

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Action on Ordinance No. 933 - Authorizing the Use of Eminent Domain for Acquisition of Certain Real Properties to Construct the NW Innis Arden Way Culvert Replacement Project		
DEPARTMENT:	Public Works		
PRESENTED BY:	Tricia Juhnke		
ACTION:	<input checked="" type="checkbox"/> Ordinance	<input type="checkbox"/> Resolution	<input type="checkbox"/> Motion
	<input type="checkbox"/> Discussion	<input type="checkbox"/> Public Hearing	

PROBLEM/ISSUE STATEMENT:

The NW Innis Arden Way Culvert Replacement Project (Phase 2 of the Hidden Lake Dam Removal Project), has been a City priority since 2014 when City Council authorized staff to cease dredging Hidden Lake and begin a phased approach to remove Hidden Lake Dam and restore Boeing Creek's natural stream bed through Hidden Lake. The Project is currently in the right-of-way (ROW) acquisition phase. Settlement negotiations with the property owners affected by this project have been underway for several months and in February 2021 the City presented owners with offers to purchase property rights. In the months since, the City and its consultants have maintained regular contact with the property owners, and while we intend to continue negotiations, time is of the essence for this Project and exercise of eminent domain may become necessary

Eminent domain is a power granted to political subdivisions, such as the City of Shoreline, through RCW 8.12 to acquire private property for public use. City staff is requesting that the Council consider moving forward with a condemnation ordinance as the necessary next step to keep this Project on schedule.

Proposed Ordinance No. 933 (Attachment A) provides for this condemnation authority. Included in proposed Ordinance No. 933 are three partial property acquisitions from properties located downstream of the NW Innis Arden Way culvert. The City Council discussed proposed Ordinance No. 933 on June 14, 2021 and directed staff to return with this proposed ordinance for potential action at tonight's Council meeting.

RESOURCE/FINANCIAL IMPACT:

Passage of proposed Ordinance No. 933 does not in itself affect the settlement amount. Council passing this Ordinance is the first step for moving forward with the use of eminent domain if negotiations come to an impasse.

A Statutory Evaluation Allowance (SEA) is available to the property owner if an offer is made under the threat of eminent domain to help defray the owner's expenses. Under

RCW 8.25.020, when the City is acquiring property by eminent domain or under the threat of it, property owners are entitled to reimbursement of up to \$750 for costs incurred evaluating the City's offer.

RECOMMENDATION

Staff recommends that the City Council adopt proposed Ordinance No. 933 authorizing the use of eminent domain for acquisition of certain real properties to construct the NW Innis Arden Way Culvert Replacement Project.

Approved By: City Manager ***DT*** City Attorney ***MK***

BACKGROUND

The City Council discussed the management plan for Hidden Lake, which included alternative surface water management approaches for the Hidden Lake facility, at their September 8, 2014 meeting. At this meeting, the Council [authorized staff to cease dredging of the lake](#) and begin a phased approach to remove Hidden Lake Dam and reestablish Boeing Creek with the goal of reducing long-term costs to the surface water utility.

Without dredging, Hidden Lake is expected to gradually fill with sediment at which time the lake outlet will be vulnerable to blockage or the outlet will be bypassed by other natural processes which could cause flood flows to overtop and erode the existing dam spillway and block the NW Innis Arden Way culvert inlet. To avoid this scenario, which could lead to a sudden rush of water of the road embankment and other major flooding damage, the existing Dam should be removed, and the NW Innis Arden Way culverts replaced.

The Hidden Lake Dam Removal (Phase 1) and NW Innis Arden Way Culvert Replacement (Phase 2) Project is currently in the ROW acquisition phase of the project and 60% design has been completed. Easements have been obtained for the Phase 1 portion of the work. Easement offers have been presented to property owners for the Phase 2 portion of the work, and negotiations are still underway.

DISCUSSION

The City Council [discussed proposed Ordinance No. 933](#) (Attachment A) at their June 14, 2021 Council meeting and provided direction to staff to bring the Ordinance back for approval at tonight's Council meeting.

A notice of final action, adoption of Ordinance No. 933, has been published in the Seattle Times once a week for two successive weeks; and notice sent via certified mail to the three property owners impacted by the final action at least 15 days prior to final action; all at the City's expense. Publication in the Seattle Times was on May 31, 2021 and June 6, 2021, and notice was sent by certified mail on May 27, 2021.

COUNCIL GOAL(S) ADDRESSED

Completion of improvements for the NW Innis Arden Way Culvert Replacement Project helps to implement City Council Goal 2: Continue to deliver highly-valued public services through management of the City's infrastructure and stewardship of the natural environment.

RESOURCE/FINANCIAL IMPACT

Passage of proposed Ordinance No. 933 does not in itself affect the settlement amount. Council passing this Ordinance is the first step for moving forward with the use of eminent domain if negotiations come to an impasse.

A Statutory Evaluation Allowance (SEA) is available to the property owner if an offer is made under the threat of eminent domain to help defray the owner's expenses. Under RCW 8.25.020, when the City is acquiring property by eminent domain or under the threat of it, property owners are entitled to reimbursement of up to \$750 for costs they incurred evaluating the City's offer.

RECOMMENDATION

Staff recommends that the City Council adopt proposed Ordinance No. 933 authorizing the use of eminent domain for acquisition of certain real properties to construct the NW Innis Arden Way Culvert Replacement Project.

ATTACHMENTS

Attachment A: Proposed Ordinance No. 933, including Exhibit A

ORDINANCE NO. 933

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, AUTHORIZING ACQUISITION OF CERTAIN REAL PROPERTY INTERESTS BY NEGOTIATED VOLUNTARY PURCHASE, UNDER THREAT OF CONDEMNATION, BY CONDEMNATION, OR BY SETTLING CONDEMNATION LITIGATION, FOR THE PURPOSE OF FACILITATING CONSTRUCTION AND FUTURE MAINTENANCE OF THE NW INNIS ARDEN WAY CULVERT REPLACEMENT PROJECT; FINDING PUBLIC USE AND NECESSITY; AUTHORIZING JUST COMPENSATION FROM THE GENERAL FUND; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, RCW 8.12.030 authorizes the use of condemnation for culverts, drainage, making changes in the grade of any street for the construction of slopes or retaining walls for cuts and fills upon real property abutting any street, or other public use after just compensation has been made; and

WHEREAS, the City has been planning for replacement of the NW Innis Arden Way culvert to support the proposed Hidden Lake Dam Removal and Boeing Creek Restoration Projects which are intended to allow Hidden Lake to return to its natural condition, and improve wildlife habitat in and near Hidden Lake and Boeing Creek, including removal of barriers to fish passage; and

WHEREAS, the City Council finds that acquisition of easements, permanent and temporary, on the properties generally depicted and described in Exhibit A, attached hereto (the “Acquired Properties”), is necessary for the construction of NW Innis Arden Way Culvert Replacement Project; and

WHEREAS, just compensation for the Acquired Properties can be funded through the City’s Surface Water Utility Fund; and

WHEREAS, there will be sustained efforts to negotiate with the owners of the Acquired Properties, and eminent domain action will be taken judiciously after reasonable efforts to reach a negotiated settlement with the owners; and

WHEREAS, in the event that negotiated acquisition of the Acquired Properties is not fully successful, it is essential that the City be prepared to initiate condemnation proceedings; and

WHEREAS, the owners of the Acquired Properties were given notice of the City Council’s June 14, 2021 and June 28, 2021 meetings, and were afforded an opportunity to submit comment at or for those meetings; and

WHEREAS, the City has provided notice of the adoption of this Ordinance in the manner set forth in RCW 8.12.005 and 8.25.290; and

WHEREAS, acquisition of the Acquired Properties is categorically exempt from SEPA review under WAC 197-11-800(5)(a);

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Condemnation Authorized. The City Manager is hereby authorized to take necessary steps to acquire all necessary property interests in the land located within the City of Shoreline, County of King, State of Washington, depicted and legally described in Exhibit A attached hereto and by this reference incorporated herein (the “Acquired Properties”) which is necessary for construction and maintenance of the NW Innis Arden Way Culvert Replacement Project, and is hereby condemned,

appropriated and taken for such public use, subject to the making or paying of just compensation to the owners thereof in the manner provided by law.

The City Manager or designee is hereby authorized and directed to execute all documents for the acquisition of all necessary property interests in the Acquired Properties and bring proceedings in the manner provided for by law to condemn, take, damage, and appropriate the Acquired Properties described in this Ordinance pursuant to the powers granted to the City of Shoreline, including RCW 35A.64.200 and Chapters 8.12 and 8.25 RCW. This authorization includes the right to condemn all reversionary interests, easements, and options in said Acquired Properties.

The City Attorney is authorized to begin and prosecute legal proceedings in the manner provided by the law to purchase, condemn, take, appropriate, and otherwise acquire the land and all other interests and property rights and privileges necessary to carry out the purposes of this Ordinance. The City Attorney is also authorized to make minor amendments to any property descriptions or maps of the properties, generally depicted on the attached Exhibit A, as may become necessary to correct scrivener's errors or to conform the legal description to the precise boundaries of the Acquired Properties.

Section 2. Finding of Public Use and Necessity. The Shoreline City Council finds that the acquisition of the Acquired Properties is for a public use and purpose, to-wit: to provide for the construction of the NW Innis Arden Way Culvert Replacement Project that will replace aging critical infrastructure, mitigate flood and erosion risk, and improve wildlife habitat through stream restoration and removal of fish barriers. The City Council further finds property interests, permanent and temporary easements, on the properties generally depicted in Exhibit A, are necessary for the proposed public use and for the benefit of the public. The Whereas clauses set forth above are hereby incorporated into and made part of the Council's findings.

Section 3. Compensation. Compensation to be paid to the owners of the Acquired Properties identified in Section 1, above, and costs and expenses of litigation authorized by this Ordinance, shall be paid from the City's Surface Water Utility Fund.

Section 4. Effective Date and Publication. A summary of this Ordinance consisting of the title shall be published in the official newspaper and the Ordinance shall take effect five days after publication.

PASSED BY THE CITY COUNCIL ON JUNE 28, 2021.

Mayor Will Hall

ATTEST:

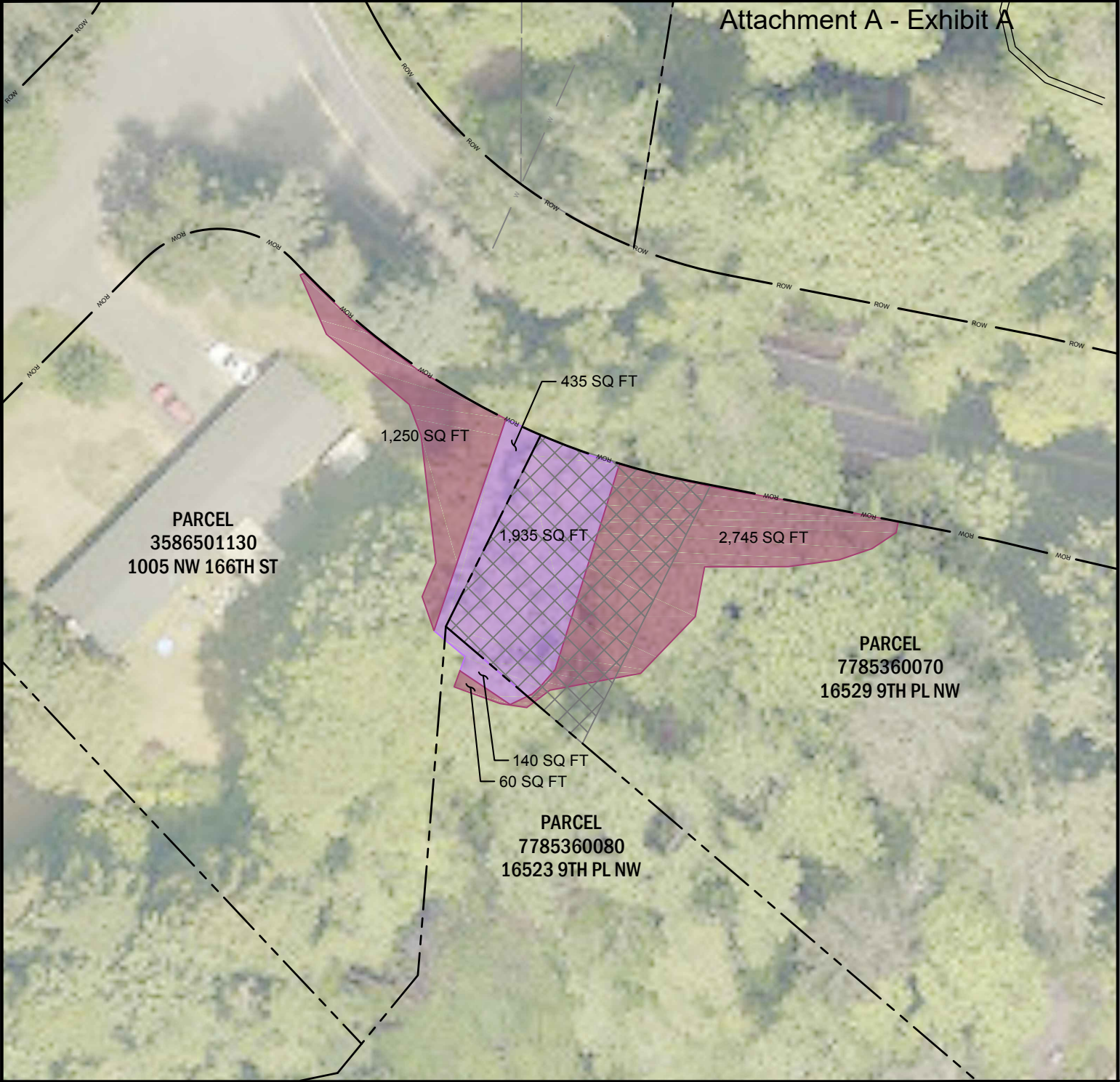
APPROVED AS TO FORM:

Jessica Simulcik Smith
City Clerk






Julie Ainsworth-Taylor, Assistant City Attorney
on behalf of Margaret J. King, City Attorney

Publication Date: _____, 2021

Effective Date: _____, 2021



Legend

-  PROPERTY LINE
-  RIGHT-OF-WAY
-  EXISTING EASEMENT - 3,550 SQ FT
-  TEMPORARY CONSTRUCTION EASEMENT
-  PERMANENT EASEMENT

**NW Innis Arden Way Boeing Creek
Culvert Replacement Project.
Proposed Easements for Properties
South of NW Innis Arden Way.**

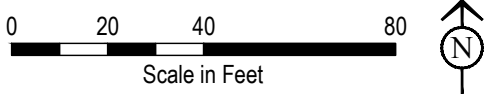


EXHIBIT A
"SUBJECT PARCEL LEGAL"

PARCEL NO. 3586501130

LOT 1, BLOCK 32, INNIS ARDEN NO. 3, ACCORING TO THE PLAT THEREOF, RECORDED IN VOLUME 46 OF PLATS, PAGE(S) 42 THROUGH 45, INCLUSIVE, IN KING COUNTY, WASHINGTON.

(PER RECORDED DEED 20130329002359)

SW1/4 SEC. 12,T.26N.,R.3E.,W.M.



PACIFIC GEOMATIC SERVICES, INC.

LAND SURVEYING & MAPPING SERVICES
 QUALITY SERVICE - CREATIVE SOLUTIONS

12201 CYRUS WAY, SUITE 105
 MUKILTEO, WA 98275
 PHONE:(425) 778-5620 FAX:(425) 775-2849
 WEB: www.PacGeolInc.com

DWN BY: SPJR	CHK.
SCALE: NTS	KDB
DATE: 3/17/2021	
JOB NUMBER	SHEET
15-019-01	1 OF 3

EXHIBIT B "EASEMENT LEGAL"

LOT 1, BLOCK 32, INNIS ARDEN NO. 3, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 46 OF PLATS, PAGE(S) 42 THROUGH 45, INCLUSIVE, IN KING COUNTY, WASHINGTON.

FURTHER DESCRIBED AS FOLLOWS.

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 8 OF SAID PLAT;

THENCE NORTH 26°21'43" EAST A DISTANCE OF 61.25 FEET TO THE SOUTHERN MARGIN OF NW INNIS ARDEN WAY, AND THE BEGINNING OF A CURVE TO THE NORTHWEST HAVING A RADIUS OF 208.56 FEET WHICH CENTER BEARS NORTH 23°14'02" EAST;

THENCE NORTHWESTERLY ALONG SAID MARGIN THROUGH A CENTRAL ANGLE OF 3°01'36" AN ARC DISTANCE OF 11.02 FEET;

THENCE SOUTH 18°21'18" WEST A DISTANCE OF 64.07 FEET;

THENCE SOUTH 47°44'44" EAST A DISTANCE OF 3.62 FEET TO THE WESTERLY BOUNDARY OF LOT 8;

THENCE NORTH 04°34'26" EAST A DISTANCE OF 3.77 FEET ALONG SAID WESTERLY BOUNDARY OF LOT 8 TO THE POINT OF BEGINNING AND TERMINUS OF SAID EASEMENT.

CONTAINING 419.49 SQUARE FEET



SW1/4 SEC. 12, T.26N., R.3E., W.M.



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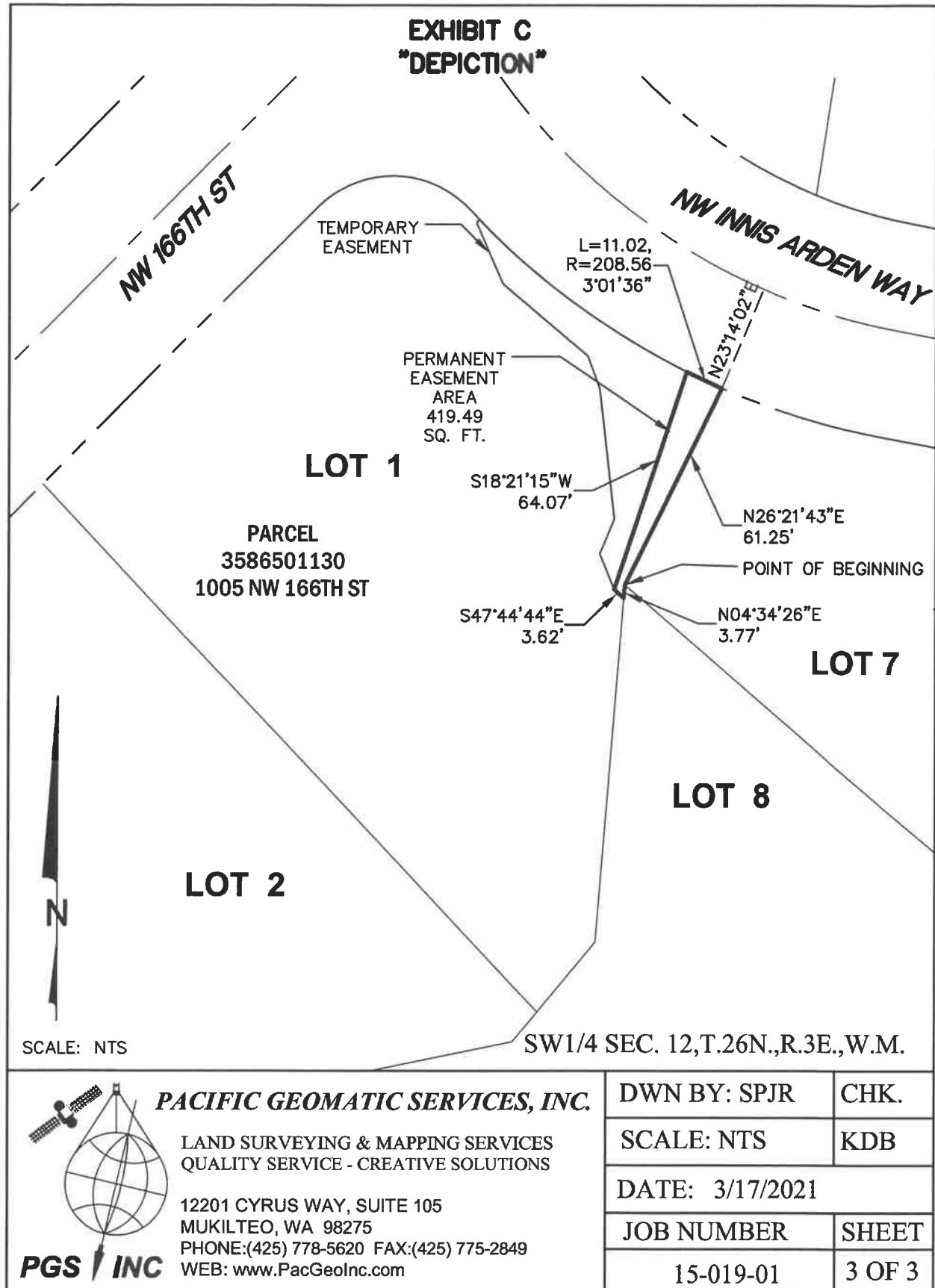


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FURTHER DESCRIBED AS FOLLOWS.

COMMENCING AT THE SOUTHERLY CORNER OF LOT 1 OF SAID PLAT;

THENCE NORTH 39°24'02" EAST ALONG THE EASTERLY LINE OF LOT 1 A DISTANCE OF 25.45 FEET;

THENCE NORTH 04°34'26" EAST ALONG SAID LINE A DISTANCE OF 96.55 FEET;

THENCE NORTH 47°44'44" WEST ALONG SAID LINE A DISTANCE OF 3.62 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 21°55'12" WEST A DISTANCE OF 10.75 FEET;

THENCE NORTH 22°28'26" EAST A DISTANCE OF 10.47 FEET;

THENCE NORTH 06°27'06" WEST A DISTANCE OF 36.70 FEET;

THENCE NORTH 20°30'14" WEST A DISTANCE OF 9.60 FEET;

THENCE NORTH 49°30'25" WEST A DISTANCE OF 31.10 FEET;

THENCE NORTH 23°29'35" WEST A DISTANCE OF 18.50 FEET;

THENCE NORTH 39°00'39" EAST TO THE SOUTHERN MARGIN OF NW INNIS ARDEN WAY A DISTANCE OF 1.19 FEET, SAID POINT IS THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 208.56' WHICH CENTER BEARS NORTH 46°05'03" EAST;

THENCE SOUTHERLY ALONG SAID MARGIN THROUGH A CENTRAL ANGLE OF 19°49'25" AN ARC DISTANCE OF 72.16 FEET;

THENCE SOUTH 18°21'18" WEST A DISTANCE OF 64.08 FEET TO THE POINT OF BEGINNING AND THE TERMINUS OF SAID EASEMENT.

CONTAINING 1,275.46 SQUARE FEET



SW1/4 SEC. 12, T.26N., R.3E., W.M.



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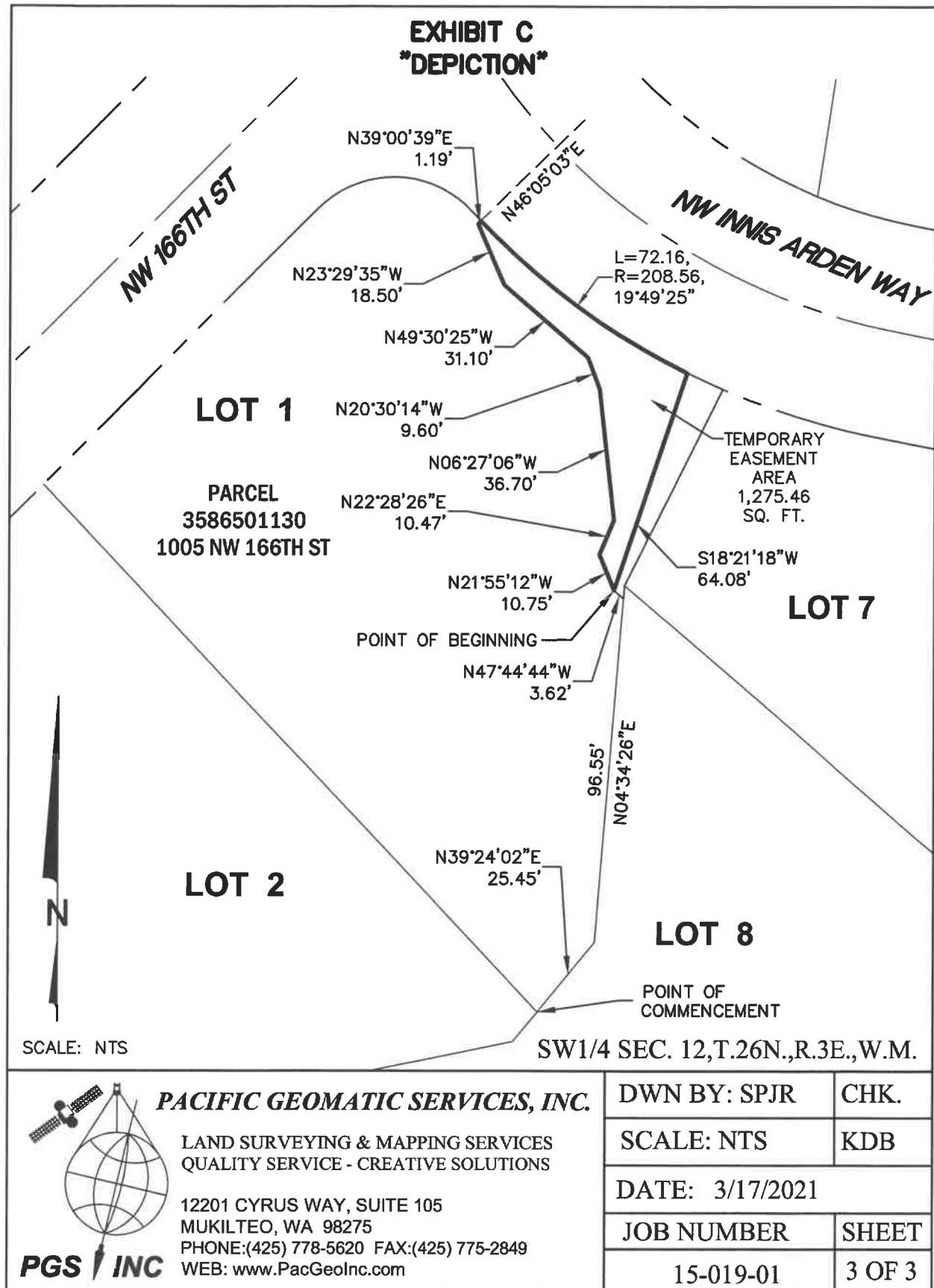
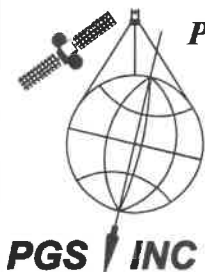


EXHIBIT A
"SUBJECT PARCEL LEGAL"

PARCEL NO. 7785360070

LOT 7 OF SHOREWOOD HILLS DIVISION 2, ACCORDING TO PLAT RECORDED IN VOLUME 112 OF PLATS AT PAGE(S)
 48, 49 AND 50 IN KING COUNTY, WASHINGTON.

SW1/4 SEC. 12,T.26N.,R.3E.,W.M.



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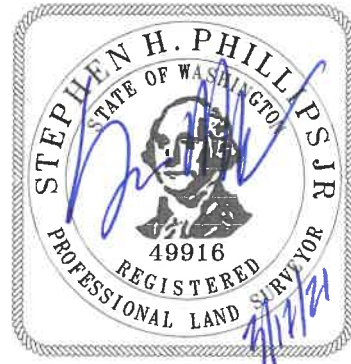
EXHIBIT B

EASEMENT LEGAL

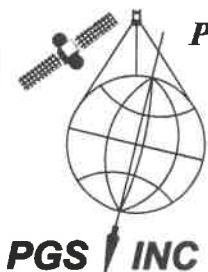
LOT 7 OF SHOREWOOD HILLS DIVISION 2, ACCORDING TO PLAT RECORDED IN VOLUME 112 OF PLATS AT PAGE(S) 48, 49 AND 50 IN KING COUNTY, WASHINGTON.

FURTHER DESCRIBED AS FOLLOWS BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 8 OF SAID PLAT
 THENCE SOUTH 49°28'30" EAST ALONG THE SOUTHERLY LINE OF LOT 7 A DISTANCE OF 30.77 FEET;
 THENCE NORTH 63°53'22" EAST A DISTANCE OF 1.47 FEET;
 THENCE NORTH 47°55'46" EAST A DISTANCE OF 3.03 FEET;
 THENCE NORTH 41°09'27" EAST A DISTANCE OF 6.63 FEET;
 THENCE NORTH 17°22'28" EAST A DISTANCE OF 61.84 FEET TO THE SOUTHERLY MARGIN OF NW INNIS ARDEN WAY
 SAID POINT BEING THE BEGINNING OF A CURVE TO THE RIGHT WITH A RADIUS OF 208.51 FEET WHICH THE RADIAL
 LINE BEARS NORTH 16°43'52" EAST;
 TO THE NORTHWEST THROUGH A CENTRAL ANGLE OF 6°36'29" A DISTANCE OF 24.05 FEET TO THE WESTERLY LINE
 OF LOT 7
 THENCE ALONG SAID CURVE THENCE SOUTH 26°21'43" WEST ALONG SAID WESTERLY LINE A DISTANCE OF 61.25
 FEET MORE OR LESS TO THE POINT OF BEGINNING AND THE TERMINUS OF SAID EASEMENT;

CONTAINING 1,936.89 SQ. FT.



SW1/4 SEC. 12, T.26N., R.3E., W.M.



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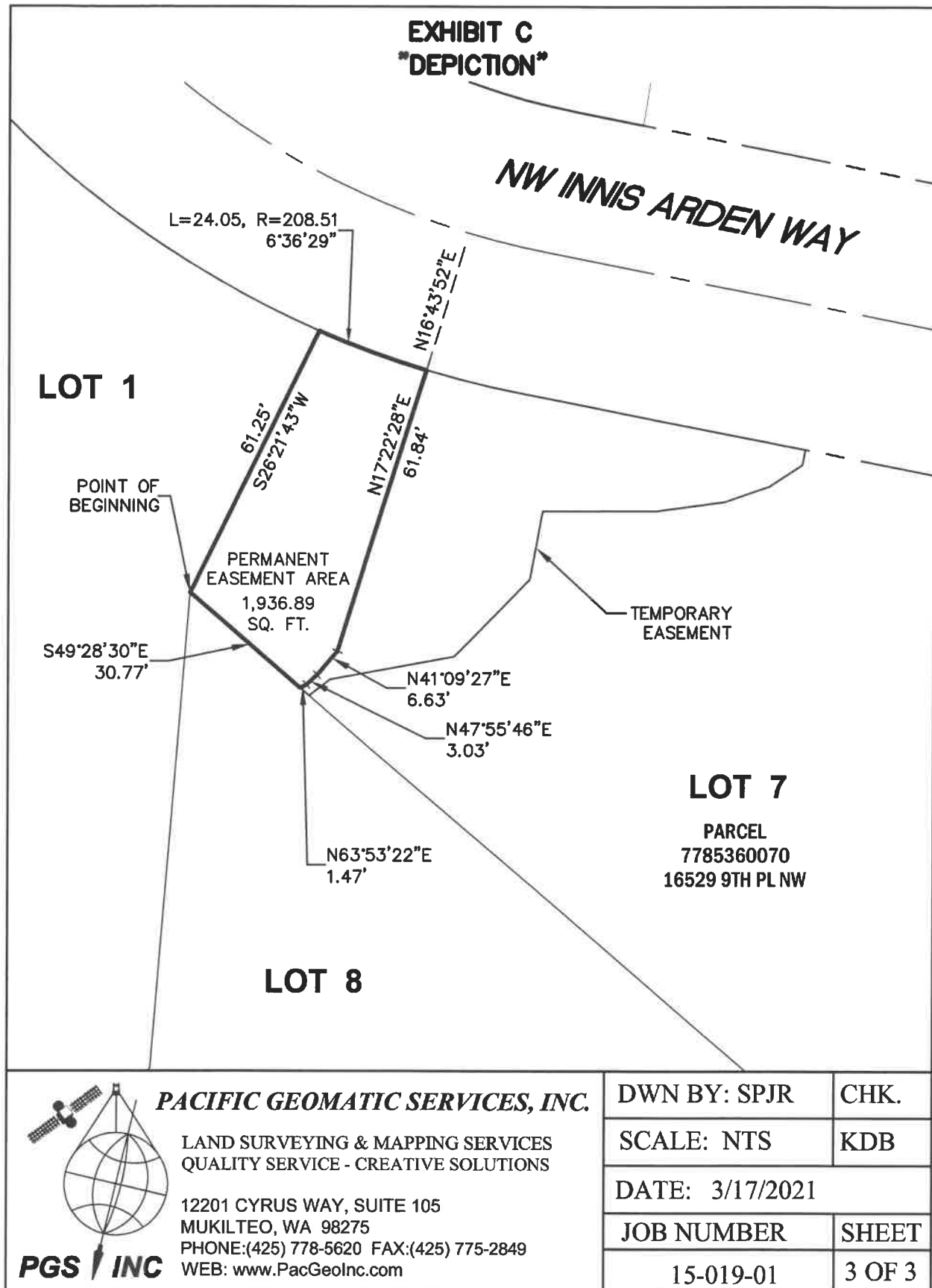


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PARCEL NO. 7785360070

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EXHIBIT B "EASEMENT LEGAL"

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THENCE SOUTH 49°28'30" EAST ALONG THE SOUTHERLY LINE OF SAID LOT 7 A DISTANCE OF 30.77 FEET TO THE
POINT OF BEGINNING;

THENCE NORTH 63°53'22" EAST A DISTANCE OF 1.47 FEET;

THENCE NORTH 47°55'46" EAST A DISTANCE OF 3.03 FEET;

THENCE NORTH 41°09'27" EAST A DISTANCE OF 6.63 FEET;

THENCE NORTH 17°22'28" EAST TO THE SOUTHERLY MARGIN OF NW INNIS ARDEN WAY A DISTANCE OF 61.84 FEET
SAID POINT BEING THE BEGINNING OF A CURVE TO THE LEFT WITH A RADIUS OF 201.20 FEET WHICH THE RADIAL
LINE BEARS NORTH 16°43'52" EAST;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 5°48'09" AN ARC DISTANCE OF 20.38 FEET;

THENCE SOUTH 78°58'13" EAST ALONG SAID SOUTHERLY MARGIN A DISTANCE OF 61.25 FEET;

THENCE SOUTH 11°01'47" WEST A DISTANCE OF 3.24 FEET;

THENCE SOUTH 56°35'58" WEST A DISTANCE OF 8.27 FEET;

THENCE SOUTH 71°04'39" WEST A DISTANCE OF 9.93 FEET;

THENCE SOUTH 82°22'02" WEST A DISTANCE OF 14.72 FEET;

THENCE SOUTH 89°50'18" WEST A DISTANCE OF 24.00 FEET;

THENCE SOUTH 10°32'15" WEST A DISTANCE OF 14.51 FEET;

THENCE SOUTH 43°55'21" WEST A DISTANCE OF 22.60 FEET;

THENCE SOUTH 79°27'01" WEST A DISTANCE OF 26.48 FEET;

THENCE SOUTH 53°00'18" WEST TO THE SOUTHERLY LINE OF
SAID LOT 7 A DISTANCE OF 5.62 FEET;

THENCE NORTH 49°28'30" WEST ALONG SAID SOUTHERLY LINE A DISTANCE OF 2.54 FEET TO THE POINT OF
BEGINNING AND THE TERMINUS OF SAID EASEMENT;

CONTAINING 2,757.67 SQ. FT.



SW1/4 SEC. 12, T.26N., R.3E., W.M.



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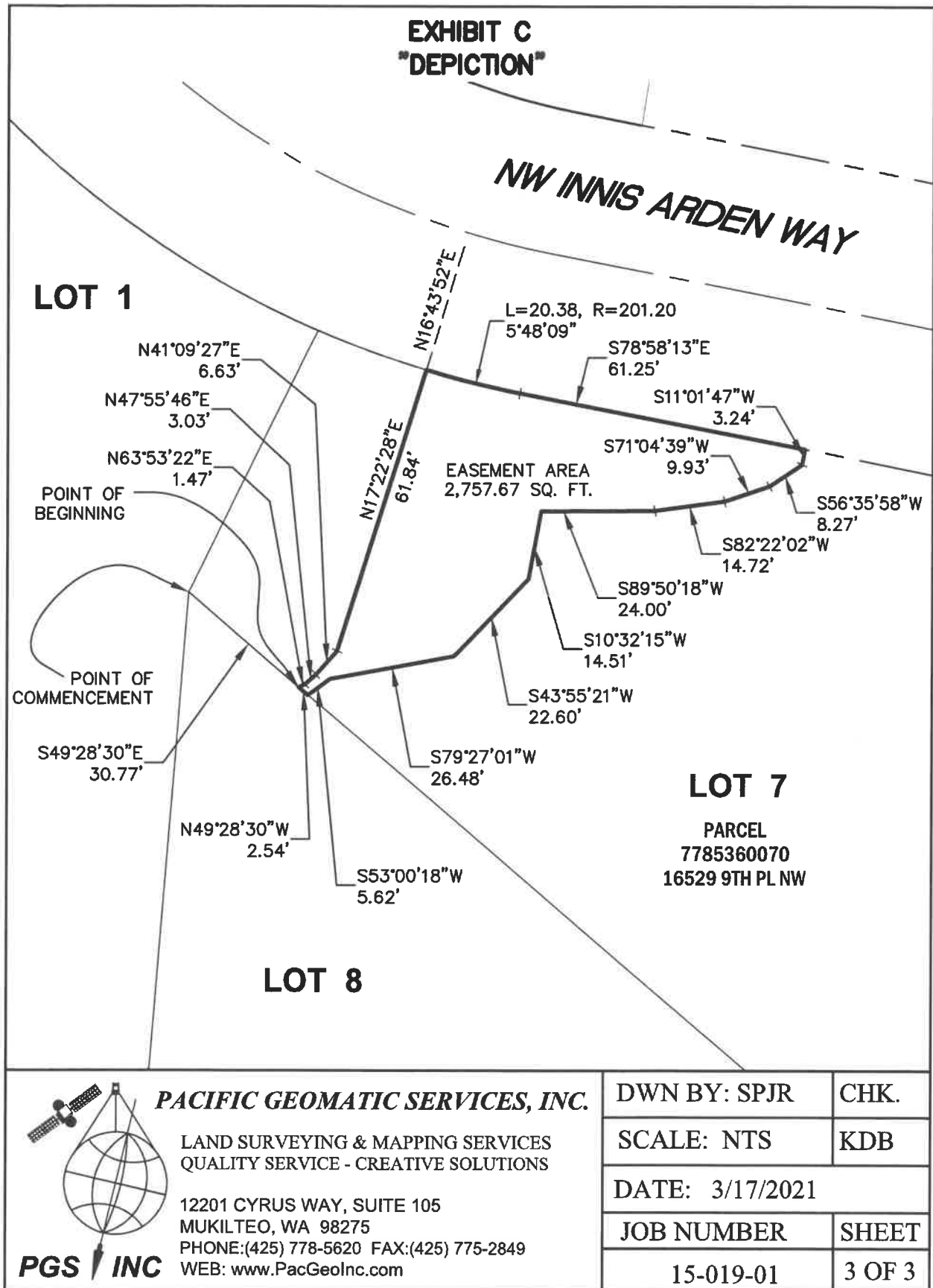


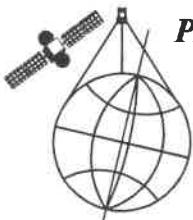
EXHIBIT A
"SUBJECT PARCEL LEGAL"

PARCEL NO. 7785360080

LOT 8 OF SHOREWOOD HILLS DIVISION 2, ACCORDING TO PLAT RECORDED IN VOLUME 112 OF PLATS AT PAGE(S) 48, 49 AND 50 IN KING COUNTY, WASHINGTON.

(RECORDED DEED 1986043201618 (IMAGE UNAVAILABLE))

SW1/4 SEC. 12,T.26N.,R.3E.,W.M.



PGS / INC

PACIFIC GEOMATIC SERVICES, INC.

LAND SURVEYING & MAPPING SERVICES
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FURTHER DESCRIBED AS FOLLOWS.

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 8 OF SAID PLAT

THENCE SOUTH 04°24'29" WEST ALONG THE WESTERLY LINE OF SAID LOT A DISTANCE OF 3.80 FEET;

THENCE SOUTH 50°02'29" EAST A DISTANCE OF 7.58 FEET;

THENCE SOUTH 19°57'37" WEST A DISTANCE OF 4.31 FEET;

THENCE SOUTH 56°06'33" EAST A DISTANCE OF 17.32 FEET;

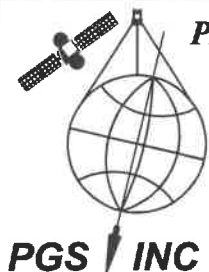
THENCE NORTH 64°28'57" EAST TO THE EASTERLY LINE OF SAID LOT 8 A DISTANCE OF 5.50 FEET;

THENCE NORTH 49°28'30" WEST ALONG SAID EASTERLY LINE A DISTANCE OF 30.77 MORE OR LESS TO THE POINT OF BEGINNING AND THE TERMINUS OF SAID EASEMENT.

CONTAINING 143.29 SQUARE FEET



SW1/4 SEC. 12, T.26N., R.3E., W.M.



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DWN BY: SPJR	CHK.
SCALE: NTS	KDB
DATE: 3/17/2021	
JOB NUMBER	SHEET
15-019-01	2 OF 3

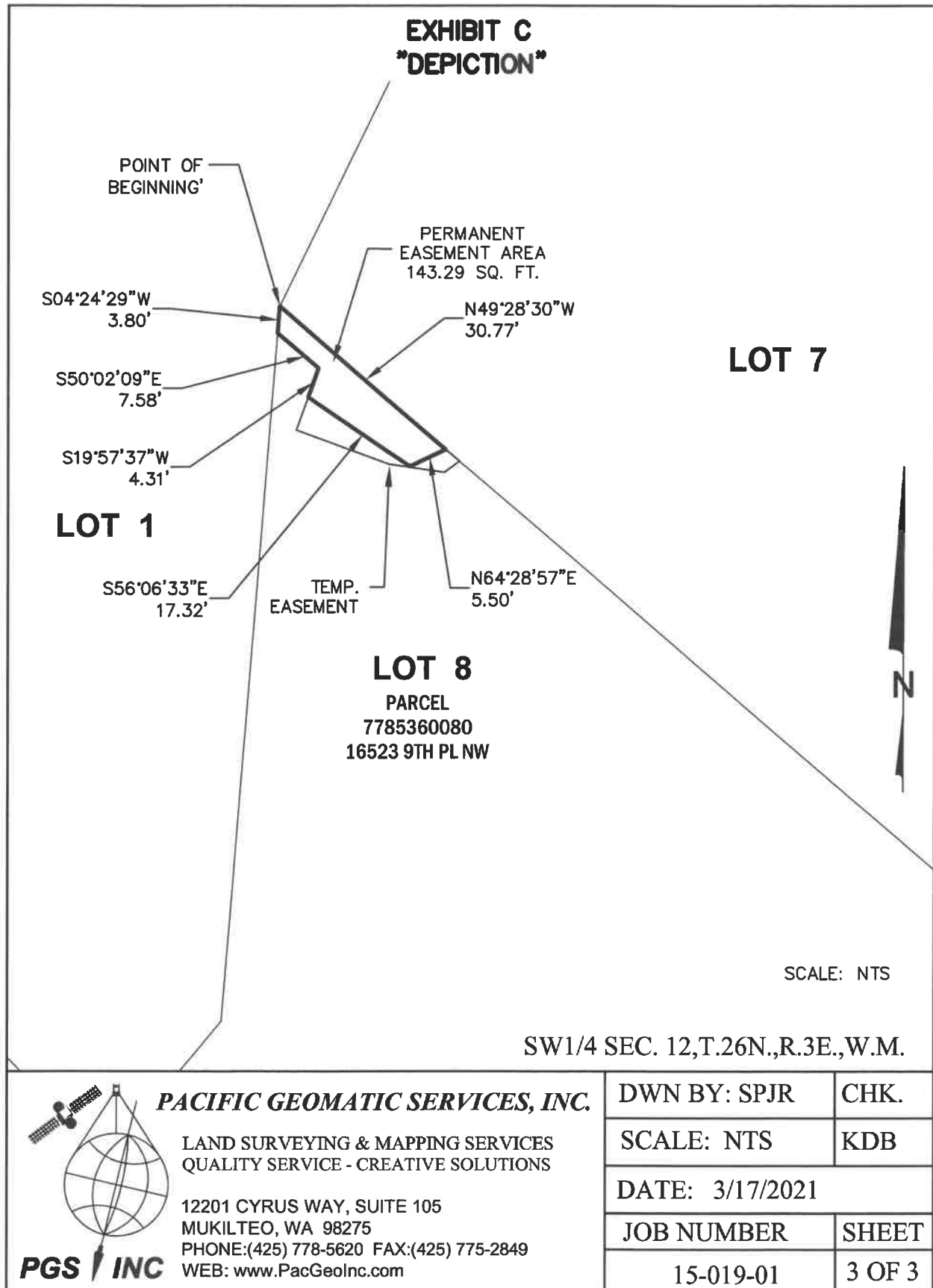


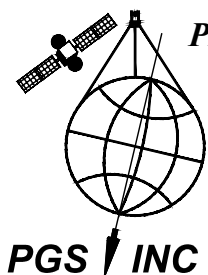
EXHIBIT A **"SUBJECT PARCEL LEGAL"**

PARCEL NO. 7785360080

LOT 8 OF SHOREWOOD HILLS DIVISION 2, ACCORDING TO PLAT RECORDED IN VOLUME 112 OF PLATS AT PAGE(S) 48, 49 AND 50 IN KING COUNTY, WASHINGTON.

(RECORDED DEED 1986043201618 (IMAGE UNAVAILABLE))

SW1/4 SEC. 12,T.26N.,R.3E.,W.M.



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EXHIBIT B "EASEMENT LEGAL"

LOT 8 OF SHOREWOOD HILLS DIVISION 2, ACCORDING TO PLAT RECORDED IN VOLUME 112 OF PLATS AT PAGE(S) 48, 49 AND 50 IN KING COUNTY, WASHINGTON.

FURTHER DESCRIBED AS FOLLOWS.

COMMENCING AT THE MOST NORTHERLY CORNER OF LOT 8 OF SAID PLAT

THENCE SOUTH 49°28'30" EAST ALONG THE EASTERLY LINE OF SAID LOT A DISTANCE OF 69.28 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID LINE SOUTH 49°28'30" EAST A DISTANCE OF 2.54 FEET;

THENCE SOUTH 52°58'31" WEST A DISTANCE OF 2.62 FEET;

THENCE NORTH 81°34'26" WEST A DISTANCE OF 7.77 FEET;

THENCE NORTH 70°02'23" WEST A DISTANCE OF 14.00 FEET;

THENCE NORTH 19°57'37" EAST A DISTANCE OF 4.90 FEET;

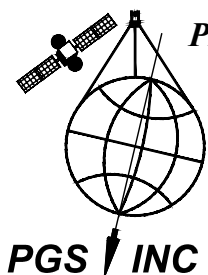
THENCE SOUTH 56°06'33" EAST A DISTANCE OF 17.32 FEET;

THENCE NORTH 64°28'57" EAST TO THE EASTERLY LINE OF SAID LOT 8 A DISTANCE OF 5.50 FEET MORE OR LESS TO THE POINT OF BEGINNING AND THE TERMINUS OF SAID EASEMENT.

CONTAINING 57.87 SQUARE FEET



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