS%209-25-20.pdf

Cornerstone Plus:

https://labelsds.com/images/user_uploads/Cornerstone%20Plus%20Label%201-9-19.pdf

Polaris: https://labelsds.com/images/user_uploads/Polaris%20SDS%205-11-20.pdf

Material Safety Data Sheets (MSDS) PDF links are attached to this planting plan. If chemicals proposed for use change SFEG will notify the Landowner in writing, provide updated MSDS sheets and obtain approval prior to utilization. Landowner 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 the use of herbicide at this property.

 (Landowner's initials)

Washington State Class A weeds are those species where control is required when these species are found. If encountered in the field Class A weeds will be reported to the landowner in writing along with information on state control requirements and recommended methods. If approved by the Landowner, NRSP 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, 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.

A ten-foot path is included along the southern end of Hart Slough for access for invasive removal. This area will be replanted with Orchard grass upon completion of the site preparation phase.

RIPARIAN RESTORATION

Riparian Planting

Following two years of site preparation, planting will begin in the winter of 2024/2025. Native trees and shrubs will be planted over approximately 3.9 acres of understory riparian habitat. Plantings in the forested riparian understory will be a mixture of long-lived conifers, deciduous trees and flowering shrubs. At the request of the Landowner, the eastern end of the planting area will be planted exclusively with shrubs. Plants will be spaced 6-10 ft apart on average but may be spaced closer in areas where the overstory is not well established. Protectors and bamboo may be used to protect the planting from browse by deer and rodents. The planting list will be finalized following site preparation. The estimated planting list includes:

Shrub only planting (east end) 0.6 acres			350
Species	Common Name	Type	Total
<i>Salix sitchensis</i>	Sitka willow	Potted/BR	50
<i>Cornus sericea</i>	Red-osier dogwood	Potted/BR	50
<i>Sambucus racemosa</i>	Red elderberry	Potted/BR	50
<i>Lonicera involucrata</i>	Black twinberry	Potted/BR	50
<i>Rosa nutkana</i>	Nootka rose	Potted/BR	50
<i>Holodiscus discolor</i>	Oceanspray	Potted/BR	50
<i>Physocarpus capitatus</i>	Pacific ninebark	Potted/BR	50
Mixed understory planting 3.3 acres			1350
Species	Common Name	Type	Total
<i>Thuja plicata</i>	Western red cedar	Potted/BR	300
<i>Pseudotsuga menziesii</i>	Douglas fir	Potted/BR	200
<i>Abies grandis</i>	Grand fir	Potted/BR	100
<i>Acer macrophyllum</i>	Bigleaf maple	Potted/BR	100
<i>Alnus rubra</i>	Red alder	Potted/BR	100
<i>Salix lucida</i>	Pacific willow	Potted/BR	100
<i>Salix sitchensis</i>	Sitka willow	Potted/BR	50
<i>Prunus emarginata</i>	Bitter cherry	Potted/BR	50
<i>Malus fusca</i>	Pacific crabapple	Potted/BR	50
<i>Crataegus douglasii</i>	Douglas hawthorn	Potted/BR	50
<i>Acer cicutatum</i>	Vine maple	Potted/BR	50
<i>Cornus sericea</i>	Red-osier dogwood	Potted/BR	50
<i>Sambucus racemosa</i>	Red elderberry	Potted/BR	50
<i>Lonicera involucrata</i>	Black twinberry	Potted/BR	50
<i>Rosa nutkana</i>	Nootka rose	Potted/BR	50
Site Total			1700

CREOSOTE REMOVAL

There are approximately twenty-four (24) creosote pilings on Landowner's property ("pilings") that were installed decades ago for a nearby railroad bridge (not currently in use). The pilings are in two (2) areas, one area is located in the vicinity of the shoreline, and another area is located landward. Pilings will be removed during the permitted work window, anticipated to be late summer 2023. Pilings will be disposed of in an approved location. The area will be replanted under the Riparian Planting section.

MAINTENANCE

After planting, the site will transition to manual removal of blackberry where feasible. While the 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 regrowth occurs, maintenance may include a combination of spot spraying and manual control. Crews will continue to visit the site at a minimum of once per year to maintain the planting area for three growing seasons after the planting phase of the project is complete.

MONITORING

Revegetation success will be monitored following standard monitoring protocol. Planting sites are monitored for 10-years following establishment. Plots are ideally sampled in years 1, 2, 3, 5, 7 and 10 after planting. Monitoring visitations may be limited following completion of maintenance.

Plant mortality, health, and herbivory or other damage is recorded to derive an overall site condition each year. 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) are evaluated in each year that monitoring occurs. These data are used to determine the need for revegetation; at least 80% of the plants originally installed are required to be alive at the end of the maintenance period. The need for re-planting will be evaluated in the summers of 2025 and 2026.

TIMELINE

2023											
Project Task	J	F	M	A	M	J	J	A	S	O	N
Site Preparation											
Planting											
Creosote Removal											
Maintenance											
Monitoring											
2024											
Project Task	J	F	M	A	M	J	J	A	S	O	N
Site Preparation											
Planting											
Creosote Removal											
Maintenance											
Monitoring											
2025											
Project Task	J	F	M	A	M	J	J	A	S	O	N
Planting											
Maintenance											
Monitoring											
2026											
Project Task	J	F	M	A	M	J	J	A	S	O	N
Planting											
Maintenance											
Monitoring											
2027											
Project Task	J	F	M	A	M	J	J	A	S	O	N
Planting											
Maintenance											
Monitoring											

¹ Creosote removal will occur summer 2024 if permits are not received for summer 2023 work window.

² Replanting will occur, if required, in fall 2026/early 2027 to reach 80% survivability

SITE MAP



EXHIBIT "D"
LEGAL DESCRIPTION OF GRANTOR'S PROPERTY

Per Statutory Warranty Deed AF#202112300154

PARCEL "A"

That portion of Government Lots 3 and 4, Section 25, Township 35 North, Range 4 East, W.M., lying South of the centerline of Hart's Slough (sometimes referred to as Batey's Slough), as the same existed on June 18, 1926, EXCEPT rights of way of Northern Pacific Railway Company and Seattle Lake Shore and Eastern Railway Company, EXCEPT State Highway, AND EXCEPT that portion of said Government Lot 3, lying within the "PLAT OF JANICKI COVE DIV. NO. 1," as per plat recorded in Volume 10 of Plats, pages 1, 2 and 3, records of Skagit County, Washington.

Situate in the County of Skagit, State of Washington.

PARCEL "B"

That portion of the old right of way of Secondary State Highway No. 1-A, (Third Street Extension) in the North 1/2 of the Southwest 1/4, and Government Lot 3 of Section 25, Township 35 North, Range 4 East, W.M., lying South of the South line of its intersection with the River Road No. 481, and North of the North Bank of the Skagit River, EXCEPT any portion lying within the "PLAT OF JANICKI COVE DIV. NO. 1," as per plat recorded in Volume 10 of Plats, pages 1, 2 and 3, records of Skagit County, Washington.

Situate in the County of Skagit, State of Washington.

PARCEL "C"

All that portion of Burlington Northern Railway Company's 100 foot wide Clear Lake to Sedro-Woolley Branch Line, now discontinued, being 50 feet wide on each side of the main tract centerline as originally located and constructed upon, over and across Government Lot 4, Section 25, Township 35 North, Range 4 East, W.M., near Sedro-Woolley, Skagit County, Washington, lying between two lines drawn perpendicular to said main tract centerline and being respectively, at the South line of said Section 25 and 1,117.4 feet Northerly as measured along said main tract line from the South line of Section 25.

Situate in the County of Skagit, State of Washington.