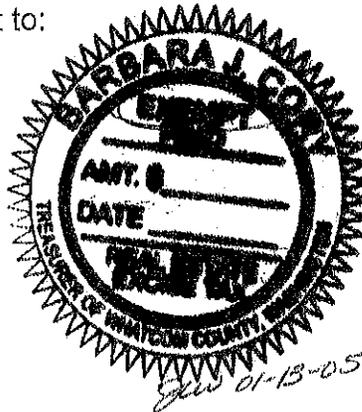




Technical Appendix 1- Easement & MOU for forest highways over national forest lands

After recording return document to:

State of Washington
Department of Transportation
Real Estate Services Office
P O Box 47338
Olympia WA 98504-7338



Document Title: HIGHWAY EASEMENT DEED
Reference Number of Related Document: none
Grantor: UNITED STATES OF AMERICA, acting by and through
the DEPARTMENT OF TRANSPORTATION, FEDERAL
HIGHWAY ADMINISTRATION
Grantee: STATE OF WASHINGTON
Legal Description:
That portion of State Route 542 lying within the Mt. Baker-
Snoqualmie National Forest as described on Exhibit "C" attached.

Additional Legal Description is on Page 15 of Document
Assessor's Tax Parcel Number: none - existing State Highway

Original

HIGHWAY EASEMENT DEED

Original

THIS DEED, made this 22nd day of NOVEMBER, 2004, by and between the UNITED STATES OF AMERICA, acting by and through the DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, hereinafter referred to as the DEPARTMENT, and the STATE OF WASHINGTON, hereinafter referred to as the STATE:

WITNESSETH:

WHEREAS, the STATE has filed application under the provisions of the Act of Congress of August 27, 1958, as amended (23 U.S.C. Section 317), for the right-of-way of a highway over certain land owned by the United States in the State of Washington, which is under the jurisdiction of the Department of Agriculture - Forest Service; and

WHEREAS, this transfer is further authorized under the provisions of the Act of Congress approved October 15, 1966 (80 Stat. 931, 937, Section 6(a)(1)(A)); and

WHEREAS, the Federal Highway Administrator, pursuant to delegations of authority from the Secretary of Transportation, has determined that an easement over the land covered by the application is reasonably necessary for right-of-way for State Route 542; and

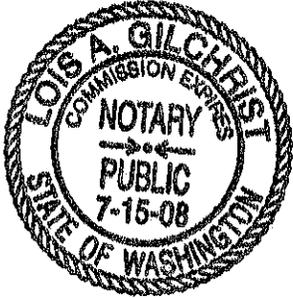
WHEREAS, the Department of Agriculture, acting by and through the Forest Service, has agreed to the transfer by the DEPARTMENT of an easement over the land to the STATE;

Now THEREFORE, the DEPARTMENT, as authorized by law, does hereby grant to the STATE an easement for a right-of-way for the operation and maintenance of a highway, and use of the space above and below the established grade line of the highway pavement for highway purposes on, above, across, in and upon the land of the United States of America within the Mt. Baker - Snoqualmie National Forest, County of Whatcom, State of Washington, as described in Exhibit C, attached hereto and made a part hereof, subject, however, to the stipulations contained in Exhibit 1 and Exhibits A and B attached, and to the following terms, conditions and covenants:

1. The STATE, in consideration of the grant of this easement, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns that:
 - a. No person shall, on the grounds of race, color, sex, age, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over or under such land hereby conveyed;
 - b. The STATE shall use said easement right-of-way so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination, in federally assisted programs of the

conveyance, he in his capacity as, Director, Real Estate Services executed the same voluntarily on this day. ^{Acting}

Given under my hand and seal of office this 5th day of January, 2005.



Lois A. Gilchrist
Notary Public in and for the
State of Washington
Residing at Ryallup

My commission expires 7-15-2008.

APPROVED AS TO
LEGAL SUFFICIENCY

Ann G. Salay
Asst. Attorney General
Date 12-8-03

Exhibit 1

The following conditions are to be included in the grant of a Highway Easement Deed by the Department of Transportation and upon compliance with the enclosed right of way plats, and specifications, a copy of which are on file at the Mt. Baker-Snoqualmie National Forest.

The Washington State Department of Transportation (WSDOT) will herein be referred to as the Grantee.

1. Outstanding valid claims, if any, existing on the date of this grant, and the Grantee shall obtain such permission as may be necessary on account of any such claims.
2. The easement herein granted is limited to use of the described right-of-way and the space above and below the established grade line of the highway pavement for the purpose of reconstruction, operation and maintenance of a highway in accordance with the approved plans described in the following condition number 4, and does not include the grant of any rights for non-highway purposes or facilities: Provided, That the right of the Forest Service to use or authorize the use of any portion of the right-of-way for non-highway purposes shall not be exercised when such use would be inconsistent with the provisions of Title 23 of the United States Code and of the Federal Highway Administration regulations issued pursuant thereto or would interfere with the free flow of traffic or impair the full use and safety of the highway, and, in any case, the Grantee and the Federal Highway Administration shall be consulted prior to the exercise of such rights; and Provided further, That nothing herein shall preclude the Forest Service from locating National Forest and other Department of Agriculture information signs on the portions of the right-of-way outside of construction clearing limits. The placement of signs shall be in conformance with Grantee specifications and standards.
3. When need for the right-of-way no longer exists, the Washington State Department of Transportation shall give notice of the fact to the Secretary of Transportation and the rights granted shall terminate and the land shall revert immediately to the full control of the Department of Agriculture.
4. The Grantee shall protect and preserve the Aquatic and Fisheries Resources within, and/or affected by Grantee's operation, maintenance, construction or reconstruction activities pursuant to this easement, in substantial accordance with the objectives of the Aquatic Conservation Strategy (ACS) objectives of the Forest Plan (*Land and Resource Management Plan and the Northwest Plan (Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl*, as amended, as listed in Exhibit A, attached hereto and made a part hereof, and National Forest policy and direction then current, in addition to any requirements within Paragraph 7 (e) or 8 (c) of these Stipulations, as appropriate.

The Forest Supervisor and Grantee shall jointly coordinate and consult annually to address

Aquatic and Fisheries Resource matters of concern or non-compliance to either party. This annual coordination and consultation may include representatives or guidance from the Washington State Department of Fish and Wildlife, the Lummi Nation, Nooksack Tribe, other Federal agencies, and other interested parties as may be appropriate. The Forest Supervisor shall initiate this annual coordination and consultation.

5. The Grantee shall establish no borrow, sand, or gravel pits; stone quarries, permanent storage areas; sites for highway operation and maintenance facilities, camps, supply depots, or disposal areas within the right-of-way; unless shown on approved construction plans, without first obtaining approval of the Forest Supervisor, Mt. Baker-Snoqualmie National Forest. The Forest Supervisor and Grantee shall meet annually to coordinate and agree upon suitable sites for disposal of slide and waste debris, Hazard Tree storage areas, for temporary or permanent use as required.

Pre-design, Design, and Construction:

6. The Grantee and the Forest Supervisor, Mt. Baker-Snoqualmie National Forest, shall make determination as to the necessity for archaeological and paleontological reconnaissance and salvage within the right-of-way, and such reconnaissance and salvage to the extent determined necessary because of reconstruction of the highway facility is to be undertaken by the Grantee in compliance with the acts entitled An Act for the Preservation of American Antiquities, approved June 8, 1906 (34 Stat. 225, 16 U.S.C. 432-433), the Archaeological Resources Protection Act of 1979 (93 Stat. 721, 16 U.S.C. 470aa-47011), and State laws where applicable.

The Grantee shall undertake no construction, reconstruction, or expansion of the existing highway facility, except for operation and maintenance of the highway or to facilitate public safety, until a Scenic Byway Management Plan, to be known as the Mt. Baker Highway Scenic Byway Management Plan, has been jointly prepared and agreed upon by the Forest Supervisor, Mt. Baker-Snoqualmie National Forest and Grantee. This Plan will describe the natural scenic values and specific guidelines associated with improvements or reconstruction of the highway, and address, as a minimum, a description of the landscape character including special places (places of social, cultural or historic importance), viewpoints, and the appearance of highway structures such as walls, bridges, appurtenant support facilities, signage, and vegetation treatments in accordance with the Scenic Byway theme and the Cascadian architectural and visual theme.

The publication *Landscape Aesthetics: A Handbook for Scenery Management* (USDA Handbook No. 701) and the interim *Development Guidelines for the Mather Memorial Parkway* shall provide a typical style and format as the basis between the Forest Supervisor and Grantee for coordination and formulation of the Mt. Baker Highway Scenic Byway Management Plan.

Prior to issuance of utility easements or permits within the roadway prism, the Forest Supervisor will consult with the Grantee regarding standards for the construction and maintenance of the utility facility. Design, construction inspection, project timing, maintenance and restoration of the utility facility are items to be agreed upon prior to granting of the utility easement or permit.

7 a. The design and construction of highway projects situated on this right-of-way will be in accordance with the provisions of Title 23, United States Code--Highways, and amendments; the Regulations for the Administration of Federal Aid for Highways, effective May 11, 1960; and amendments and established procedures for Federal-aid projects, including the requirements of Title 23, Code of Federal Regulations, part 771, and the design and construction standards and specifications of the Washington State Department of Transportation as approved by the Federal Highway Administration for use on Federal-aid projects.

b. The Forest Supervisor, Mt. Baker-Snoqualmie National Forest, will be provided an opportunity to review plans relative to effects, if any, that the project works as planned will have upon adequate protection and utilization of the land traversed by the right-of-way and adjoining land under the administration of the Forest Service for the purposes for which such land is being administered. The Forest Supervisor will review and comment back to the Grantee within 30 days of receiving the plans. Those features of design, construction, and maintenance of the highway facility and the use of the right-of-way that would have effect on the protection and utilization of the land under the administration of the Forest Service are to be mutually agreed upon by the Forest Supervisor, Mt. Baker-Snoqualmie National Forest, and the Grantee by conference or other communication during the preparation of the plans and specifications for each construction project, and the plans shall be revised, modified, or supplemented to meet the approval of the Forest Supervisor, Mt. Baker-Snoqualmie National Forest, or when deemed appropriate, supplemented by written stipulation between the Forest Supervisor, Mt. Baker-Snoqualmie National Forest, and the Grantee, prior to the start of construction.

c. The final design and the construction specifications for any highway construction project on the right-of-way will be presented to the Forest Supervisor, Mt. Baker-Snoqualmie National Forest, for approval; construction shall not begin until such approval is given: Provided, That if it is subsequently deemed necessary that the approved plans, specifications, or stipulation be amended or supplemented, any amendment or supplement which affects alignment or subgrade shall be approved by the Forest Supervisor, Mt. Baker-Snoqualmie National Forest, and the Grantee before being placed in effect.

d. Consistent with applicable State and Federal highway safety standards, the Grantee shall provide for the prevention and control of soil erosion within the right-of-way and adjacent lands that might be affected by the construction, of the highway, and shall vegetate and keep vegetated with suitable species all earth cut or fill slopes feasible for revegetation, or other areas on which ground cover is destroyed, where it is deemed necessary during a joint review between the Forest Supervisor, Mt. Baker-Snoqualmie National Forest, and the Grantee prior to completion of the highway, and the Grantee shall maintain all terracing, water bars, leadoff ditches, or other preventive works that may be required to accomplish this objective. This provision shall also apply to slopes that are reshaped following slides, which occur during or after construction.

Maintenance and Operations:

8. Consistent with applicable State and Federal highway safety standards, the Grantee shall:

Vegetation Management –

a. Protect and preserve soil, vegetative cover, scenic, and aesthetic values on the right-of-way outside of construction limits.

b. Revegetate, protect and maintain failed slopes, ditches, or other drainage management works after reconstruction.

d. The Grantee shall maintain the right-of-way clearing by means of chemicals only after consultation with the Forest Supervisor. Consultation must address the time, method, chemicals, and the exact portion of the right-of-way to be chemically treated. An Integrated Vegetation Management Plan for all vegetation control work performed by Grantee within the right of way shall be prepared by the Grantee with guidance and consultation by the Forest Supervisor within 2 years of the date of this grant. The Integrated Vegetation Management Plan shall include measures to prevent infestations of noxious weeds within the easement area in substantial accordance with the Best Management Practices as listed in Exhibit B, attached hereto and made a part hereof. Grantee shall also treat or remove existing populations of noxious weeds within the easement.

e. The Noxious Weed Prevention and Control Plan portion of the Integrated Vegetation Management Plan shall be prepared in consultation with the Forest Supervisor, and Whatcom County Noxious Weed Control Board or current equivalent agency, during the preparation of said Plan. As a minimum, the plan shall address targeted weeds, planned prevention and control measures, type and amounts of chemical treatment (if any), timing of activities, areas to be treated, and monitoring of results. Said Plan shall be made with reference to the current *Washington State Noxious Weed List* as published by the Washington State Noxious Weed Control Board or current equivalent agency and promulgated in current regulations of the State of Washington. Grantee shall report progress of work under said Plan to the Forest Supervisor annually.

f. Roadside trees inside of the right of way that are considered by Grantee to be a public safety hazard (Hazard Trees) shall be jointly inspected and marked by Grantee and the Forest Supervisor on a timely basis, prior to removal. Timber and wood from Hazard Trees so removed shall remain the property of the United States of America and not be appropriated by Grantee without express written authorization from the Forest Supervisor. Emergency Hazard Tree and downed tree removal shall be removed from the roadway or threat to roadway by the Grantee at Grantee's expense at the earliest opportunity, and moved to a location to remove the traffic hazard.

The Grantee shall have the right to remove immediately any Hazard Trees which may be classified as Emergency or Imminent Public Hazards, the definition and standards of which shall be jointly established by the Grantee and the Forest Supervisor. The Grantee shall notify the Forest Supervisor of Emergency or Imminent Hazard Tree removal as soon as practicable, including information on size and species.

Emergency and Imminent Hazard Trees that are not treated on a programmed basis shall, where practicable, be allowed to remain where felled unless removed to a temporary storage area, until such time as the Forest Supervisor shall arrange for disposal.

g. Maintain the highway roadway, drainage, signing, pavement marking and safety appurtenances to a standard and level consistent with the Grantee's standards and specifications for state highways approved by FHWA.

h. The Grantee shall conduct highway operations and maintenance during winter road sanding season in such manner as will limit and reduce road sand and sediments from entering streams and rivers, consistent with the 4(d) Rule guidelines approved by US Fish and Wildlife Service and National Marine Fisheries Service and established Washington State DOT Winter Best Management Practices in Snow and Ice Removal.

i. The Grantee and the Forest Supervisor shall jointly agree on a management plan of action regulating vehicle parking, pavement marking, highway signing, end-of-road seasonal gating and closures, and snow plowing activity within the Heather Meadows Area, addressing all Forest Service permittees and including the Firs and Mountaineers adjacent parking areas. The Grantee's shall be responsible for conduct of snow and ice removal from the highway travelled lanes.

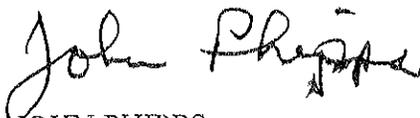
j. The Grantee and Forest Supervisor shall continue to handle access issues in accordance with the latest version of the Memorandum of Understanding between State of Washington Department of Transportation and USDA Forest Service Pacific Northwest Region.

9. These Stipulations shall be reviewed by the Forest Supervisor, Mt. Baker-Snoqualmie National Forest, for compliance thereto with the Forest Plan (*Land and Resource Management Plan and the Northwest Plan (Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl*), as amended, attached hereto and made a part hereof, and National Forest policy and direction then current, at intervals not to exceed five (5) years, and revised or amended by written Stipulation between the Forest Supervisor and the Grantee.

You may authorize immediate entry under the above terms.

This route has been reviewed against the criteria of Section 4(f) of the Department of Transportation Act of 1966, Public Law 89-670, as amended by the Federal-Aid Highway Act of 1968, Public Law 90-495, Section 18.

Since this crosses an area of public land under National Forest designation, as the agency having jurisdiction of these public lands, we have determined that the route does not encroach or use land from any of the types of specifically designated areas in the above public laws.



JOHN PHIPPS
Forest Supervisor
Mt. Baker-Snoqualmie National Forest

EXHIBIT A

ACS Objectives of the Northwest Forest Plan*

ACS Objective
<u>Objective 1:</u> Maintain and restore the distribution, diversity, and complexity of watershed and landscape-scale features to ensure protection of the aquatic systems to which species, populations and communities are uniquely adapted.
<u>Objective 2:</u> Maintain and restore spatial and temporal connectivity within and between watersheds. Lateral, longitudinal, and drainage network connections include floodplains, wetlands, upslope areas, headwater tributaries, and intact refugia. These network connections must provide chemically and physically unobstructed routes i.e. culverts, to areas critical for fulfilling life history requirements of aquatic and riparian-dependent species.
<u>Objective 3:</u> Maintain and restore the physical integrity of the aquatic system, including shorelines, banks, and bottom configurations.
<u>Objective 4:</u> Maintain and restore water quality necessary to support healthy riparian, aquatic, and wetland ecosystems. Water quality must remain within the range that maintains the biological, physical, and chemical integrity of the system and benefits survival, growth, reproduction, and migration of individuals composing aquatic and riparian communities.
<u>Objective 5:</u> Maintain and restore the sediment regime under which aquatic ecosystems evolved. Elements of the sediment regime include the timing, volume, rate, and character of sediment input, storage, and transport.
<u>Objective 6:</u> Maintain and restore in-stream flows sufficient to create and sustain riparian, aquatic, and wetland habitats and to retain patterns of sediment, nutrient, and wood routing. The timing, magnitude, duration, and spatial distribution of peak, high, and low flows must be protected.
<u>Objective 7:</u> Maintain and restore the timing, variability, and duration of floodplain inundation and water table elevation in meadows and wetlands.
<u>Objective 8:</u> Maintain and restore the species composition and structural diversity of plant communities in riparian areas and wetlands to provide adequate summer and winter thermal regulation, nutrient filtering, appropriate rates of surface erosion, bank erosion, and channel migration and to supply amounts and distributions of coarse woody debris sufficient to sustain physical complexity and stability.
<u>Objective 9:</u> Maintain and restore habitat to support well-distributed populations of native plant, invertebrate, and vertebrate riparian-dependent species.

*USDA and USDI. Record of decision for amendments to Forest service and Bureau of Land Management planning documents within the range of the Northern spotted owl. Standards and Guidelines for management of habitat for late-successional and old-growth forest related species within the range of the northern spotted owl. April 1994. 73 pages.

Exhibit B

Noxious Weed Prevention and Treatment Best Management Practices

Management Requirement	Management Practices <small>(should be followed as specified unless the intent of the first column can be met with an alternate method that better meets the management requirement).</small>
<p>Avoid spread of weeds during road decommissioning or construction activities.</p>	<ol style="list-style-type: none"> 1) In decommissioning projects, existing infestations should be treated before the road is made undrivable. 2) If weeds are present in project area, all equipment and gear should be cleaned (power wash or high pressure cleaning) before leaving area to avoid spreading the infestation further 3) Use only weed-free plant materials for revegetation. 4) Use only weed-free straw, erosion control mats, or other weed-free mulch. 4) For new construction minimize clearing limit widths.
<p>Avoid spread of weeds during road maintenance activities.</p> <p><i>This is not meant to apply to surface vehicles or equipment doing work within the limits of the road surface, or any work in non-infested areas.</i></p>	<ol style="list-style-type: none"> 1) For areas beyond the road surface, existing infestations should be treated before the maintenance activity occurs. 2) If weeds are present in project area, all equipment and gear should be cleaned (power wash or high pressure cleaning) before leaving area to avoid spreading the infestation further 3) Within small infested areas, consider using alternate methods to accomplish maintenance work (e.g. cleaning hand tools for small sites will be more efficient and cheaper than cleaning large equipment). 4) When feasible, work from relatively weed-free areas into the infested area rather than vice-versa. 5) When feasible, do not maintain ditches when noxious weeds are in flowering or seed stage. 6) Do not maintain ditches or mow shoulders within 2 weeks before or after herbicide application - this will minimize herbicide use and increase effectiveness. 7) Road maintenance programs should include monitoring for noxious weeds. Infestations should be inventoried and scheduled for treatment.

<p>Avoid spreading weeds via use of infested materials.</p>	<p>1) On the MBSNF, all gravel, fill, winter sanding stockpiles, quarries, and borrow material should be inspected, treated if necessary, and ensured that it is weed free before transport and use. These areas should be designated as "zero tolerance" zones.</p> <p>2) All seed purchased or otherwise designated or accepted for the Mt. Baker-Snoqualmie National Forest will be required to be tested for "all states noxious weeds" according to Association of Official Seed Analysts (AOSA) standards. It also will be certified in writing by a Registered Seed Technologist and Seed Analyst as meeting the requirement of the Federal Seed Act and State Seed law for Washington regarding the testing, labeling, sale, and transport of prohibited and restricted noxious weeds.</p> <p>3) Do not draft water (e.g. for dust abatement) from known weed infested water sources.</p>
<p>Limit transport of weed seeds onto the MBS National Forest.</p>	<p>1) Specify cleaning of heavy equipment entering the MBSNF that is contracted for work outside the limits of the road surface. Equipment should be free of all dirt, mud, and plant parts.</p>
<p>Incorporate weed prevention in Access and Travel Management Planning.</p>	<p>1) During transportation planning and alternative development, consider weed risk factors (presence, habitat type, aspect, etc.) to evaluate road location and design.</p> <p>2) EAs for road construction must consider weed risk in development of alternatives and mitigating measures</p>
<p>Retain shade to suppress weeds.</p>	<p>1) Minimize the removal of trees and other roadside vegetation, particularly on southern aspects.</p> <p>2) Where shoulders or ditches are covered by desirable vegetation, consider leaving it in place rather than blading it off if such a practice can be done without causing excessive damage to the road surface or public safety hazards.</p>
<p>Re-establish desirable vegetation on all bare ground to minimize weed establishment or spread.</p>	<p>1) Seed all exposed soil (except travelway) before soil crusting or otherwise treat in a manner that optimizes establishment of desirable species</p> <p>4) Monitor all seeded sites and spot re-seed as needed. Preferably use native, pioneer species because they require fewer nutrients and less fertilizer.</p> <p>5) If using fertilizer, do so only after desirable vegetation has become established, to help the desired species maintain a competitive advantage over the weeds.</p>

Ensure quick re-establishment of desirable vegetation to discourage weeds.	1) Require that all bare soil resulting from projects be re-seeded, planted, and/or mulched promptly after clearing. 2) Use only weed-free plant materials, straw or mulch for revegetation and restoration projects.

EXHIBIT "C"

All those portions of the following described lands lying within the right of way limits of Washington State DOT approved right of way plans entitled, "SR 542, Glacier to Shuksan", sheets 1 through 25 and "SR 542, Shuksan to Austin Pass", sheets 1 through 13, together being Mt. Baker Highway, MP 33.54 to MP57.26:

T. 39 N., R. 07 E., W.M., Whatcom County, State of Washington

Section 1, Lot 2
Section 2, Lot 1, Lot 2, Lot 3, Lot 4
Section 3, Lot 2, Lot 4, Lot 5, Lot 6
Section 4, NW1/4 SW ¼, SE1/4 NW1/4, Lot 2
 Lot 4 – 8, inclusive
Section 7, Lot 1
Section 8, NW1/4 NE1/4, NE1/4 NE1/4, Lot 1

T. 40 N., R. 07 E., W.M.

Section 33, SE1/4 SW1/4, SW1/4 SE1/4, SE1/4SE1/4
Section 34, SW1/4 SW1/4 SE1/4SW1/4, SW1/4 SE1/4, SE1/4SE1/4
Section 35, SW1/4SE1/4, SE1/4 SE1/4
Section 36, Lots 1-4, inclusive

T. 39 N., R. 08 E., W.M. (Unsurveyed)
Section 2

T. 40 N., R. 08 E., W.M. (Fractional unsurveyed)
Sections 31 thru 35, inclusive
Section 36, NE1/4 SE1/4, Lot 1, Lot 4, Lot 5, Lot 7 (Surveyed)

T. 39N., R. 09 E., W.M. (Unsurveyed)
Sections 5, 6, 8, 16, 17, 18, 19, 20, 30

T40 N., R. 09 E., W.M. (Fractional Unsurveyed)
Section 31, Lots 3-5, inclusive

Total: 357.89 acres, more or less. The specific details concerning all of which may be found on the above named maps now of record and on file in the Office of the Secretary of Transportation at Olympia, Washington, bearing date of approval September 4, 1981, revised March 28, 2003. A copy of which is on file in the Mt. Baker – Snoqualmie Forest Supervisor's Office, 21905 64th Avenue West, Mountlake Terrace, Washington.