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Kathy Hill, Skagit County Auditor

9/14/1999 Page 1 of 3 2:04:32PM

AFTER RECORDING RETURN TO:

Dan Tolliver, P.E.
Skagit County Public Works Department
1111 Cleveland Avenue
Mount Vernon, Washington 98273

GRANTOR:
Skagit County

GRANTEE:
Kenneth Wayne Kite and June Kite

MAINTENANCE AND LAND USE AGREEMENT NO. 004574
FISHER CREEK CROSSING OF STARBIRD ROAD

THIS MAINTENANCE AND LAND USE AGREEMENT is made for the period beginning December 31, 2000, by and between Kenneth Wayne Kite and June Kite, with a mailing address of 1863 Starbird Road, Mount Vernon, Washington 98274, hereinafter referred to as "**Landowner**", and Skagit County, hereinafter referred to as "**County**", and together, hereinafter referred to as the "**Parties.**"

The Parties agree to the following:

1. That the Landowner is the owner of property in Skagit County in the Northeast ¼ of Section 33, Township 33 North, Range 04 East, W.M. with tax parcel numbers 330433-1-001-0104 and 330433-01-004-0101.
2. That a fish-bearing stream named Fisher Creek (WRIA # 03.0180) flows through the above described lands.
3. That Fisher Creek also flows through a culvert under the Skagit County owned roadway named the Starbird Road immediately upstream of the Landowner's culvert.
4. That the above described culvert restricts the upstream passage of fish in Fisher Creek.
5. That it is the intention of the County in partnership with the Washington State Department of Fish and Wildlife (WDFW) to restore the free and unobstructed passage of fish by placing log streambed controls at the outlet of said Starbird Road culvert. This work shall be hereinafter referred to as "Project".
6. That the Landowner understands and is in agreement with the Project.
7. That the WDFW will construct the Project and will guarantee the work for the period of one year after which the County will assume responsibility for the maintenance and repair of this Project.

WHEREFORE, pursuant to the above recitals the Parties to this agreement acknowledge and agree to the following:

001574

The County shall, within the limitations of this agreement:

1. Maintain five log streambed controls (designed and built by WDFW) in Fisher Creek on the Landowner's property immediately downstream of the Starbird Road culvert crossing. This work will be completed at no cost to the Landowner.
2. Notify Landowner prior to each access and if requested meet Landowner on project site prior to commencing maintenance work.
3. Restore the Landowner's property to as near pre-project conditions as possible after each use.

The Landowner shall within the limitations of this agreement:

1. Provide access and a staging area for materials and heavy equipment (as indicated on the project plans Attachment A).
2. Provide right-of-entry to County personnel, agents, and assigns for the purpose of inspecting and maintaining the project.
3. Upon notification by County of completion of maintenance activities, promptly review the project before equipment removal.

OWNERSHIP AND MAINTENANCE

The Landowner agrees to the following regarding maintenance of the project:

1. Provide County personnel, agents, and assigns right of entry to said property for the purposes of inspecting the condition of the project and assessing fish use of the area.
2. The Landowner is not responsible for the maintenance of the log structures to be installed immediately downstream of Starbird Road. Ownership and maintenance of these structures shall be the responsibility of the County
3. Normal maintenance activities include erosion control work necessary to maintain the project as designed and removal of logs and debris from the log controls that would interfere with fish passage and/or threaten the integrity of the log controls, e.g., erosion.

HOLD HARMLESS

The County agrees to defend, indemnify, and save harmless the Landowner from and against any and all liability, loss, costs, damage and expense, including cost and attorney fees in defense thereof because of actions, claims or lawsuits for damages resulting therefrom, sustained or alleged to have been sustained by any person or persons and on account of damage to property arising or alleged to have arisen directly or indirectly out of or in consequence of the inspection, repair or maintenance by the County of this project.

LAND USE

The log controls will not interfere with the traditional use of Landowner's property or Fisher Creek for domestic water use (existing well adjacent to project) and livestock watering.

CONTINGENCY

The obligation of Skagit County to own and maintain the Project under this Agreement is contingent upon federal, local and state agreements and legislative appropriation of necessary funds in accordance with law.



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In the event funding from state, federal, county or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to actual construction, then Skagit County may terminate this Agreement. Notification of Termination shall be in writing and provide 30 days notice in advance of termination date.

This agreement is binding upon the Landowner, his heirs, personal representatives, successors or assigns and shall be a covenant running with said land.

Dated this 12 day of July, 1999.

LANDOWNER

Kenneth Wayne Kite
Kenneth Wayne Kite

June Kite
June Kite

Executed by the Board of Skagit County Commissioners this 7TH day of Sept. 1999.

Approved as to Content:

BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON

Chal A. Martin
Chal A. Martin, P.E.
Director/County Engineer

Ted W. Anderson
Ted W. Anderson, Chairman

Approved as to Form:

Hilary A. Thomas
Hilary A. Thomas, Civil Deputy

Harvey Wolden
Harvey Wolden, Commissioner

Robert Hart
Robert Hart, Commissioner

Approved as to Indemnification:

ATTEST:

Dave Fleming
Dave Fleming, Risk Manager

Patti J. Chambers
Patti J. Chambers, Clerk of the Board

Approved:

By: Alicia Huschka
Alicia Huschka, Budget/Finance Manager