

Return address:

Bearrach McMonagle  
786 West Rd.  
Sedro-Woolley, WA 98284



201108150114

Skagit County Auditor

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8 1:51PM

Document Title:

Order regarding access

Reference Number :

Grantor(s):

☐ additional grantor names on page \_\_\_\_

1. ~~David~~ David Allan

2.

Grantee(s):

☐ additional grantee names on page \_\_\_\_

1. Bearrach McMonagle

2.

Abbreviated legal description:

☐ full legal on page(s) \_\_\_\_

Lot 1 short plat # PL 05-0258

Assessor Parcel / Tax ID Number:

☐ additional tax parcel number(s) on page \_\_\_\_

123887

FILED  
SKAGIT COUNTY CLERK  
SKAGIT COUNTY, WA  
2009 JUL 17 PM 12:02

SUPERIOR COURT OF WASHINGTON, FOR SKAGIT COUNTY

BEARRACH McMONAGLE, a single  
person, and JENNIFER GLYZINSKI, a  
single person,

Plaintiffs,

vs.

DAVID ALLAN, as his separate estate,  
and/or DAVID ALLAN and JANE DOE  
ALLAN, husband and wife,

Defendants.

NO. 05-2-02463-4

ORDER REGARDING ACCESS  
OVER DEFENDANT'S  
PROPERTY

Pursuant to paragraph 7 of the Judgment entered April 3, 2009, and in  
accordance with the Special Master's report dated June 10, 2009, it is hereby  
ordered that:

1. Plaintiffs and their contractors/workers/consultants will use the route  
shown on the attached Exhibit "A" to access their property over defendant's  
property. If defendant moves the existing shop building or driveway, the physical  
location of the route will change, but the relationship of the route to the existing  
shop building will remain approximately the same, in accordance with the report of  
the Special Master dated June 10, 2009, a copy of which is attached as Exhibit "B."

ORDER REGARDING ACCESS OVER  
DEFENDANT'S PROPERTY - 1



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1  
2 Defendant will keep this route open – without obstructions of any kind – during the  
3 dates plaintiffs have specified in their notice given pursuant to paragraph 3 below.  
4

5 2. Plaintiffs' right to cross defendant's property will end five years after  
6 the plaintiffs complete the mitigation performed to restore the partially functioning  
7 wetland on plaintiffs' property. Plaintiffs may perform the mitigation work on their  
8 property at their convenience, and there is no time limit as to when plaintiffs have to  
9 start this work.  
10

11 3. Plaintiffs will give defendant seven days notice prior to entering on  
12 defendant's property by mail to defendant, David Allen, PO Box 98, Bow, WA  
13 98232. The notice will state the date[s] plaintiffs will be present and a general  
14 description of the activities taking place. For example, such a notice might say  
15 "Plaintiffs and several contractors will be burning/pulling stumps during the period  
16 May 10-20, 2010. Plaintiffs' contractors will need to get pick-up trucks, dump trucks  
17 and a flatbed truck across defendant's land in order to do this work."  
18

19 Defendants will give plaintiffs fourteen days notice prior to performing any  
20 work which would obstruct or in any way hinder plaintiffs' use of the route defined  
21 under paragraph 1 above by fax to plaintiffs' lawyer, John Belcher, at 306-671-0753.  
22 The notice will state the date[s] defendant will be performing such work, the purpose  
23 of the work and the portion of the route affected by such work. The duration of such  
24 work cannot exceed fourteen days without prior authorization from this Court. For  
25 example, such a notice might say "Defendant will be burying septic tanks just west  
26 of the shaded "Gravel Drive" shown on Exhibit "A" where it intersects the unshaded  
27

ORDER REGARDING ACCESS OVER  
DEFENDANT'S PROPERTY - 2



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1  
2 "Gravel Drive" to the upper lot during the period August 10-20, 2009. Defendant will  
3 need to run a line across the driveway with a backhoe."  
4

5 4. Any interference by defendant with the right of access granted plaintiffs  
6 under this order may be punished as contempt.

7 DONE IN OPEN COURT this 17 day of <sup>July</sup>~~June~~, 2009.

8  
9  
10   
11 JUDGE  
12

13 Presented By:  
14 KOTTKAMP & YEDINAK, PLLC

Copy received:

15 By:   
16 NICHOLAS YEDINAK, WSBA #20113  
17 Lawyer for Plaintiffs

By: N/A.  
18 DAVID ALLAN,  
19 Pro Se Defendant  
20  
21  
22  
23  
24  
25  
26  
27

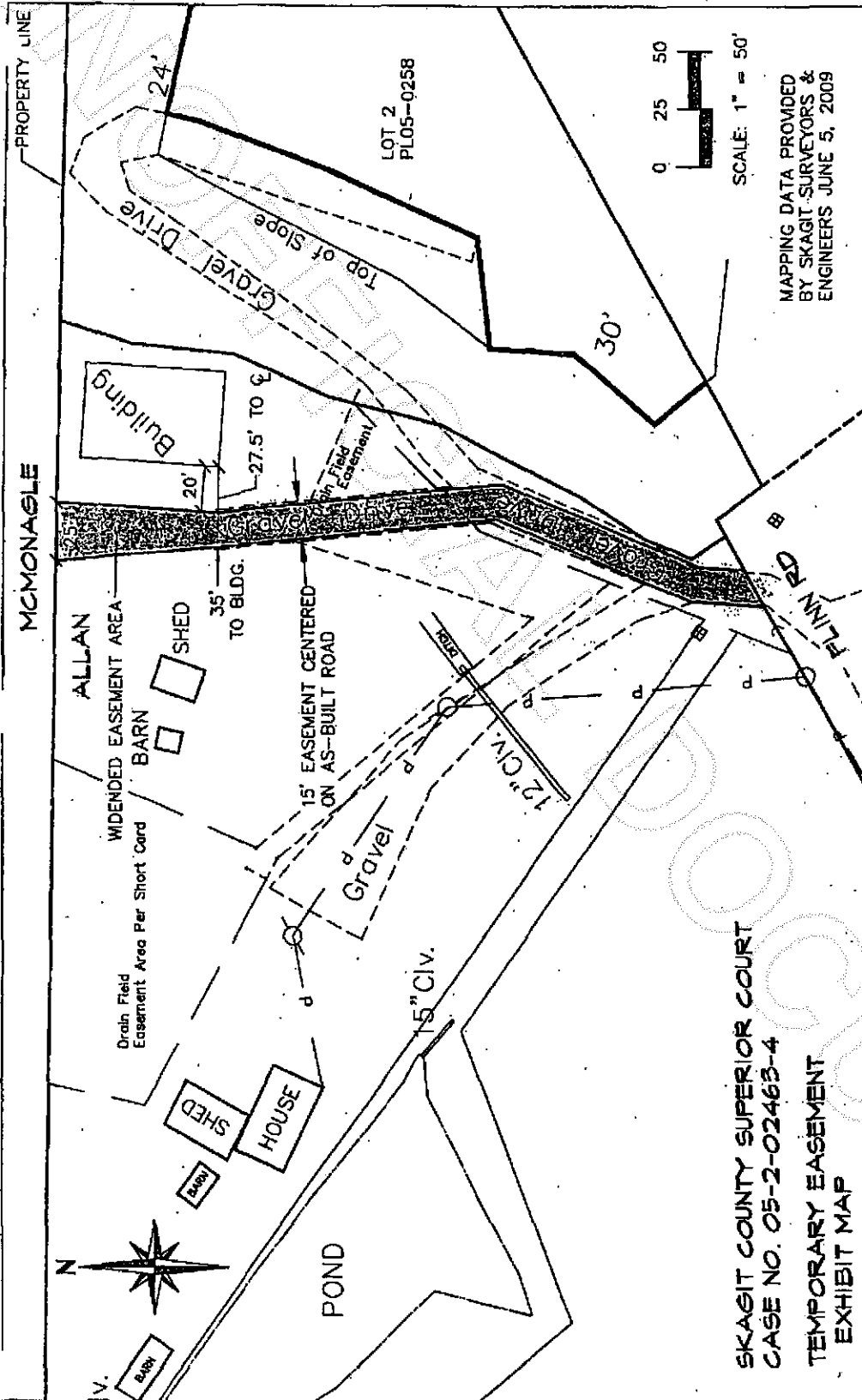
ORDER REGARDING ACCESS OVER  
DEFENDANT'S PROPERTY - 3



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SKAGIT COUNTY SUPERIOR COURT  
CASE NO. 05-2-02463-4  
TEMPORARY EASEMENT  
EXHIBIT MAP



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LAND SURVEYING / LAND-USE CONSULTATION

June 10, 2009

The Honorable John M. Meyer  
Skagit County Superior Court Judge  
Skagit County Courthouse  
205 West Kincaid, Room 202  
Mount Vernon WA 98273

Re: Skagit County Superior Court Case No. 05-2-02463-4  
Allan/McMonagle Easement

Dear Judge Meyer:

I met on-site June 5, 2009 with John Belcher, Barry McMonagle, Garl Long and David Allan. We worked together to formulate a mutually agreeable location for an access across the Allan property to the McMonagle parcel. I believe that the agreed upon location will not have a negative impact on the Allan property and is located with good width and in an appropriate location for McMonagle to access his property to take care of the stump/slash clean up and the fill removal/mitigation.

Skagit Surveyor's and Engineers was kind enough to provide me with their AutoCAD map, which I utilized to create the attached Exhibit. The location of the shop building is correct, but the exact location of the gravel drive north of the intersection is representational only.

I am proposing that the temporary access easement be located over, under and across a portion of Lot 1, Skagit County Short CaRD No. PL-05-0258, approved January 5, 2006 and recorded January 6, 2006 under Auditor's File No. 200601060080, records of Skagit County, Washington, being a portion of the Northeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 22, Township 36 North, Range 3 East, W.M., being 15-feet in width (7.5 feet left and 7.5 feet right) and centered on the gravel drive (as-constructed, or to be constructed) that runs Northeasterly and Northerly from the East end of Flinn Road to a point which is 27.5 feet Westerly of the Westerly extension of the South face of the shop building (as now constructed, or to be constructed), from this point the easement width shall be asymmetric with the East side being 20-feet West of and parallel with the West face of the shop building (as now constructed, or to be constructed) and extending Northerly to the North line of said Lot 1, the Westerly line of said easement shall begin at a point 35-feet Westerly of the Southerly face of said shop and run Northwesterly to the North line of said Lot 1 at a point 25-feet Westerly of the previously described East line of said easement.

The attached exhibit will aid you with a visual representation of the location.

LISSEY & ASSOCIATES, PLLC  
320 Milwaukee Street / P.O. Box 1109 / Mount Vernon, WA 98273



42 / Fax: (360) 419-0581 / Email: bruce@lisser.com



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Skagit County Auditor

June 9, 2009

The Honorable John M. Meyer

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If and when Mr. Allan relocates the existing shop building or drive, the physical location of the easement will change slightly, but the relationship from the face of the shop, centering along the gravel drive and the beginning of the taper from 15-feet to 25-feet at the property line will be understood with respect to maintaining the relationship from the building to the north property line as well as centered along the gravel drive from Flinn Road to the shop.

The temporary easement is to provide for access to the McMonagle property to perform the cleaning of timber slash, removal of fill material placed in a wetland, restoration of the wetlands and maintenance of said restoration area per Skagit County Superior Court of Washington Case No. 05-2-02463-4 Findings of Fact and Conclusions of Law.

I should additionally comment on the fact that there is only need for this single access to the McMonagle property. Once the fences are removed and re-constructed along the property line there is sufficient space to access the stumps/slash site as well as the wetland mitigation site on the McMonagle parcel.

During our discussion on-site, there were comments about the timeframe for termination of the easement to take place five years after a restoration permit is in hand.

The above-referenced decision states "the plaintiffs will need access over defendants property for five years to water and replace the plantings on the wetland" and further states "... to this end, defendant should be ordered to allow plaintiff access, over defendants property to complete this work and any follow-up work (such as watering and replacing vegetation planted on wetland) for up to five years after planting". Based upon conversations the day of the site visit and subsequent e-mail from the plaintiff (copy attached), it seems that the timing of the access needs to be clarified to avoid any future confusion.

We also discussed that it would be wise to add language in the final order that would include requirements for notice from McMonagle to Allan as to when work will begin and conversely from Allan to McMonagle in the event conflicts occur with respect to access due to construction, etc.

Thank you for the opportunity to assist with the case, please feel free to give me a call if you have any questions or if you need clarification on the easement location.

Sincerely,

Bruce G. Lisser, P.L.S., Special Master

BGL/mm  
Enclosures

E:Letters/09-037 060509



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State of Washington, } ss.  
County of Skagit

I, Nancy K. Scott, County Clerk of Skagit County and ex-officio Clerk of the Superior Court of the State of Washington, for the County of Skagit, do hereby certify that the foregoing instrument is a true and correct copy of the original, consisting of 10 pages, now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Court at my office at Mount Vernon this 15 day of Aug., 20 11. Nancy K. Scott, County Clerk.

By [Signature]  
Deputy Clerk

