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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 *Emily Derenne*
DATE *4.17.24*

SKAGIT COUNTY
Contract # C20240185
Page 1 of 14

DOCUMENT TITLE: **TEMPORARY EASEMENT**

REFERENCE NUMBER OF RELATED DOCUMENT: *Not Applicable*

GRANTOR(S): **Jennifer L. Lewis and Nicholas C. Lewis**, a married couple.

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

ABBREVIATED LEGAL DESCRIPTION: A temporary easement located within PTN.
GOV LOT 2 AND SW NE, 05-35-05

ASSESSOR'S TAX / PARCEL NUMBER(S): **P17895** (Xref ID: 330505-0-002-0009)

TEMPORARY EASEMENT

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

The undersigned, **Jennifer L. Lewis and Nicholas C. Lewis**, 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 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 construction of bank stabilizing large woody debris 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 and riparian plantings 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 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 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 (including for the workplace safety of the County's employees, agents, or representatives while performing Project work on the Landowners' Property). 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.

GRANTORS:

Jennifer L. Lewis and Nicholas C. Lewis, a married couple.

J L Lewis

Jennifer L. Lewis

DATED this 19 day of MARCH, 2024.

STATE OF WASHINGTON

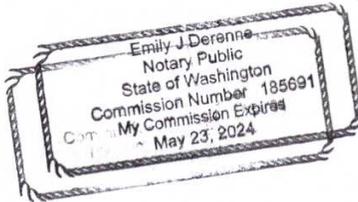
COUNTY OF SKAGIT

} ss.

I certify that I know or have satisfactory evidence that **Jennifer L. Lewis** is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she executed the forgoing instrument as her duly authorized free and voluntary act for the uses and purposes herein mentioned.

DATED this 19 day of March, 2024.

(SEAL)



Emily Derenne
Notary Public

Print name: Emily Derenne

Residing at: Bellingham WA

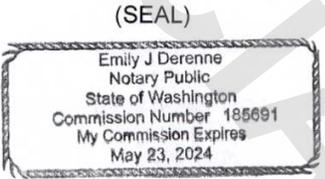
My commission expires: 5/23/24

Nicholas C. Lewis
Nicholas C. Lewis
DATED this 19th day of March, 2024.

STATE OF WASHINGTON }
COUNTY OF SKAGIT } ss.

I certify that I know or have satisfactory evidence that **Nicholas C. Lewis** is the person who appeared before me, and said person acknowledged that he signed this instrument, 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 19 day of March, 2024.



Emily J Derenne
Notary Public
Print name: Emily Derenne
Residing at: Bellevue WA
My commission expires: 5/23/24

DATED this 9 day of April, 2024.

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

Peter Browning, Chair

Ron Wesen, Commissioner

Lisa Janicki, Commissioner

Attest:

Clerk of the Board

Authorization per Resolution R20160001

Susha Yegor
County Administrator

Recommended:

[Signature]
Department Head

Approved as to form:

Erik Pedersen
Civil Deputy Prosecuting Attorney
Erik Pedersen, Reviewed 4/3/2024

Approved as to indemnification:

Marylauben
Risk Manager

Approved as to budget:

Susha Yegor
Budget & Finance Director

EXHIBIT "A"

TEMPORARY EASEMENT AREA LEGAL DESCRIPTION

A temporary easement 100 feet wide for the purposes of riparian restoration and maintenance over and across a portion of Southwest Quarter of the Northeast Quarter of Section 5, Township 33 North, Range 5 East, W.M., easement described as follows:

COMMENCING at the Southwest Corner of said Southwest Quarter of the Northeast Quarter; Thence northerly along the West Line of said Southwest Quarter a distance of 584 feet, more or less, to the North Bank of Walker Creek as it exists and the **POINT OF BEGINNING**;

Thence easterly along said North Bank of Walker Creek a distance of 2,275 feet, more or less, to the East Line of said Southwest Quarter; Thence northerly along said East Line 111 feet; Thence westerly parallel with said North Bank a distance of 1,120 feet, more or less, to said West Line; Thence southerly along said West Line a distance of 102 feet, more or less, to said North Bank and the **POINT OF BEGINNING**.

Easement Containing 4.5 acres, more or less.

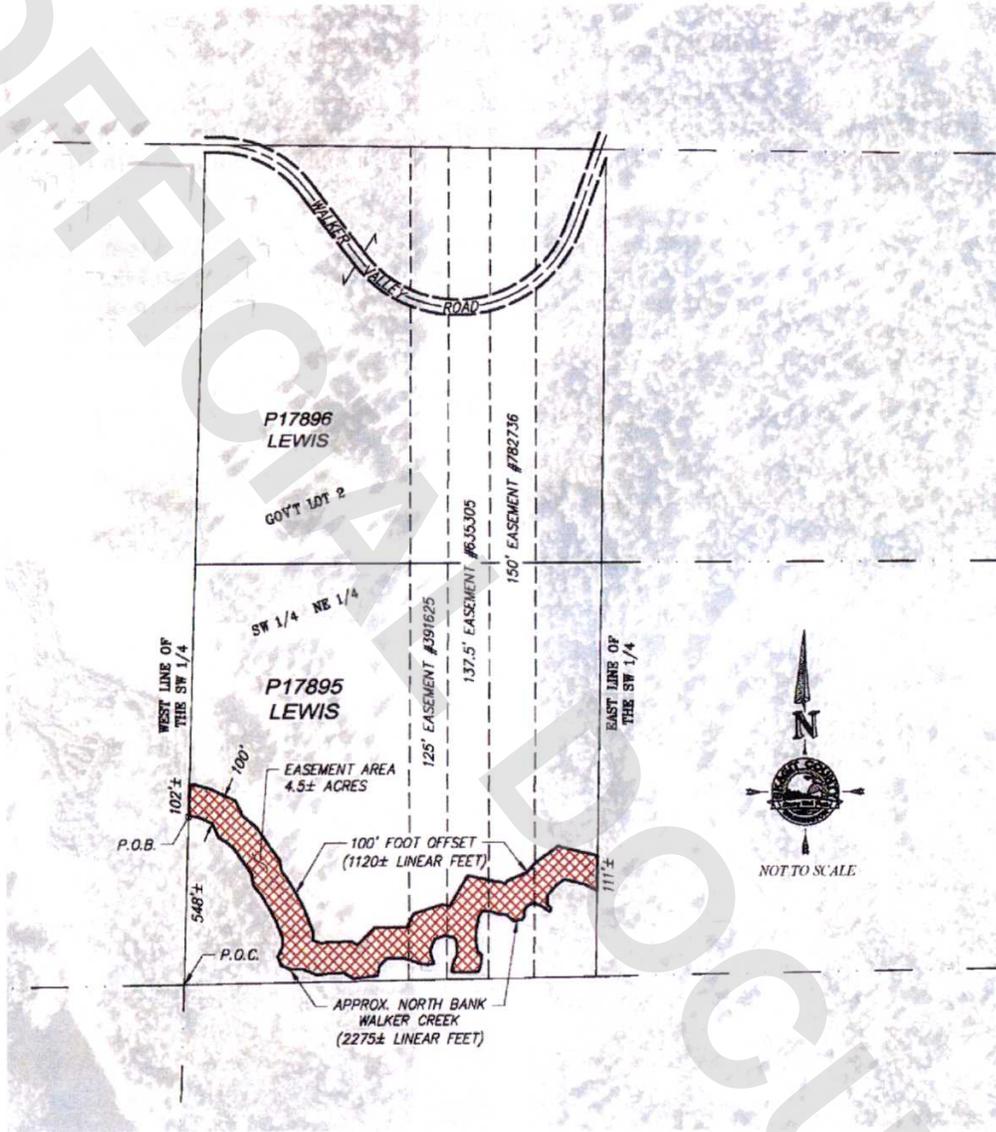
Subject to all covenants, conditions, restrictions, reservations, agreements, easements, provisions, and assessments of record, if any.

Situate in Skagit county, State of Washington.

EXHIBIT "B"

GRAPHIC DEPICTION OF TEMPORARY EASEMENT AREA

SITUATE IN A PORTION OF THE SW 1/4 OF THE NE 1/4 OF SECTION 5,
TOWNSHIP 33 NORTH, RANGE 5 EAST, W.M., SKAGIT COUNTY, WASHINGTON



TEMPORARY MAINTENANCE & RESTORATION EASEMENT
P17895 - 25406 WALKER VALLEY ROAD



**SKAGIT COUNTY
PUBLIC WORKS**
1800 CONTINENTAL PLACE
MOUNT VERNON, WA 98273-5625
(360) 416-1400 FAX (360) 416-1405

EXHIBIT "C"

RIPARIAN RESTORATION AND MAINTENANCE PLAN SCOPE OF WORK

Overview

This privately owned restoration site is located along Walker Creek, a tributary to Nookachamps Creek located east of the community of Big Lake. The goal of this project is to remove an approximately 3.5-acre monoculture of invasive vegetation (particularly Himalayan blackberry and knotweed) growing in the riparian zone and install native plants (Figure 1). 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 in Skagit Bay. The riparian buffer along Walker Creek will be enhanced to an average width of approximately 100 feet. This project will support the establishment of 2,000 native trees and shrubs over 3.5 acres to improve approximately 1,700 linear feet of stream. The Project includes fencing along active pasture areas, separating grazing areas from stream buffers.



Figure 1. Planting area schematic. Large (blue) areas denotes new planting. Smaller inset shows new planting and previous NRSP project (north – red area).

SITE PREPARATION

Invasive Species Control

Starting in the late spring of 2024, the County will control invasive weeds on the site in preparation for planting. The primary weeds of concern that have been identified at this site are Himalayan blackberry and Japanese knotweed. Each weed will be controlled as described below:

Himalayan blackberry: Blackberry grows in a dense monoculture throughout the riparian area of the site. In 2024 a crew will mow blackberry where it occurs throughout the site. Blackberry will regrow for approximately 6-8 weeks to around shin-height, then the regrowth will be sprayed with 1% triclopyr herbicide with non-ionic surfactant as a foliar spray. A follow up herbicide application in late summer 2024 using 2% glyphosate herbicide with a non-ionic surfactant will

also occur. Areas within 25 feet of running water will be sprayed with the aquatic formula of glyphosate in accordance with product label requirements. Two herbicide applications will be necessary within the same growing season because the site will be planted after only one year of site preparation due to funding constraints. Triclopyr is more effective in early summer, while glyphosate is more effective in late summer.

Japanese knotweed: Knotweed grows in patches and scattered individuals in the planting area – particularly right along Walker Creek. Herbicide application is the most reliable and cost-effective control method for knotweed. In concurrence with blackberry treatment during the summer of 2024, 1% imazapyr solution mixed with a non-ionic surfactant will be applied as a foliar spray. Regrowth will be monitored and retreated with the same spray mixture in subsequent years, as needed.

This project will control 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. Use of herbicides will be minimized to the 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 following herbicides are proposed at this site:

Garlon 4 Ultra: https://s3-us-west-1.amazonaws.com/agrian-cg-fs1-production/pdfs/Garlon_4_Ultra1p_Label.pdf

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. 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 the use of herbicide at this property.

NOZ (Landowner initials)

Washington State Class A weeds are those species where control is required when these species are found. If encountered in the field all Class A weeds will be reported to the landowner in writing and information will be provided on state control requirements and recommended methods. If approved by the landowner, treatment and control of these weeds using recommended methods will be incorporated into the project.

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, Class B weeds will be reported to the Landowners. Control of Class B weeds will not be conducted as part of this Project.

Class C weeds will be controlled as part of the Project work for restoration site preparation and maintenance when they occur within the Project restoration area. The above weeds will be controlled within the Project restoration area for the duration of this contract. The following Class C weeds are 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*)

Riparian Planting

Following one year of site preparation, planting will begin (estimated in the winter of 2024/2025). Crews will plant native trees and shrubs over approximately 3.5 acres of understory riparian habitat. Plantings in the pasture conversion area will be a mixture of long-lived conifers, deciduous trees and flowering shrubs. Beneath the BPA powerline easement, the plant list is composed exclusively of native shrubs (Figure 2). Plants will be spaced 6-10 ft apart on average. Protectors and bamboo may be used to protect the planting from browse by deer and rodents. Protectors will be removed upon completion of the project, but bamboo will be left on site.

Shrub only planting (powerline easement) 0.75 acres		
Species	Common Name	Type
Salix sitchensis	Sitka willow	Potted/BR
Cornus sericea	Red-osier dogwood	Potted/BR
Sambucus racemosa	Red elderberry	Potted/BR
Lonicera involucrata	Black twinberry	Potted/BR
Rosa nutkana	Nootka rose	Potted/BR
Holodiscus discolor	Oceanspray	Potted/BR
Physocarpus capitatus	Pacific ninebark	Potted/BR
Field conversion planting 2.75 acres		
Species	Common Name	Type
Thuja plicata	Western redcedar	Potted/BR
Pseudotsuga menziesii	Douglas fir	Potted/BR
Picea sitchensis	Sitka spruce	Potted/BR
Abies grandis	Grand fir	Potted/BR
Acer macrophyllum	Bigleaf maple	Potted/BR
Alnus rubra	Red alder	Potted/BR
Salix lucida	Pacific willow	Potted/BR
Salix sitchensis	Sitka willow	Potted/BR
Prunus emarginata	Bitter cherry	Potted/BR
Malus fusca	Pacific crabapple	Potted/BR
Crataegus douglasii	Douglas hawthorn	Potted/BR
Cornus sericea	Red-osier dogwood	Potted/BR
Sambucus racemosa	Red elderberry	Potted/BR
Lonicera involucrata	Black twinberry	Potted/BR
Rosa nutkana	Nootka rose	Potted/BR

Figure 2. Typical planting scheme that may be used at Landowner's site.

Fencing

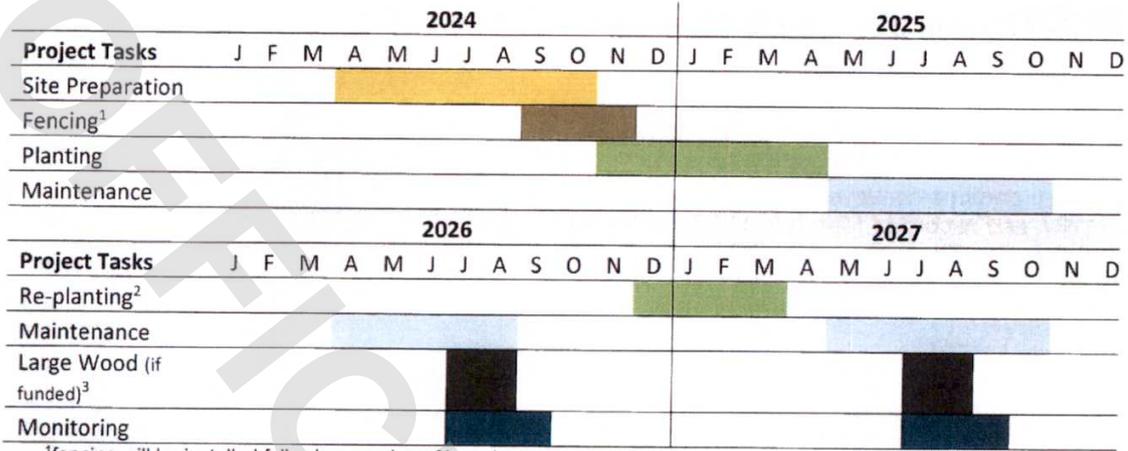
Following initial site prep the Project will install livestock exclusion fencing that includes at least one 12' access gate to be located during construction. The fence will be installed to be as straight as possible while maintaining a minimum 35 feet from the waterbody. Fencing will be no-climb fencing. All fencing will meet NRSC standards. The fence will tie into existing barbed wire fencing on the east and west of the Project site. Actual amount and location of fencing will be determined once blackberries have been removed so that topographical features can be considered.

Maintenance and Monitoring

After planting, maintenance 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 utilize 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.

Revegetation success will be monitored following the standard monitoring protocol. For sites larger than two acres, vegetation monitoring plots distributed across the planting area will be used. Plant mortality, health, and herbivory or other damage, and prevalence of invasive species are recorded to derive an overall site condition each year. 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 recorded 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 live at the end of the project. The need for re-planting will be evaluated in the summers of 2025 and 2026.

Timeline



¹fencing will be installed following mowing of invasive vegetation.

²replanting will occur if monitoring shows need

³large wood will be installed pending determined need, funding availability, and permit approval

EXHIBIT "D"**LEGAL DESCRIPTION OF LANDOWNERS' PROPERTY**

Per Real Estate Contract AF#201511200104

Government lot 2, and the Southwest Quarter of the Northeast Quarter of Section 5, Township 33 North, Range 5 East, W.M., except county road right of way and except those portions conveyed to Skagit County for road purposes by deeds dated February 8, 1937, and recorded March 9, 1937, under Auditor's File Nos. 287481 and 287482 records of Skagit County, Washington.

Situated in Skagit County, Washington.