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Skagit County Auditor

Recording Requested By And
When Recorded Mail To:

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

SKAGIT COUNTY
Contract # C20240375
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REVIEWED BY
SKAGIT COUNTY TREASURER
DEPUTY Sena Thompson
DATE 8-13-24

DOCUMENT TITLE: **TEMPORARY EASEMENT**

REFERENCE NUMBER OF RELATED DOCUMENT: *Not Applicable*

GRANTOR(S): **Joshua J Maxwell and Krissa L Maxwell**, a married couple.

GRANTEE(S): **Skagit County**, a political subdivision of the State of Washington.

ABBREVIATED LEGAL DESCRIPTION: A temporary easement located within (33.9300 ac) CU F&A #32 AF#8503220002 1986 LOT 4 SHORT PLAT#99-0020 AF#200111300188 LOCATED IN SW1/4 NE1/4 OF SECTION 30, TOWNSHIP 34 NORTH, RANGE 5 EAST, W.M.

ASSESSOR'S TAX / PARCEL NUMBER(S): **P118658** (Xref ID: 340530-1-007-0500).

TEMPORARY EASEMENT

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

The undersigned, **Joshua J. Maxwell** and **Krissa L. Maxwell**, a married couple, (herein "Grantors" or "Landowners"), 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. Landowners 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 Landowners 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 Landowners' 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 the construction of bank stabilizing large woody debris and installation of native plantings 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 Landowners' 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 protection, improvement, and enhancement of water quality in Skagit County streams for the benefit of downstream saltwater shellfish habitat.

1.2 Landowners represent and warrant to the County that the Landowners are the legal owners of the property described in Exhibit "D" (the "Landowners' Property"), and further represent and warrant to the County that there are no outstanding rights which interfere with this Temporary Easement agreement. The Landowners also acknowledge that a change in property ownership will not change the encumbrance of the Landowners' Property created by the terms of this Temporary Easement, and the Landowners agree to inform any future owner of Landowners' Property of this Temporary Easement prior to sale or transfer of the Landowners' 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 Landowners' Property for the duration of this Temporary Easement). The Landowners agree to notify the County within thirty (30) days of transfer of changes in ownership during the term of this Temporary Easement.

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

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

1.5 Landowners recognize and agree 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 a forty-eight (48) hour 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 Landowners' Property within the area of the Temporary Easement (as described and depicted in Exhibit "A" and Exhibit "B"), for the purpose of constructing and implementing the Project (described at Exhibit "C") within the area of the Temporary Easement. Landowners 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 repositioning of large woody debris for bank stabilization, removal of invasive vegetation, and riparian plantings 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 Landowners shall be responsible for plant preservation, not to include active maintenance, following this three (3) year period.

2.1.3 Project Preservation. Landowners agree to preserve the Project in a substantially similar 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 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. Except as provided in Section 2.1.2, the Landowners shall be responsible for all riparian restoration preservation required as part of the Project. Landowners may be required to reimburse the County for Project costs funded by the County in the event that the Landowners do not preserve the Project in accordance with the terms of this Temporary Easement.

2.2 The Landowners acknowledge that Landowners are 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 Landowners' Property to be used for such purposes pursuant to the terms of this Temporary Easement. The Landowners agree that the Project, when completed, will not now or in the future result in damages to the Landowners' Property, and that the County is not liable for any impacts to Landowners' 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 Landowners' Property in exercise of County's rights herein granted by this Temporary Easement (including for the workplace safety of the County's employees, agents, or representatives while performing Project work on the Landowners' Property). The County assumes no liability for any alleged damage to Landowners' 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.

GRANTORS:

Joshua J. Maxwell and Krissa L. Maxwell, a married couple.


Joshua J. Maxwell

DATED this 28th day of July, 2024.


Krissa L. Maxwell

DATED this 28th day of July, 2024.

STATE OF WASHINGTON

COUNTY OF SKAGIT

ss.

I certify that I know or have satisfactory evidence that Joshua J. Maxwell and Krissa L. Maxwell, a married couple, is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they executed the forgoing instrument as their duly authorized free and voluntary act for the uses and purposes herein mentioned.

DATED this 28th day of July, 2024.




Notary Public

Print name:

Residing at:

My commission expires:

Emily Derenne

Bellingham WA

5/23/2026

DATED this 8 day of August, 2024.

**BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Peter Browning, Chair

Ron Wesen, Commissioner

Lisa Janicki, Commissioner

Attest:

Clerk of the Board

Authorization per Resolution R20160001

Lisha Logne

County Administrator

Recommended:

[Signature]

Department Head

Approved as to form:

Erik Pedersen

Civil Deputy Prosecuting Attorney
Erik Pedersen, Reviewed 8/6/2024

Approved as to indemnification:

Maryleuben

Risk Manager

Approved as to budget:

Lisha Logne

Budget & Finance Director

EXHIBIT "A"

TEMPORARY EASEMENT AREA LEGAL DESCRIPTION

THE TEMPORARY EASEMENT BEGINS AT THE NORTHWESTERN CORNER OF SKAGIT COUNTY TAX PARCEL P118658, MORE PARTICULARLY DESCRIBED AS 1986 LOT 4 SHORT PLAT#99-0020 AF#200111300188 LOCATED IN SW1/4 NE1/4 O/S#32 AF#8503220002 1986 LOT 4 SHORT PLAT#99-0020 AF#200111300188 LOCATED IN SW1/4 NE1/4; THENCE EASTERLY ALONG THE NORTHERN PROPERTY LINE 215 FEET TO A POINT 35 FEET FROM THE ORDINARY HIGH WATER MARK (OHWM) ON THE WESTERN BANK OF WALKER CREEK TO THE **TRUE POINT OF BEGINNING**; THENCE SOUTHERLY MAINTAINING A MINIMUM DISTANCE OF 35' FROM THE OHWM OF THE WESTERN BANK OF WALKER CREEK TO A POINT ADJACENT TO THE SOUTHERN PROPERTY LINE; THENCE EASTERLY 70 FEET TO A POINT 35 FEET EAST OF THE OHWM OF THE EASTERN BANK OF WALKER CREEK; THENCE NORTHERLY MAINTAINING A MINIMUM DISTANCE OF 35' FROM THE OHWM OF THE EASTERN BANK OF WALKER CREEK TO A POINT ADJACENT TO THE NORTHERN PROPERTY LINE AND THE SOUTHERN RIGHT-OF WAY FOR TAYLOR ROAD; THENCE WESTERLY **RETURNING** TO THE TRUE POINT OF BEGINNING.

Situate in Skagit County, State of Washington.

EXHIBIT "B"

GRAPHIC DEPICTION OF TEMPORARY EASEMENT AREA



This easement includes the shaded area required for: installation of large woody debris, invasive plant removal, and native plantings.

Parcel Numbers: P118658
Address: 24528 Wiseman Lane
Mount Vernon, WA 98273
Situate in the County of Skagit, State of Washington

EXHIBIT "C"

RIPARIAN RESTORATION AND MAINTENANCE PLAN SCOPE OF WORK

Overview

This privately owned farm and restoration site is located along Walker Creek. The goal of this project is to use large woody debris to stabilize the bank of the creek in areas of erosion near the north end of the parcel, and remove invasive vegetation (particularly Himalayan blackberry and Japanese knotweed), and to install native plants at an average width of 35' in the riparian zone as needed to supplement a previous (2015) restoration project throughout a 5-acre area (Figure 1). Overall, the project will stabilize the bank in up to 2 areas; remove invasive vegetation from an aggregate area of approximately 2 acres, and plant approximately 1,560 native trees and shrubs over an area of approximately 5 acres, thereby enhancing approximately 1,535 linear feet of stream.

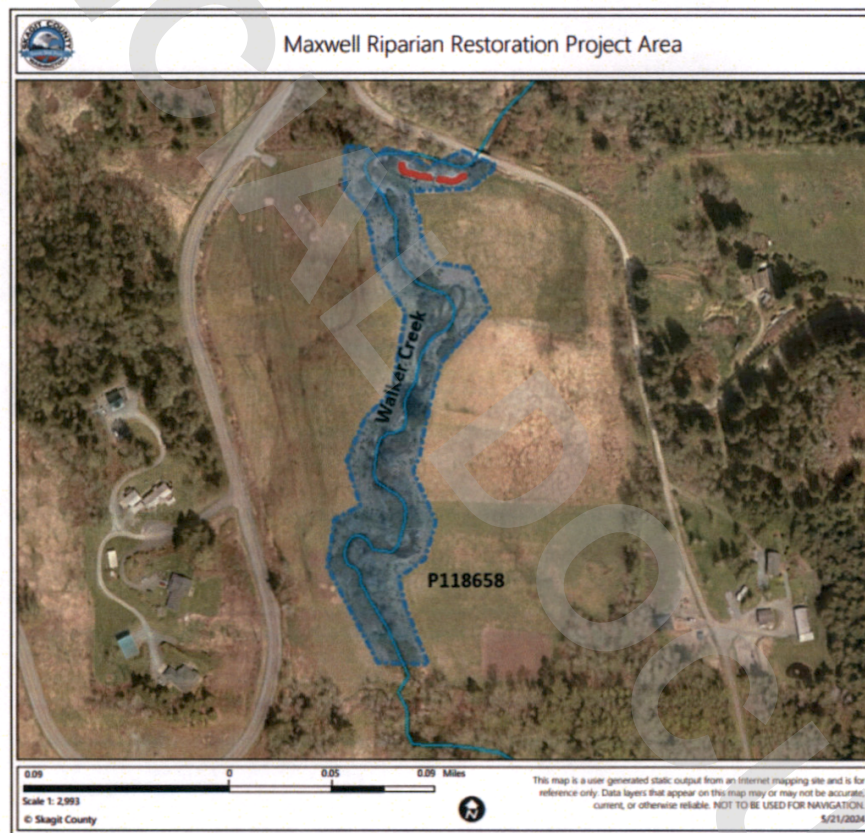


Figure 1. Restoration area schematic. Blue shading denotes area of invasive plant removal and native species planting. Red lines indicate areas of bank stabilization.

Bank Stabilization

During the summer of 2024 Skagit County will install or reposition wood to complete up to 2 structures of large woody debris along approximately 50' of Walker Creek (each) to stabilize the bank of the creek where it abuts the pasture (Figure 1). Bank stabilization will be field fit and

may include installation of structures, typically 25' length and 8-10' in depth, relocation of wood, bank sloping, and other practices as deemed appropriate. Native plants will be installed to reduce bank sloughing and complement the bank stabilization work. Disturbance of the riparian habitat and creek bed will occur outside of salmon spawning season and in the low-flow period. The wood will be installed to reduce bank erosion which impacts water quality (for the protection, improvement, and enhancement of downstream shellfish habitat) and undermines the integrity of the pasture fencing. The parties recognize and agree that the Project is not intended to provide any flood control protection, purpose, or benefit.

Following bank stabilization, the Project will replace or repair any fencing removed to allow to access the site.

Invasive Species Control

Starting in summer of 2024, the County will control invasive weeds on the site in preparation for planting in late winter 2024/early spring 2025. The primary weeds of concern that have been identified at this site are Himalayan blackberry and Japanese knotweed. Each weed will be controlled as described below:

Himalayan blackberry: Blackberry grows in patches throughout the riparian area of the site. In 2024 a crew will mow blackberry where it occurs throughout the site. Blackberry will regrow for approximately 6-8 weeks to around shin-height, then the regrowth will be sprayed with 1% triclopyr herbicide with non-ionic surfactant as a foliar spray. A follow up herbicide application in late summer 2024 using 2% glyphosate herbicide with a non-ionic surfactant will also occur. Areas within 25 feet of running water will be sprayed with the aquatic formula of glyphosate in accordance with product label requirements. Two herbicide applications will be necessary within the same growing season because the site will be planted after only one year of site preparation due to funding constraints. Triclopyr is more effective in early summer, while glyphosate is more effective in late summer.

Japanese knotweed: Knotweed grows in patches and scattered individuals in the planting area, particularly right along Walker Creek. Herbicide application is the most reliable and cost-effective control method for knotweed. In concurrence with blackberry treatment during the summer of 2024, 1% imazapyr solution mixed with a non-ionic surfactant will be applied as a foliar spray. Regrowth will be monitored and retreated with the same spray mixture in subsequent years, as needed.

This project will control invasive weed species that can impede establishment and growth of native plants at riparian restoration sites in a manner that is cost effective and consistent with accepted ecological restoration methods. Use of herbicides will be minimized to the extent practical. Herbicide is applied under the supervision of a licensed applicator, with a licensed operator on site at all times during work. Operators are licensed to work in and around water and in a terrestrial environment. Herbicide will be applied in accordance with guidelines designated by the Environmental Protection Agency on appropriate herbicides for fish bearing streams. No herbicide application is conducted when rain is predicted within 6-hours or winds speeds are greater than 10 mph.

The following herbicides are proposed at this site:

Garlon 4 Ultra: https://s3-us-west-1.amazonaws.com/agrian-cg-fs1-production/pdfs/Garlon_4_Ultra1p_Label.pdf

Roundup Custom:

https://labelsds.com/images/user_uploads/Roundup%20Custom%20SDS%209-25-20.pdf

Cornerstone Plus:

https://labelsds.com/images/user_uploads/Cornerstone%20Plus%20Label%201-9-19.pdf

Polaris: https://labelsds.com/images/user_uploads/Polaris%20SDS%205-11-20.pdf

Material Safety Data Sheets (MSDS) PDF links are attached to this planting plan. If chemicals proposed for use change SFEG will notify the landowner in writing, provide updated MSDS sheets and obtain approval prior to utilization. Landowners will be notified by phone at least 48 hours prior to any herbicide treatment.

I acknowledge that I have been informed of and agree to the use of herbicide at this property.



(Landowner initials)



(Landowner initials)

Washington State Class A weeds are those species where control is required when these species are found. If encountered in the field all Class A weeds will be reported to the landowner in writing and information will be provided on state control requirements and recommended methods. If approved by the landowner, treatment and control of these weeds using recommended methods will be incorporated into the project.

Washington State Class B weeds are those species where control is recommended by the state and/or recommended/required by the county noxious weed board. If encountered at a work site, Class B weeds will be reported to the Landowners. Control of Class B weeds will not be conducted as part of this Project.

Class C weeds will be controlled as part of the Project work for restoration site preparation and maintenance when they occur within the Project restoration area. The above weeds will be controlled within the Project restoration area for the duration of this contract. The following Class C weeds are a threat to successful riparian restoration if they occur within restoration sites:

- Himalayan blackberry (*Rubus armeniacus*)
- Evergreen blackberry (*Rubus laciniatus*)
- Morning glory (*Convolvulus arvensis*)
- English ivy (*Hedera spp.*)
- Old man's beard/Travelers joy (*Clematis vitalba*)
- Reed canary grass (*Phalaris arundinacea*)

Riparian Planting

Following invasive species control, planting will begin. Planted species will be a mixture of long-lived conifers, deciduous trees, and shrubs (Table 1). Plant protectors and bamboo stakes may be used to protect the planting from browse by deer and rodents. Protectors will be removed upon completion of the project, but bamboo stakes will be left on site. Species will be selected based on specific site conditions. Table 1 contains a list of typical species included in restoration sites.

Table 1. Typical native species that may be used at Landowner's site.

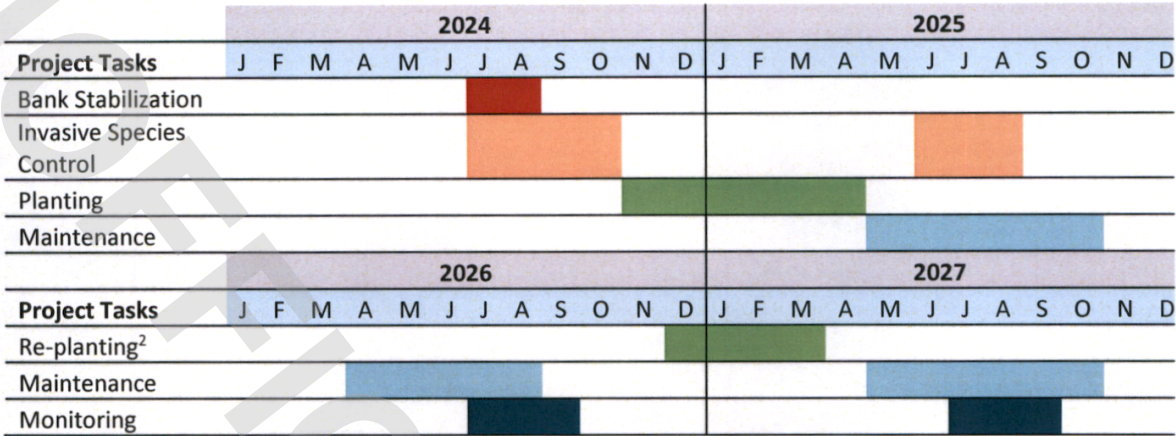
Shrub Species	Common Name
<i>Physocarpus capitatus</i>	Pacific ninebark
<i>Salix sitchensis</i>	Sitka willow
<i>Cornus sericea</i>	Red-osier dogwood
<i>Amelanchier alnifolia</i>	Serviceberry
<i>Symphoricarpos albus</i>	Snowberry
<i>Lonicera involucrata</i>	Black twinberry
<i>Rosa nutkana</i>	Nootka rose
<i>Holodiscus discolor</i>	Oceanspray
<i>Spiraea douglasii</i>	Hardhack
<i>Sambucus racemosa</i>	Red elderberry
Tree Species	Common Name
<i>Pseudotsuga menziesii</i>	Douglas fir
<i>Tsuga heterophylla</i>	Western hemlock
<i>Populus trichocarpa</i>	Black cottonwood
<i>Pinus monticola</i>	Western white pine
<i>Pinus ponderosa</i>	Ponderosa pine
<i>Rhamnus purshiana</i>	Cascara
<i>Corylus cornuta</i>	Beaked hazelnut
<i>Thuja plicata</i>	Western redcedar
<i>Salix lucida</i>	Pacific willow
<i>Prunus emarginata</i>	Bitter cherry
<i>Malus fusca</i>	Pacific crabapple
<i>Crataegus douglasii</i>	Douglas hawthorn

Maintenance and Monitoring

After planting, maintenance will transition to manual removal of blackberry where feasible. While the goal is to be able to maintain the site without using herbicide, this goal is dependent on the weed load and site-specific conditions. If dense regrowth occurs, maintenance may utilize a combination of spot spraying and manual control. Crews will continue to visit the site at a minimum of once per year to maintain the planting area for three growing seasons after the planting phase of the project is complete.

Revegetation success will be monitored following the standard monitoring protocol. For sites larger than two acres, vegetation monitoring plots distributed across the planting area will be used. Plant mortality, health, and herbivory or other damage, and prevalence of invasive species are recorded to derive an overall site condition each year. Survival percentage (compared to the original number of plants installed) and tree-stocking (total trees per acre including both planted and naturally recruited trees) are recorded in each year that monitoring occurs. These data are used to determine the need for revegetation. The need for re-planting will be evaluated in the summers following the initial summer of construction; if at least 80% of the plants originally installed are alive, the area will not need to be re-planted.

Timeline



¹Fencing will be installed following completion of bank stabilization and invasive species control.

²Replanting will occur if monitoring shows need

EXHIBIT "D"

LEGAL DESCRIPTION OF LANDOWNERS' PROPERTY

Per Short Plat No. 99-020 AF# 200111300188

Lot 4, including Tracts "C", "D", "E", "F" and "G" of Short Plat No. 99-020 recorded November 30, 2001, under Auditor's File No. 200111300188, records of Skagit County, Washington; and being a portion of the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$, of Section 30, Township 34 North, Range 5 East, W.M.

Situate in the County of Skagit, State of Washington.