

ORDINANCE NO. 23-1664

AN ORDINANCE OF THE CITY OF LYNDEN, COUNTY OF WHATCOM, AUTHORIZING AND PROVIDING FOR THE ACQUISITION, CONDEMNATION, APPROPRIATION, AND TAKING BY EMINENT DOMAIN OF EASEMENTS FOR THE CONSTRUCTION AND MAINTENANCE OF AN EXTENSION OF THE JIM KAEMINGK SR. TRAIL OVER THE PROPERTY DESCRIBED IN EXHIBIT "A" BELOW; PROVIDING FOR DECLARING AS A PUBLIC USE AND NECESSITY AND AUTHORIZING CONDEMNATION, APPROPRIATION, AND TAKING EASEMENT RIGHTS NECESSARY THEREFOR; PROVIDING FOR THE COST THEREOF AND DIRECTING THE CITY ATTORNEY TO INITIATE APPROPRIATE LEGAL PROCEEDINGS FOR SAID CONDEMNATION.

WHEREAS, the City of Lynden ("City") is engaged in the expansion of the Jim Kaemingk Sr. Trail to extend and improve the trail from one end of the City to the other; and

WHEREAS, the City requires a temporary construction easement over property abutting W. Pine Street Lynden, WA described in full in Exhibit "A" (hereinafter "Property"), for a duration of eighteen (18) months, for the purpose of constructing a new section of a public trail on adjacent property; and

WHEREAS; the City requires a temporary access and maintenance easement over the Property for the thirty-six (36) months following the expiration of the temporary construction easement, to efficiently access required mitigation vegetative plantings adjacent to the shoreline required for the trail and to address future maintenance needs for those plantings; and

WHEREAS, the City has contacted the owner(s) of the Property on several occasions in an attempt to acquire the easements without success; and

WHEREAS, it is necessary and in the public interest to exercise the City's power of eminent domain and condemn the Property for the purposes of obtaining a temporary construction easement (described in Exhibit "B" and depicted in Exhibit "C") and an access and maintenance easement (described in Exhibit "D" and depicted in Exhibit "E") necessary for the laying out, establishing, constructing, and maintaining of the contemplated expansion of the Jim Kaemingk Sr. Trail, subject to the making or paying of just compensation to the owners of the Property in the manner provided by law; and

WHEREAS, notice by certified mail has been provided as required by RCW 8.25.290(2)(a) to the property owner(s) of the Property of the City's plan to take a final action to authorize the condemnation of the Property; and

WHEREAS, notice of the City's plan to take a final action authorizing the condemnation of the Property has been given by publication, as required by RCW 8.25.290(2)(b); and

WHEREAS, the Lynden City Council is exercising its independent discretion to proceed with an eminent domain case to establish the right to take such property for a public purpose and to settle the amount of compensation, if any, owing to the property owners; and

WHEREAS, the foregoing recitals are material findings and declarations of the Lynden City Council;

NOW THEREFORE, BE IT ORDAINED as follows:

Section 1 – Finding of Public Use & Declaration of Necessity: Obtaining the above-described easements for the purpose of extending the Jim Kaemingk Sr. Trail is hereby declared to be a public use, that the public interest requires the proposed public use, and that the portion of the Property to be acquired hereunder is necessary to facilitate said public use.

Section 2 – Description of Property: The property to be taken pursuant to this Ordinance includes:

- (1) A temporary construction easement over a portion of the Property (as described in Exhibit "B" and depicted in Exhibit "C"), for a period of eighteen (18) months commencing from the date the City obtains immediate use and possession of the easement, and
- (2) A temporary access & maintenance easement over the same portion of the Property (as described in Exhibit "D" and depicted in Exhibit "E"), for a period of thirty-six (36) months commencing from the date the temporary construction easement described above expires.

Section 3 – Source of Funds: Compensation for the portion of the Property condemned including all costs and expenses of acquiring same shall be paid from City of Lynden Park funds (general fund), or from other monies the City may have available or obtain therefor.

Section 4 – Authorization of City Attorney: The City Attorney is hereby authorized and directed to undertake proceedings provided by law to condemn, appropriate, take, and damage the land and property necessary to carry out the provisions of this ordinance. The City Attorney is also authorized to enter stipulations for the purpose of minimizing damages, including all stipulations authorized by Chapter 8.25 RCW.

Section 5 - Condemnation: The temporary construction easement and temporary access & maintenance easement described in Section 2 above are hereby condemned, appropriated, taken, and damaged for the public purposes described herein, subject to the making or paying of just compensation to the owners thereof in the manner provided by law.

Section 6 – Severability: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, and if, for any reason, this ordinance should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

Section 7 – Conflicts: Any ordinance or parts of ordinances in conflict herewith are hereby repealed.

Section 8 – Effective Date: This ordinance shall be in full force and effect five (5) days after its passage, approval and publication as provided by law.

AFFIRMATIVE VOTE \_\_\_\_\_ IN FAVOR, AND \_\_\_\_\_ AGAINST, AND SIGNED BY THE  
MAYOR THIS \_\_\_ DAY OF \_\_\_\_\_, 2023.

\_\_\_\_\_  
Scott Korthuis, Mayor

ATTEST:

\_\_\_\_\_  
Pamela Brown, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Robert Carmichael, City Attorney

**EXHIBIT A**

**Legal Description of Property**

Assessor's Tax Parcel Number: 400320 145493 0000

THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M. DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER, THENCE EAST 180 FEET, THENCE SOUTH 797 FEET M/L TO THE NORTH LINE OF HAWLEY'S ADDITION TO LYNDEN, TO THE POINT OF BEGINNING, THENCE WEST 180 FEET, THENCE NORTH 164 FEET, THENCE EAST 180 FEET, THENCE SOUTH 164 FEET TO THE POINT OF BEGINNING, LESS ROADS, EXCEPT THAT PORTION OF LOT 1 LYNDEN CITY TRAIL SHORT PLAT, LOT LINE ADJUSTMENT AS RECORDED UNDER AUDITOR'S FILE NUMBER 2070403245.

INCLUDING THAT PORTION OF AN ADJACENT AREA OF DEED GAP CONVEYED BY THE CITY OF LYNDEN, RECORDED UNDER WHATCOM COUNTY ASSESSOR'S FILE NUMBER 2111202452.

# EXHIBIT "B"

## TEMPORARY CONSTRUCTION EASEMENT

### TOP FAMILY LIVING TRUST to THE CITY OF LYNDEN

A variable width easement over and across a portion of the Northeast quarter of the Northwest quarter of Section 20, Township 40 North, Range 3 East of W.M., said easement described as follows:

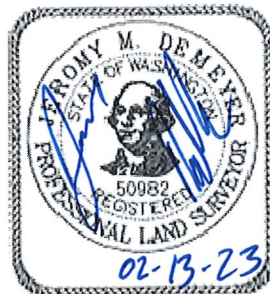
All that portion of said quarter quarter lying: Southerly of Lot 1 of the Lynden City Trail Short Plat / Lot Line Adjustment, as per the map thereof, recorded under Whatcom County Auditor's File No. 2070403245, Southwesterly of Fishtrap Creek, East of the West line of said quarter quarter, East of the Northerly extension of East line of Lot 5, Block 31, Hawleys Addition to Lynden, as per the map thereof recorded in Book 1 of Plats, Page 87, record of Whatcom County, Washington and Northeasterly and Northwesterly of the following described line:

**Commencing** at the Southwest corner of said Lot 1; thence South 02° 52' 35" West on a southerly extension of said Lot 1 a distance of 50.11 feet to the **true point of beginning** of this line description: thence South 51° 08' 05" East a distance of 222.44 feet; thence North 72° 16' 16" East a distance of 105.42 feet; thence North 02° 45' 12" East a distance of 15.47 feet more or less to Fishtrap Creek and the **terminus** of this line description.

As shown on Exhibit "C" attached hereto and incorporated herein by reference.

Situate in Whatcom County, Washington.

Subject to all easements, covenants, restriction and/or agreements of record, or otherwise.

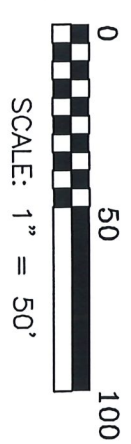
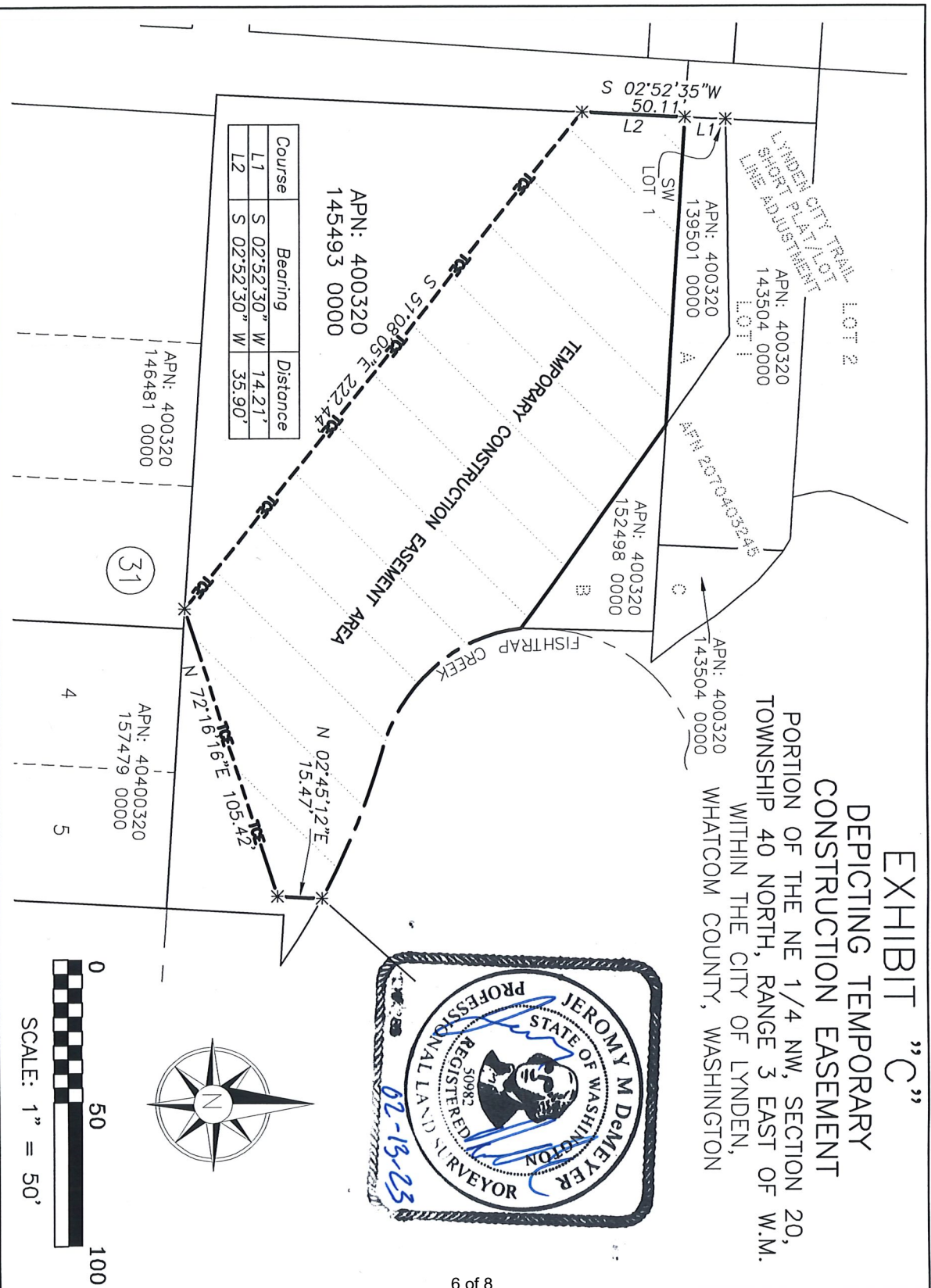


LYNDEA CITY TRAIL LOT 2  
 SHORT PLAT/LOT  
 LINE ADJUSTMENT  
 APN: 400320  
 143504 0000  
 LOT 1

**EXHIBIT "C"**  
 DEPICTING TEMPORARY  
 CONSTRUCTION EASEMENT

PORTION OF THE NE 1/4 NW, SECTION 20,  
 TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M.  
 WITHIN THE CITY OF LYNDEN,  
 WHATCOM COUNTY, WASHINGTON

| Course | Bearing       | Distance |
|--------|---------------|----------|
| L1     | S 02°52'30" W | 14.21'   |
| L2     | S 02°52'30" W | 35.90'   |



# EXHIBIT "D"

## ACCESS AND MAINTENANCE EASEMENT

### TOP FAMILY LIVING TRUST to THE CITY OF LYNDEN

A variable width easement over and across a portion of the Northeast quarter of the Northwest quarter of Section 20, Township 40 North, Range 3 East of W.M., said easement described as follows:

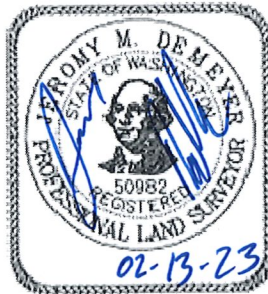
All that portion of said quarter quarter lying: Southerly of Lot 1 of the Lynden City Trail Short Plat / Lot Line Adjustment, as per the map thereof, recorded under Whatcom County Auditor's File No. 2070403245, Southwesterly of Fishtrap Creek, East of the West line of said quarter quarter, East of the Northerly extension of East line of Lot 5, Block 31, Hawleys Addition to Lynden, as per the map thereof recorded in Book 1 of Plats, Page 87, record of Whatcom County, Washington and Northeasterly and Northwesterly of the following described line:

**Commencing** at the Southwest corner of said Lot 1; thence South 02° 52' 35" West on a southerly extension of said Lot 1 a distance of 50.11 feet to the **true point of beginning** of this line description: thence South 51° 08' 05" East a distance of 222.44 feet; thence North 72° 16' 16" East a distance of 105.42 feet; thence North 02° 45' 12" East a distance of 15.47 feet more or less to Fishtrap Creek and the **terminus** of this line description.

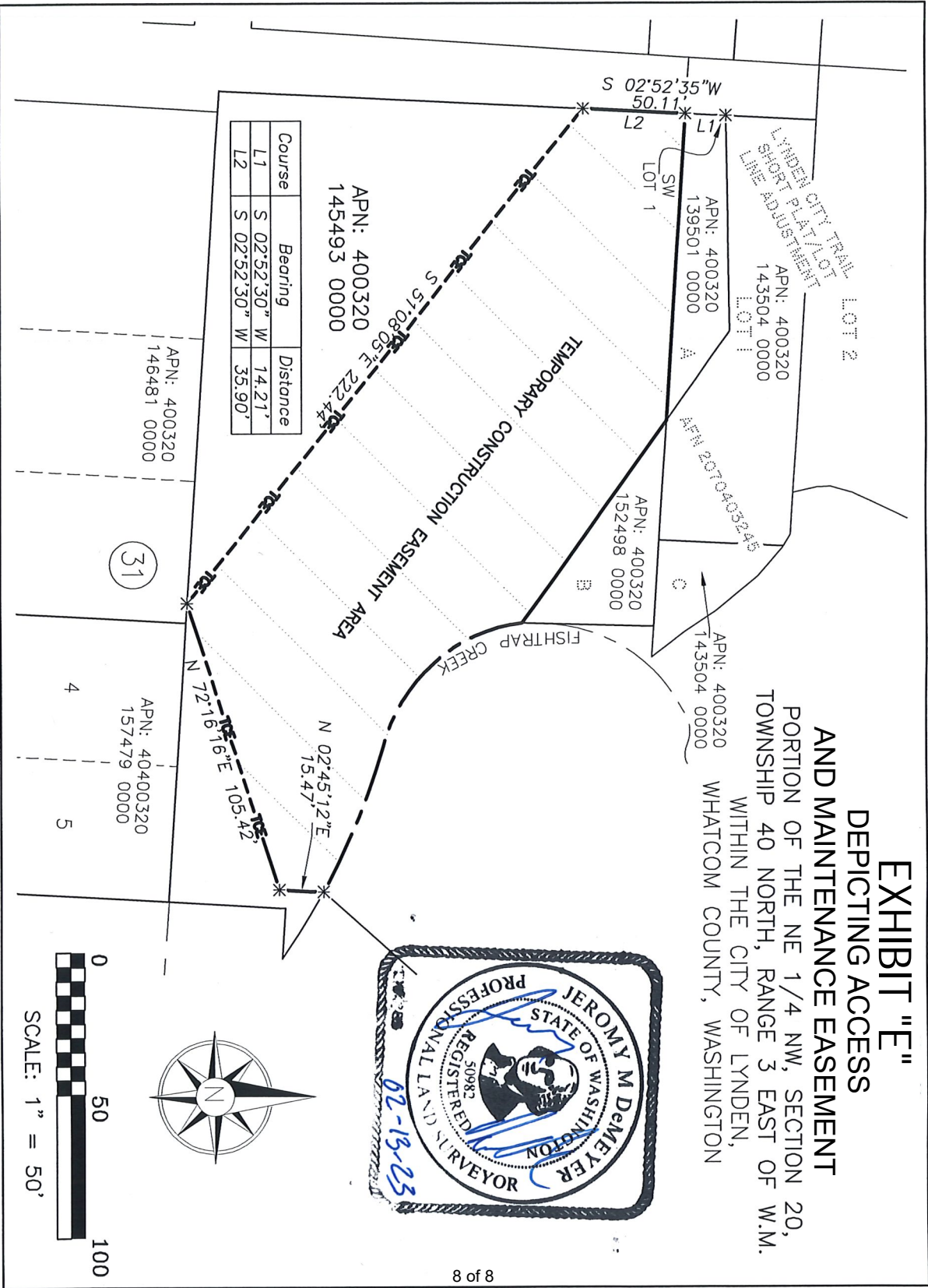
As shown on Exhibit "E" attached hereto and incorporated herein by reference.

Situate in Whatcom County, Washington.

Subject to all easements, covenants, restriction and/or agreements of record, or otherwise.



**EXHIBIT "E"**  
**DEPICTING ACCESS**  
**AND MAINTENANCE EASEMENT**  
 PORTION OF THE NE 1/4 NW, SECTION 20,  
 TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M.  
 WITHIN THE CITY OF LYNDEN,  
 WHATCOM COUNTY, WASHINGTON



| Course | Bearing       | Distance |
|--------|---------------|----------|
| L1     | S 02°52'30" W | 14.21'   |
| L2     | S 02°52'30" W | 35.90'   |

