File NR S1-28144
WR Doc ID 2285529

DEPARTMENT OF ECOLOGY
State of Washington

State of Washington
REPORT OF EXAMINATION
FOR WATER RIGHT APPLICATION

PRIORITY DATE
7/11/2002

WATER RIGHT NUMBER
S1-28144

MAILING ADDRESS
ALEXANDER TAYLOR
321 POINT LAWRENCE ROAD
OLGA WA 98279-9506

SITE ADDRESS (IF DIFFERENT)

Quantity Authorized for Diversion

DIVERSION RATE	UNITS	ANNUAL QUANTITY (Ac-ft/yr)
0.089 (Non-consumptive)	cfs	37 (Non-consumptive)

Purpose of Use

PURPOSE	DIVERSION RATE ADDITIVE	DIVERSION RATE NON-ADDITIVE	UNITS	ANNUAL QUANTITY (Ac-ft/yr) ADDITIVE	ANNUAL QUANTITY (Ac-ft/yr) NON-ADDITIVE	PERIOD OF USE (mm/dd)
Fish propagation	0.089		cfs	37		10/01 - 4/30

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
SAN JUAN	CASCADE CREEK	BUCK BAY	2-SAN JUAN

DIVERSION SOURCE	PARCEL #	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
CASCADE CREEK	160932001000		36N	01W	09	SWNW	48.6240	-122.8324

Datum: NAD83/WGS84

Place of Use - See Attached Map (Attachment 1)

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

San Juan County parcel numbers 160932001000 and 160932005000 (see Attachment 2 for complete legal descriptions).

Proposed Works

A screened or slotted diversion consisting of a 4-inch diameter HDPE or PVC pipe leading to a 2-inch diameter HDPE intake line. The intake line will supply water to one to four 55 gallon incubator barrels. All water will be returned to Cascade Creek through 4-inch tubing leading from the top of the incubator barrels.

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
July 1, 2015	July 1, 2016	July 1, 2018

Measurement of Water Use

How often must water use be measured?	Upon Request by Ecology
How often must water use data be reported to Ecology?	Upon Request by Ecology

Provisions

Department of Fish and Wildlife Requirements

The intake shall be screened in accordance with Department of Fish and Wildlife screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). Contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091. Attention: Habitat Program, Phone: (360) 902-2534 if you have questions about screening criteria. http://wdfw.wa.gov/about/contact/

A permit from the Department of Fish and Wildlife may be needed to raise fish in any state waters: http://wdfw.wa.gov/about/contact/.

No dam or weir shall be constructed in connection with this diversion.

Proof of Appropriation

The water right holder shall file the notice of Proof of Appropriation of water (under which the certificate of water right is issued) when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. The certificate will reflect the extent of the project perfected within the limitations of the permit. Elements of a proof inspection may include, as appropriate, the source, system instantaneous capacity, beneficial use, annual quantity, place of use, and satisfaction of provisions.

Schedule and Inspections

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, diversions, and associated distribution systems for compliance with water law.

Maximum Diversion

The subject diversion must never exceed 25% of the total flow in the creek as measured just upstream from the point of diversion. The intake must be sized properly to prevent the over-diversion of water.

Findings of Facts

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question, there will be no impairment of existing rights, the purpose of use is beneficial, and there will be no detriment to the public interest.

Therefore, I ORDER approval of Application S1-28144, subject to existing rights and the provisions specified above.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	**Department of Ecology** Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel RD SW Ste 301 Tumwater, WA 98501	**Pollution Control Hearings Board** PO Box 40903 Olympia, WA 98504-0903

Signed at Bellevue, Washington, this 18 day of July 2013.

Jacqueline Klug, Section Manager

For additional information visit the Environmental Hearings Office Website: http://www.eho.wa.gov. To find laws and agency rules visit the Washington State Legislature Website: http://www1.leg.wa.gov/CodeReviser.

INVESTIGATOR'S REPORT
Application for Water Right – Alexander Taylor
Water Right Control Number S1-28144
Buck Smith, Senior Hydrogeologist
Department of Ecology

BACKGROUND

This report serves as the written findings of fact concerning Water Right Application S1-28144.

Alexander (Sandy) Taylor has requested a non-consumptive water right for fish propagation purposes. His request is for 0.089 cubic feet per second (cfs) and 37 acre-feet per year (ac-ft/yr) from Cascade Creek on Orcas Island. Mr. Taylor is proposing to construct a small diversion above the Cascade Creek waterfalls on his property. These falls are impassable barriers for anadromous fish that enter the creek. These falls are located approximately 1000 feet upstream from where Cascade Creek enters Buck Bay (marine waters).

The diversion will supply water to incubator barrels located on the east bank of the creek. These incubators will be used to raise salmon eggs obtained by Mr. Taylor. The fry produced in these barrels will be released into the creek. Mr. Taylor and other local supporters are hoping to "jumpstart" a population that will then return and spawn naturally in the creek.

Table 1 Summary of the Requested Water Right

Applicant Name:	Alexander Taylor
Date of Application:	7/11/2002
Place of Use	San Juan County parcel numbers 160932001000 and 160932005000

County	Waterbody	Tributary To	WRIA
San Juan	Cascade Creek	Buck Bay	2-San Juan

Purpose	Rate	Unit	Ac-ft/yr	Begin Season	End Season
Fish propagation	0.089	cfs	37	10/01	4/30

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Cascade Creek	160932001000	36N	01W	09	SW NW	Not provided	Not provided

WRIA = Water Resource Inventory Area; cfs = cubic feet per second; Ac-ft/yr = Acre-feet per year; Twp = Township; Rng = Range; Sec = Section; QQ Q = Quarter-quarter of a section. Datum is NAD83/WGS84

Legal Requirements for Approval of Appropriation of Water

Public Notice

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to

be diverted and used. Notice of this application was published in *The Journal of the San Juan Islands* on October 5 and 12, 2005.

Consultation with the Department of Fish and Wildlife

The Department of Ecology (Ecology) must give notice to the Department of Fish and Wildlife (WDFW) of applications to divert water. Mr. Stephen Boessow (WDFW) has met with Mr. Taylor and has visited the diversion site. Mr. Boessow has no objections to the subject application. However, the proposed intake must be properly screened and the fish propagation project may need to be permitted by WDFW.

State Environmental Policy Act (SEPA)

A surface water application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if the application is for more than 1 cfs. Because this application is for 0.089 cfs, it is categorically exempt from SEPA and a threshold determination is not required.

INVESTIGATION

I have made numerous visits to Cascade Creek and the surrounding area. Cascade Creek is part of the larger Mountain Lake-Cascade Creek watershed. My visits were made in regard to streamflow measuring, compliance work, site visits for other applications within the watershed, and numerous meetings with representatives of the water purveyors within the watershed (Olga Water Users (OWU), Rosario Utilities (now owned by Washington Water Service), Doe Bay Water Users Association (DBWUA), and the Moran State Park water systems). As such, I am very familiar with the watershed. My most recent visit to Mr. Taylor's project site was on August 31, 2011.

Watershed Description

The Mountain Lake-Cascade Creek watershed is approximately five square miles (3,072 acres) in area. Mountain Lake itself is a 198 acre (8,800 acre-foot) lake located at the southeastern base of Mount Constitution (2,409 feet in elevation), within Moran State Park. The lake is fed by groundwater discharge, small streams, snow melt, and rainfall.

The water level in Mountain Lake is controlled by two spillway bays, where 4" x 6" stop logs are placed in the spillways (each spring) to retain water for the summer recreation season and for flow release into Cascade Creek. These stop logs are removed in the winter to prevent flooding of park facilities along the lakeshore. The outlet of water through the dam is accomplished by a gate valve (always open) that leads to a 12-inch outlet pipe which splits into two 8-inch pipes with gate valves. One of the 8-inch pipes leads to the DBWUA system. The other pipe is the "headwaters" of Cascade Creek. As such, water enters into Cascade Creek from the outlet pipe (year-round) and from the dam spillways (wet season only).

From the outlet pipe, Cascade Creek flows west and then south for approximately 3 miles before it enters into Buck Bay. Along the way, water is diverted by OWU for municipal supply purposes. Then, just downstream, water is diverted into a ditch leading to Cascade Lake for use by Washington Water

Service for municipal supply and by Rosario Resort for hydropower purposes. In addition, the State of Washington (Department of Ecology) maintains a trust water right for instream flow purposes (in the amounts of 0.25 cfs - June, July, & August and 0.50 cfs – September & October) below the Cascade Lake point of diversion (the ditch). There are no authorized points of diversion between this point and Mr. Taylor's proposed point of diversion.

Streamflow through the Mountain Lake dam outlet pipe to Cascade Creek is regulated by Moran State Park staff (currently checked at least weekly by Gary Sale), in cooperation with OWU, DBWUA, the owners of the Rosario diversion, and the Department of Ecology.

Proposed Use and Basis of Water Demand

Mr. Taylor plans to construct a water supply system for stream-side salmon incubators on the lower reach of Cascade Creek. He is proposing to use 4-inch diameter HDPE or PVC pipe (with sufficient slots and/or holes to be compliant with WDFW screening guidelines) for his intake structure. The intake may be buried under natural gravel and rock if a suitable location is identified, or suspended in the stream.

From the intake structure, a 2-inch HDPE pipe will siphon/gravity-feed water approximately 150 feet down-gradient (with a vertical drop of 15 feet) to a flow control device. This device will consist of a ball valve used to control the flow into each incubator. The incubators will be made from 55 gallon HDPE barrels. The diverted water will flow through the barrels and will be returned to Cascade Creek through 4-inch tubing. This tubing will be placed so it skims water from the top of the incubators.

Other Water Rights within the Proposed Place of Use

There are no other water rights appurtenant to the proposed place of use.

Impairment Considerations

Impairment is an adverse impact on the physical availability of water for a beneficial use that is entitled to protection. A water right application may not be approved if it would impair the ability of an existing authorized user from fully exercising their right. In this case, Mr. Taylor's proposed point of diversion will be the most downstream of all diversions on Cascade Creek. In addition, it will be a non-consumptive right, with a full return of flow approximately 150 feet downstream of the point of diversion.

As described previously, Ecology does hold a trust water right (for instream flow) on Cascade Creek. The only time period where Ecology's trust right (June-October) and Mr. Taylor's request (October-April) overlap is the month of October. During October, Ecology's instream flow right is for 0.50 cfs. Likely, due to the fact the lower creek is a gaining reach, and the return of fall rains, the flow in the creek should normally be greater than 0.50 cfs at Mr. Taylor's proposed point of diversion. However, if not, Mr. Taylor's request is non-consumptive, has a short bypass reach (water returned immediately to the creek), and is for an environmental benefit. Therefore, it shall not be considered to be an impairment of Ecology's trust right.

Water Availability

For water to be available for appropriation, it must be both physically and legally available.

Physical availability
Because of the upstream management of the Mountain Lake dam, Cascade Creek flows year-round at a higher rate than requested by Mr. Taylor. Therefore, water should always be physically available to meet Mr. Taylor's request.

Legal availability
Cascade Creek is not legally closed by administrative rule or by request of WDFW, therefore water is legally available. And, the subject request is for a non-consumptive use.

Beneficial Use

The proposed use of water is defined in statute as a beneficial use (RCW 90.54.020(1)).

Public Interest Considerations

No potential for detriment to the public interest could be identified during the investigation of the subject application.

Consideration of Protests and Comments
No protests or comments were received.

Conclusions

I conclude water is available from the source in question, there will be no impairment of existing rights, the purpose of use is beneficial, and there will be no detriment to the public interest.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend this request for a water right be approved in the amounts and within the limitations listed below and subject to the provisions listed on page 2.

Purpose of Use and Authorized Quantities

The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:

- 0.089 cubic feet per second (non-consumptive)
- 37 acre-feet per year (non-consumptive)
- For fish propagation

Authorized Point of Diversion
SW¼ NW¼ of Section 9, Township 36 North, Range 1 West, W.M.

Place of Use
San Juan County parcel numbers 160932001000 and 160932005000 (see Attachment 2 for complete legal descriptions).

Buck Smith July 18, 2013

Buck Smith, Licensed Hydrogeologist 1479 *Date*

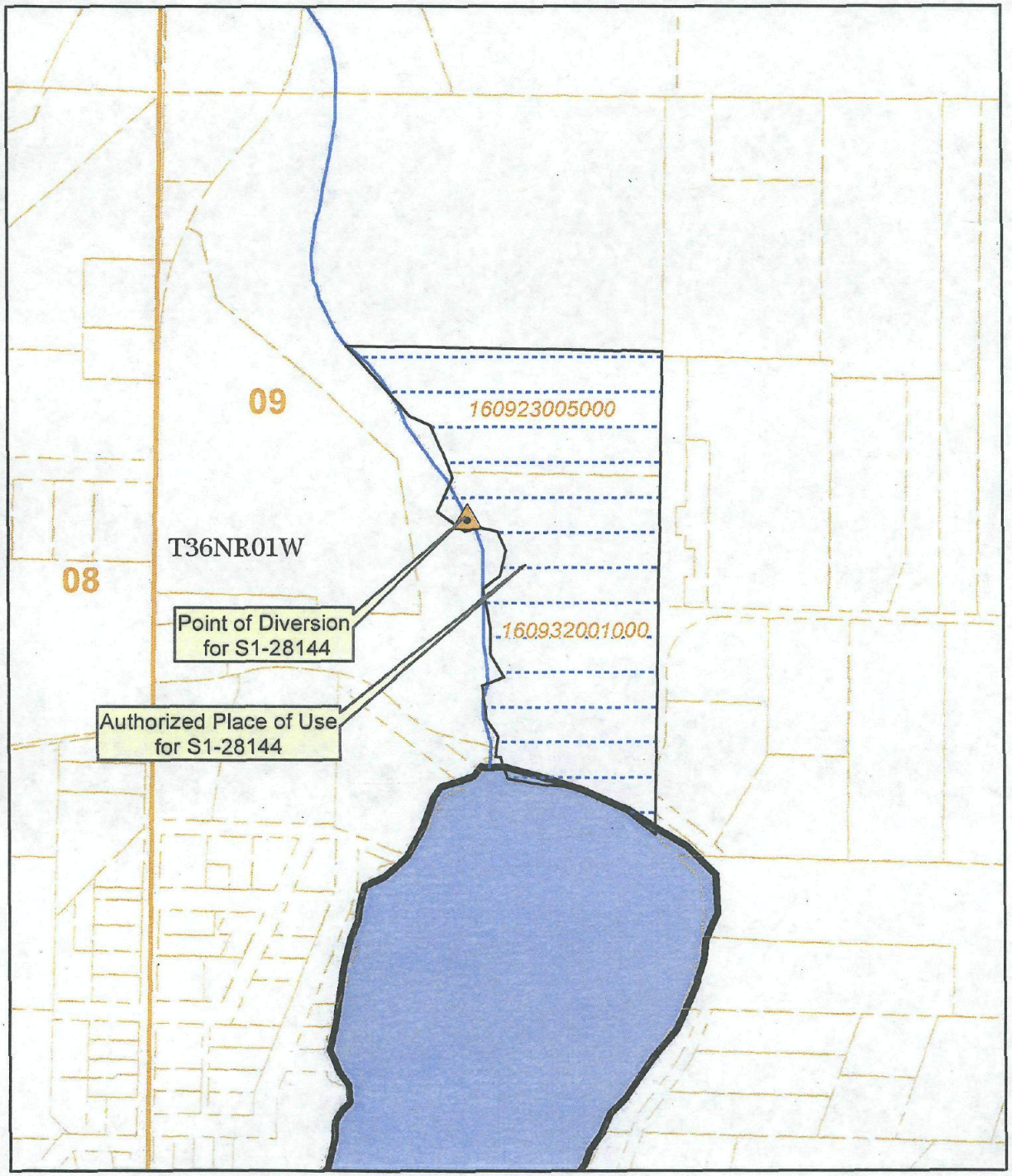
State of Washington Hydrogeologist 1479 Licensed Geologist

J. R. "BUCK" SMITH

If you need this publication in an alternate format, please call Water Resources Program at (360) 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

Alexander Taylor
Water Right Number S1-28144
Sec. 9 T 36N R 01W W.M.
WRIA 2 - San Juan County

DEPARTMENT OF ECOLOGY
State of Washington



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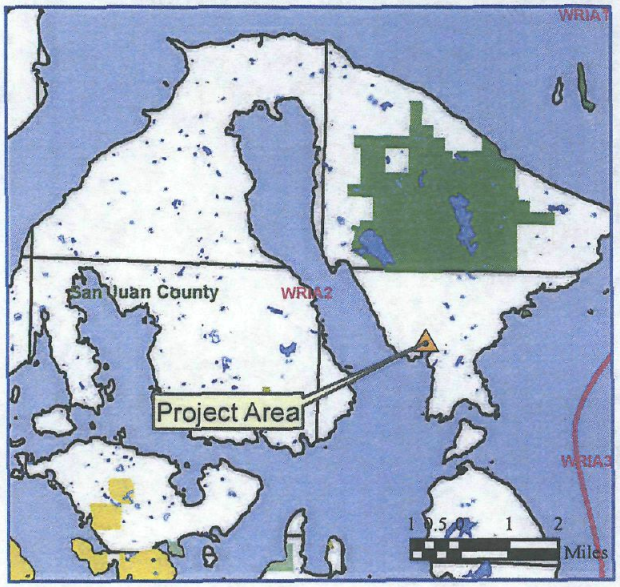

State Highway
WRIA
Water Courses
Water Bodies
Township
Section
Authorized Place of Use
Surface Water Diversion
Parcels

N W E S

5/24/2013

Place of use and point(s) of diversion/withdrawal are as defined on the cover sheetunder the headings,'LOCATION OF DIVERSION/WITHDRAWAL'and 'LEGALDESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED.'

Attachment 1

ATTACHMENT 2 (page 1)

San Juan County Tax Parcel 160932001000

Legal Description

A certain parcel of land lying within the Southwest Quarter of the Northwest Quarter and within Government Lot 1, Section 9, Township 36 North, Range 1 West, W.M., more particularly described as follows:

Commencing at the Southeast corner of the North half of said Southwest Quarter of the Northwest Quarter; thence South 326.04 feet, along the East line of said Southwest Quarter of the Northwest Quarter, to the TRUE POINT OF BEGINNING; thence West 536 feet more or less, parallel to the South line of the North half of said Southwest Quarter of the Northwest Quarter to the center of a creek; thence following the center of said creek in a Southerly direction through the said Southwest Quarter of the Northwest Quarter and Government Lot 1 to the Meander Line along the beach; thence in an Easterly direction along said Meander Line to the East line of said Government Lot 1; thence North, along the East line of said Government Lot 1 to the Southeast corner of said Southwest Quarter of the Northwest Quarter; thence continuing North, along the East line of said Southwest Quarter of the Northwest Quarter to the True Point of Beginning.

TOGETHER WITH Tidelands of the Second Class, conveyed by the State of Washington by Tide Land Deed recorded December 29, 1950, in Volume 24, of Deeds, at page 407, under Auditor's File No. 41144, lying North of a tract of Oysterlands conveyed by the State of Washington to F.E. Womer and G.M. Gerhard through Deed issued January 28, 1904 under Application No. 3742, and situate in front of, adjacent to, or abutting upon that portion of Lot 1, Section 9, Township 36 North, Range 1 West, W.M. lying East of a line running North and South through the point of intersection of the Northeasterly line of Fifth Street, of the Amended Plat of Olga, a recorded Plat in said Lot 1, with the Government Meander Line.

EXCEPTING THEREFROM any portion lying or situate within County Road No. 63 (Olga Point Lawrence Road).

EXCEPTING THEREFROM any portion lying or situate within the 'Oysterlands' as described within and as conveyed by Statutory Warranty Deed, recorded July 18, 1994 in Volume 471 of Official Records, at page 354 under Auditor's File No. 94071822, records of San Juan County, Washington.

Situate in San Juan County, Washington.

ATTACHMENT 2 (page 2)

San Juan County Tax Parcel 160932005000

A certain parcel of land lying within the Southwest quarter of the Northwest quarter, Section 9, Township 36 North, Range 1 West, W.M., more particularly described as follows:

Beginning at the Southeast corner of the North half of said Southwest quarter of the Northwest quarter, thence South 326.04 feet along the East line of said Southwest quarter of the Northwest quarter, thence West 536 feet more or less, parallel to the South line of the North half of said Southwest quarter of the Northwest quarter to the center of a creek, thence following the center of said creek in a Northerly direction to a point on the South line of said North half, thence East 815 feet more or less, along the South line of said North half to the Point of Beginning.

TOGETHER WITH a non-exclusive perpetual easement, thirty feet in width, for roadway and utilities, over, under and across a parcel of land as described within and granted by an Easement for Roadway and Utilities, recorded March 31, 1998 under Auditor's File No. 19980331006, records of San Juan County, Washington.

Situate in San Juan County, Washington.