

Recording Requested By And
When Recorded Mail To:

Skagit County
Public Works Department
Attn: Emily Derenne
1800 Continental Place
Mount Vernon, Washington 98273



201211060058

Skagit County Auditor

11/6/2012 Page 1 of 12 1:53PM

DOCUMENT TITLE: TEMPORARY EASEMENT

SKAGIT COUNTY
Contract # C20120449
Page 1 of 12

REFERENCE NUMBER OF RELATED DOCUMENT: Not Applicable

GRANTOR(S): Robert Elsner and Dorothy Elsner, husband and wife.

GRANTEE: Skagit County, a political subdivision of the State of Washington.

ABBREVIATED LEGAL DESCRIPTION: A temporary easement located within a portion of SOUTHEAST QUARTER OF SECTION 23 AND ALSO LOCATED IN THE NORTHEAST QUARTER OF SECTION 26 SOUTHWESTERLY OF STATE ROUTE 9.

ASSESSOR'S TAX / PARCEL NUMBER(S): P114140 (Xref ID:340423-4-010-0200)

TEMPORARY EASEMENT

(For riparian restoration work under the Natural Resource Stewardship Program project)

The undersigned, **Robert Elsner and Dorothy Elsner**, husband and wife (herein "Grantors" or "Landowner"), for good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, hereby grants to **Skagit County**, a political subdivision of the State of Washington (herein "Grantee" or "County"), a temporary, non-exclusive easement ("Temporary Easement"), as provided herein. Landowner and County may be individually referred to herein as a "party", and may be collectively referred to herein as the "parties." The terms of this Temporary Easement are further provided as follows:

1. Nature and Location of Easement. The Temporary Easement hereby granted by Landowner herein shall be a temporary easement to allow the County, the County's agents, employees, and contractors over, upon, across, through, a portion of real property located within and upon Landowner's Property, such Temporary Easement as legally described on *Exhibit "A"* and as further described and depicted on *Exhibit "B"*, attached hereto and incorporated herein by this reference, for the purpose of providing a temporary easement (and any related appurtenances thereto), including the right of ingress and egress with all necessary equipment for construction of the riparian restoration work, including any livestock fencing, under the Skagit County Natural Resource Stewardship Program (NRSP) as described in *Exhibit "C"*, attached hereto and incorporated by reference (herein referred to as the "Project"). A legal description for the Landowner's Property is attached hereto as *Exhibit "D"*, and is hereby incorporated by reference.

1.1 The County, through its Department of Public Works (Natural Resources Division), will perform the Project as described in *Exhibit "C"* under its Natural Resources Stewardship Program (NRSP) for the improvement and enhancement of water quality and fish habitat in Skagit County streams.

1.2 Landowner represents and warrants to the County that the Landowner is the legal owner(s) of the property described in Exhibit "D" (the "Landowner's Property"), and further represent and warrant to the County that there are no outstanding rights which interfere with this Temporary Easement agreement. The Landowner also acknowledges that a change in property ownership will not change the encumbrance of the Landowner's Property created by the terms of this Temporary Easement, and the Landowner agrees to inform any future owner of Landowner's Property of this Temporary Easement prior to sale or transfer of the Landowner's Property during the term of this Temporary Easement (as the terms of this Temporary Easement shall be binding on any subsequent owner[s] of the Landowner's Property for the duration of this Temporary Easement). The Landowner agrees to notify the County, within thirty (30) days of transfer, of changes in ownership during the term of this Temporary Easement.

1.3 Landowner agrees to inform the County (and the County's agents, employees, and contractors) of all known safety hazards on Landowner's Property prior to the commencement of the activities described in Exhibit "C"

1.4 Landowner recognizes and agrees that County's agents may include, but are not limited to: Skagit Fisheries Enhancement Group and the Washington State Department of Ecology (only for the purposes of viewing, confirming project progress, and continued vegetation preservation during the term of this Temporary Easement)

1.5 Except as provided to the contrary by the terms of this Temporary Easement, the Landowner retains the right to control trespass on Landowner's Property, and Landowner shall retain all responsibility for taxes, assessments, and for any claims for damages to Landowner's Property.

1.6 Landowner recognizes and agrees that participation in the County's Natural Resource Stewardship Program does not eliminate or abrogate any jurisdictional authority, code requirements, or obligations required by any government entity including Skagit County.

2. Use of Easement. The County, County's employees, agents, and contractors shall have the right, with one (1) week notice, (or with such other notice as may be otherwise mutually agreed in writing by and between the parties), and during daytime hours, Monday through Saturday (unless otherwise arranged between the parties), to enter upon the Landowner's Property within the area of the Temporary Easement (as described and depicted in Exhibit "A"), for the purpose of constructing and implementing the Project (described at Exhibit "C") within the area of the Temporary Easement. Landowner shall not have the right to exclude the County, County's employees, agents, and/or contractors from the area of the Temporary Easement.

2.1 Project Components. This temporary easement includes the following components, as described in Exhibit "C": (1) initial site work, (2) monitoring and maintenance, and (3) project preservation.

2.1.1 Initial Site Work. The initial site work includes riparian vegetation restoration, fence installation, and a livestock crossing as described in Exhibit "C". Initial site work will be conducted within one (1) year of mutual execution of this agreement.

2.1.2 Monitoring and Maintenance. A Restoration and Maintenance Plan (Plan) has been developed for the Project and is included as Exhibit "C". In accordance with the Plan, Skagit County shall provide maintenance of vegetation for three (3) years after planting. The Landowner shall be responsible for plant preservation following this three (3) year period.

2.1.3 Project Preservation. Landowner agrees to preserve the Project in the same condition as exists at the time of Project completion and agrees to refrain from cutting, damaging, or otherwise harming any of the vegetation planted as part of the Project, removing any fencing intended to exclude livestock from the watercourse or in any way intentionally compromising the integrity of the Project for a period of ten (10) years from the date of mutual execution of this Temporary Easement agreement. Repair and maintenance of the fence is the sole responsibility of the Landowner, and except as provided in Section 2.1.2, the Landowner shall be responsible



for all riparian restoration preservation required as part of the Project. Landowner may be required to reimburse the County for Project costs funded by the County in the event that the Landowner does not preserve the Project in accordance with the terms of this Temporary Easement.

2.2 The Landowner acknowledges that Landowner is voluntarily participating in the County's NRSP for riparian restoration (as described in Exhibit "C") that is the subject of this Temporary Easement and is permitting the Landowner's property to be used for such purposes pursuant to the terms of this Temporary Easement. The Landowner agrees that the Project (which consists of native vegetation planting and installation of fencing), when completed, will not now or in the future result in damages to the Landowner's Property, and that the County is not liable for any impacts to Landowner's Property resulting from the Project. The terms of this Section 2.2 shall survive the termination or expiration of this Temporary Easement.

2.3 The County agrees to be responsible for any damage arising from negligent acts of its employees, agents, or representatives on Landowner's Property in exercise of County's rights herein granted by this Temporary Easement. The County assumes no liability for any alleged damage to Landowner's Property resulting from this Temporary Easement, or from any source other than as may be expressly set forth herein.

3. **Termination of Temporary Easement.** The Project shall be considered complete following the completion of the activities described in Exhibit "C", including project maintenance activities. This Temporary Easement shall otherwise expire by its own terms ten (10) years from the date of mutual execution.

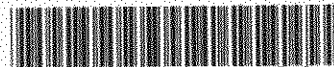
4. **Governing Law; Venue.** This Temporary Easement shall be construed under the laws of the State of Washington. It is agreed by the parties that the venue for any legal action brought under or relating to the terms of this Temporary Easement shall be in Skagit County, State of Washington.

5. **Entire Agreement.** This Temporary Easement contains the entire agreement between the parties hereto and incorporates and supersedes all prior negotiations or agreements. This Temporary Easement may not be modified or supplemented in any manner or form whatsoever, either by course of dealing or by parol or written evidence of prior agreements and negotiations, except upon the subsequent written agreement of the parties. Waiver or breach of any term or condition of this Temporary Easement shall not be considered a waiver of any prior or subsequent breach.

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

NOV 06 2012

Amount Paid \$ /
Skagit Co. Treasurer
By Mb Deputy



201211060058
Skagit County Auditor

DATED this 25th day of September, 2012.

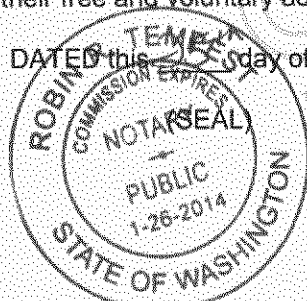
GRANTOR:

Robert & Dorothy Elsler
[Signature]

STATE OF WASHINGTON }
COUNTY OF SKAGIT } ss.

I certify that I know or have satisfactory evidence that Robert and _____, husband and wife, is/are the person(s) who appeared before me, and said person(s) acknowledged that he/she/they signed this instrument, on oath stated that he/she/they executed the forgoing instrument as his/her/their free and voluntary act for the uses and purposes herein mentioned.

DATED this 25th day of September, 2012.



Robin A. Tempast
Notary Public
Print name: Robin A. Tempast
Residing at: Mount Vernon
My commission expires: 1-26-14

DATED this 25th day of September, 2012.

GRANTOR:

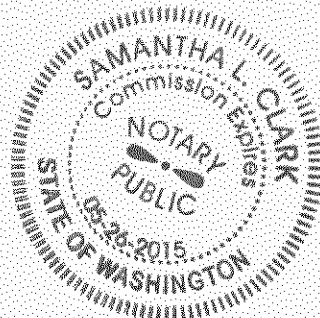
Dorothy M. Elsner
Dorothy M. Elsner

STATE OF WASHINGTON }
COUNTY OF SKAGIT } ss.

I certify that I know or have satisfactory evidence that Dorothy Elsner and _____, husband and wife, is/are the person(s) who appeared before me, and said person(s) acknowledged that he/she/they signed this instrument, on oath stated that he/she/they executed the forgoing instrument as his/her/their free and voluntary act for the uses and purposes herein mentioned.

DATED this 1st day of OCTOBER, 2012.

(SEAL)



Samantha L. Clark
Notary Public
Print name: Samantha L. Clark
Residing at: Oak Harbor, WA
My commission expires: 5/28/15



201211060058
Skagit County Auditor

DATED this 5 day of November, 2012.

BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON

Kenneth A. Dahlstedt
Kenneth A. Dahlstedt, Chairman

Sharon D. Dillon
Sharon D. Dillon, Commissioner

Ron Wesen
Ron Wesen, Commissioner

Attest:

Amber Kuyper, Asst.
Clerk of the Board

For contracts under \$5,000:
Authorization per Resolution R20030146

Recommended:

Henry Hark
Department Head

County Administrator

Approved as to Form:

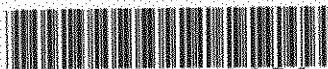
[Signature] 10/18/12
Civil Deputy Prosecuting Attorney

Approved as to indemnification:

Jessie Null Hays
Risk Manager

Approved as to budget:

Lisha Gano
Budget & Finance Director



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STATE OF WASHINGTON

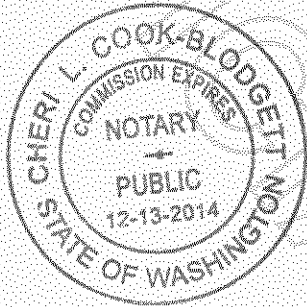
COUNTY OF SKAGIT

} ss.

I certify that I know or have satisfactory evidence that Kenneth A. Dahlstedt, Sharon D. Dillon and/or Ron Wesen is/are the person(s) who appeared before me, and said person(s) acknowledged that she/he/they signed this instrument, on oath stated that she/he/they was/were authorized execute the instrument and acknowledged it as Commissioner(s) of Skagit County, to be the free and voluntary act of such party for the uses and purposes herein mentioned.

DATED this 5th day of November 2012.

(SEAL)



Cheri L. Cook-Blodgett
Notary Public

Print name: Cheri L. Cook-Blodgett

Residing at: Concrete, WA

My commission expires: 12-13-2014



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Skagit County Auditor

EXHIBIT "A"

TEMPORARY EASEMENT LEGAL DESCRIPTION

This temporary easement follows the Protected Critical Area (PCA) boundary for Skagit County tax parcel P114140 as recorded in AF#9901250155 and more particularly defined as:

That portion of the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$, Section 23, and the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 26, Township 34 North, Range 4 East, W.M., particularly described as follows:

BEGINNING at the Southeast corner of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$, Section 26; thence North along the East line of said Northeast $\frac{1}{4}$ to its intersection with County road; thence following the Westerly line of County road in a Northwesterly direction to the intersection of said Westerly line of County road with a line which is 20 rods North of the South line of the Southeast $\frac{1}{4}$ of said Section 23; thence West to a point 20 rods North of the Southwest corner of the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$, Section 23; thence South along West line of Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$, Section 23, and the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 26, to Southwest corner of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$, Section 26; thence East to **POINT OF BEGINNING**.

EXCEPT that portion described as follows:

A tract of land in the East $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 26, Township 34 North, Range 4 East, W.M., described as follows:

BEGINNING on the south side of the County road, 564.0 feet South of the Northeast corner of said East $\frac{1}{2}$; thence South along its East line, 764.0 feet to its Southeast corner; thence North $88^{\circ} 45'$ West, 662.8 feet to its Southwest corner; thence Northerly along its West line, 275.0 feet; thence North $47^{\circ} 55'$ East 824.0 feet to the South side of the County road; thence South $33^{\circ} 42'$ East 100.0 feet to the **POINT OF BEGINNING**.

ALSO EXCEPT that portion described as follows:

Beginning at the Southeast corner of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 26, Township 34 North, Range 4 East, W.M.; thence North 764.0 feet to the intersection of the South line of State Highway #1A, and the East line of said Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$; thence Northwesterly along the South line of said highway, 100.0 feet to the **TRUE POINT OF BEGINNING**; thence South $47^{\circ} 55'$ West, 175.0 feet; thence Northwesterly parallel with said highway, 241.0 feet; thence North $47^{\circ} 55'$ East, 175.0 feet to said highway; thence Southerly along the South side of said highway to the **TRUE POINT OF BEGINNING**.

TOGETHER WITH an easement for ingress, egress and utilities per **AGREEMENT AND EASEMENT** recorded under Skagit County Auditor's File Number 9809150104.

AND ALSO SUBJECT TO and **TOGETHER WITH** easements, reservations, restrictions, covenants, liens and other instruments of record.

Situate in the County of Skagit, State of Washington.



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Skagit County Auditor

EXHIBIT "B"

GRAPHIC DEPICTION OF TEMPORARY EASEMENT AREA



This temporary easement includes the shaded area required for installation of a livestock crossing, livestock exclusion fencing and native vegetation.

Parcel Number: P114140
Address: 15988 State Route 9
Mount Vernon, WA 98274
Situate in the County of Skagit, State of Washington



EXHIBIT "C"

RIPARIAN RESTORATION AND MAINTENANCE PLAN SCOPE OF WORK

The project is designed to improve water quality, reduce sediment delivery and increase riparian shade around an unnamed tributary in the Nookachamps Watershed. The site is located near Big Lake, Washington. The project will involve removing invasive plant species at the site, restoring riparian vegetation and installing a fence to exclude livestock. Areas that are replanted will be maintained for three (3) years to improve planting success. Key project elements are depicted in Figure 1.

The project will involve constructing nine hundred feet (900') of fencing to exclude horses from the site. This fencing will enclose the three acre planting buffer around the unnamed tributary at the site and will exclude livestock (horses). Fencing will consist of a four foot (4') high, three (3) strand barbwire fence, with the top strand consisting of smooth wire. Corner posts will consist of wooden H-braces. Fencing plans are provided in Figure 2. The fence will include two twelve foot (12') wide gates to provide for livestock crossing and equipment access. Gate locations will be determined in the field with the landowner and Skagit County.

Non-native plant species such Himalayan blackberries (*Rubus discolor*) and reed-canary grass (*Phalaris arundinacea*) will be manually and chemically controlled. Both species are sparsely scattered throughout the three acre site. These plants will be manually removed with tools such as weed eaters during the winter of 2012 prior to planting.

In January or February 2013 approximately one thousand two hundred (1,200) native shrubs and trees will be installed at the three (3) acre site. The planting is designed to restore native vegetation typical of historic forested floodplains, and will include at least 30 percent conifers. Planted stock will consist of bareroot plants. All plants will be protected with Miracle tubes or spiral wraps to prevent rodent predation.

Maintenance of the planted areas will continue through 2015. Maintenance will consist of weedeating around plants in the June or July. In late summer and early fall as the invasive plants start to grow back they will be hand-sprayed with herbicide to control the rhizomes. The landowner will be notified at least one week prior to any construction or maintenance activities. Protective tubes will be removed prior to project completion.



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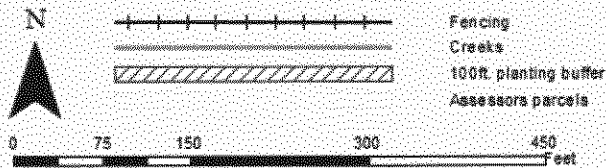


Figure 1. Elsner property site plan



EXHIBIT "D"
LEGAL DESCRIPTION OF LANDOWNER'S PROPERTY

Lot 1 of Skagit County Short Plat No. 97-0047, approved January 25, 1999 and recorded January 25, 1999 under Auditor's File No. 9901250155 in Volume 13 of Short Plats, pages 200 and 201, being a portion of the Southeast 1/4 of the Southeast 1/4 of Section 23, and of the Northeast 1/4 of the Northeast 1/4 of Section 26, all in Township 34 North, Range 4 East, W.M.



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Skagit County Auditor

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