03/28/2013 04:35:57 PM
Recording Fee $79.00 Page 1 of 8
Assignment
Island County Washington

4336597

Upon Recording, Please Return To:
Washington Recreation and Conservation Office
PO Box 40917
Olympia, WA 98504-0917
Attn: Mike Ramsey

Document Title: Assignment of Rights
Reference No. of Related Document: 4322295
Assignor: Island County, a political subdivision of the State of Washington
Assignee: The State of Washington, through the Recreation and Conservation Office, including any successor agencies
Abbreviated Legal Description: Gov't Lot 1, Sec. 5, Twp. 31 N, R 3 E, W.M., Except W 40 Acres, together with 2nd Class Tidelands
Assessor's Parcel Nos: R33105-086-1670
E13004
CT-10434.4

ASSIGNMENT OF RIGHTS
WASHINGTON STATE RECREATION AND CONSERVATION OFFICE

This ASSIGNMENT OF RIGHTS ("Assignment") is executed as of the 25 day of FEBRUARY, 2013, by ~~The Nature Conservancy, a District of Columbia nonprofit corporation~~ ISLAND COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF WASHINGTON ("Assignor"), to and in favor of THE STATE OF WASHINGTON through the Recreation and Conservation Office ("Assignee"), including any successor agencies. KC HPJ

RECITALS

A. The Nature Conservancy has entered into a Conservation Easement ("Easement") with certain property owners (collectively "Owner") in Island County, Washington. The names and address of the Owner and the recording number of the Easement are set forth in Exhibit 1 attached hereto and incorporated herein. The legal description of the Property subject to the Easement is set forth in Exhibit 2 attached hereto and incorporated herein. The Nature Conservancy entered into an Assignment and Acceptance of Conservation Easement to Island County on FEBRUARY 14, 2013.

B. The purpose of the Easement is described in the Easement. That purpose is also described in the Project Agreements entered into between the recipients of RCO funds ("Sponsors") and the Assignee through the RCO entitled Barnum Point Acquisition – Phase 1 (ESRP) Project Number 11-1651A dated April 20, 2012, and through the Barnum Point Acquisition – Phase 1 (ALEA) Project Number 10-1438A, and the supporting materials which are on file with the Assignee in connection with the Project Agreements, which Project Agreements are incorporated herein by this reference. That purpose includes protection of habitat as defined in the Easement.

C. Owner has authorized The Nature Conservancy to assign to the Assignee certain rights for access to and stewardship of the property covered by the Easement. That authorization was transferred to Island County by the Assignment and Acceptance of Conservation Easement referenced in Section A., above. Assignment of such rights is a necessary condition to receipt of

KC

grant funding under the Project Agreements and the policies of the Puget Sound Estuary and Salmon Restoration Program and Aquatic Lands Enhancement Act of the State of Washington administered by the Assignee. Such rights are valuable to the Assignee in connection with ensuring protection of habitat under the terms of the Easement. The assignment of such rights to the Assignee, however, does not in any way relieve the Assignor of such duties to enforce the Easement as may be imposed on it under the Easement and the Project Agreements.

D. These recitals are incorporated herein by this reference.

Now, therefore, Assignor and the Assignee agree as follows:

AGREEMENT

1. **Assignment**. For and in consideration of monies coming in whole or in part from the Puget Sound Estuary and Salmon Restoration Program and in fulfillment of terms of the Project Agreements identified herein, Assignor does hereby assign, transfer, set over, convey and deliver to the Assignee individually, and as the representative of all the people of the State, the following joint rights (collectively referred to as "joint rights") under the Easement, the recording number of which is listed in Exhibit 1 attached hereto and incorporated herein by this reference and as described in Exhibit 2 attached hereto. The term "joint right" means a right that both the Assignor and Assignee may independently enforce under the Easement. The grant of these joint rights does not in any way relieve the Assignor of its duties to enforce the terms of the Easement, whether under those agreements or under the Project Agreements. The following rights are granted to Assignee.

A. **Access**. A right to enter the Conservation Easement Area, as defined in the Easement, through the Property subject to the Easement at a reasonable time and upon prior arrangement with Assignor and Owner, in order to monitor and evaluate performance, compliance, and/or quality assurance under the Project Agreements.

B. **Enforcement**. A right to enforce the terms and conditions of the Easement and to seek injunctive relief, including restoration, and/or damages for any breach thereof.

C. **Amendments.** A right to review and approve any proposed amendments to the Easement. Review and approval by RCO's Director will be for compliance with the terms of the Project Agreements.

D. **Termination for Reasons of Impracticability**. A right to review and approve any proposed agreements to terminate the Easement, or release a portion of the Conservation Easement Area from the terms of the Easement, before expiration of the term of the Easement for the reason that circumstances have rendered the conservation purpose of the Easement impractical to achieve. Absent approval of the Assignee acting through the RCO or entry of an order of the Superior Court in which the property subject to the Easement is located, the Assignor shall not enter into any termination or release agreement.

KC

E. **Stewardship and Management Plans**. A right to review any Stewardship and/or Management Plans, including habitat restoration and enhancement plans, as defined in the Easement. Review by RCO's Director will be for compliance with the terms of the Project Agreements. To the extent the rights assigned herein overlap with the rights granted to the Assignor under the Easement, the rights assigned herein shall not be construed to displace those rights. These Rights shall be held in common with Assignor or Assignor's successors and assigns.

2. **Assignee's Exercise of Rights**. The Assignee hereby represents and warrants that its exercise of rights under this Assignment will be consistent with the conservation purpose defined in the Easement and the Project Agreements.

3. **Representations and Warranties of Assignor**. Assignor hereby represents and warrants to the Assignee that:

A. Owner, identified in Exhibit 1 attached hereto and incorporated herein, has authorized and approved this Assignment.

B. Assignor shall enforce the terms of the Easement as provided in the Easement.

C. Assignor shall comply with, and the Assignee shall not be responsible for determining compliance with, all applicable federal, state, and local laws, regulations, and policies in its administration of the Easement or the undertaking of any of its rights under the Easement.

D. Neither Assignor nor Owner has any claims or causes of action, at law or in equity, with respect to the Easement as of the date provided above.

4. **Obligations**. It is expressly understood and agreed that, by the acceptance of this Assignment, the Assignee has not assumed, and shall not become obligated to keep, fulfill, observe, perform or discharge, any duty or obligation of Assignor under the Easement.

5. **Indemnity**. Assignor shall defend, protect and hold harmless the Assignee, or any officers or employees thereof, from and against any and all costs, claims, fees and expenses arising out of in part or whole the acts or omissions of Assignor and/or its employees, relating to the Easement or in any way relating to Assignor's representations and warranties under this Assignment.

6. **Replacement Property.** The Easement may be extinguished in whole or in part before expiration of its term (if any) under certain circumstances identified in the Easement. Assignor may be entitled to compensation in such event. Assignor shall use all such proceeds for acquisition, restoration and/or enhancement of substantially equivalent property or property interests. Assignor hereby agrees to consult with, and receive the approval of, the RCO in the selection of any replacement property and to assign to the Assignee the same or substantially equivalent rights for access to and stewardship of the replacement property as provided for in

KC

this Assignment.

7. **Restriction on Assignment.** Assignor shall not assign the Easement or the performance of any obligations to the Assignee under the Easement, without the express written consent of the RCO's Director, which shall not unreasonably be withheld.

8. **Assignment Term.** The term of this Assignment shall be the same as the term of the Easement, and shall expire upon the expiration date of the Easement (if any).

9. **Disputes.** Any disputes between Assignor and the Assignee under this Assignment shall be governed by the terms of the Project Agreements.

10. **Governing Law/Venue.** This Assignment shall be governed by the laws of the State of Washington. In the event of a lawsuit between Assignor and the Assignee involving this Assignment, venue shall be proper only in Thurston County. Assignor by executing this Assignment acknowledges the jurisdiction of the courts of the State of Washington in this matter.

11. **Severability.** If any provision of this Assignment or any provision of any document incorporated by reference herein shall be held invalid, such invalidity shall not affect the other provisions of this Assignment which can be given effect without the invalid provision and to this end the provisions of this Assignment are declared to be severable.

12. **SCHEDULE OF EXHIBITS:**
Exhibit 1 - Owner and Easement Recording Number
Exhibit 2 - Legal Description of Property Subject to Easement

---

REMAINDER OF PAGE IS INTENTIONALLY BLANK: SIGNATURE PAGES FOLLOW

KC

ASSIGNOR:
Island County,
a political subdivision of the State of Washington

It is understood and agreed that delivery of this ASSIGNMENT OF RIGHTS TO WASHINGTON STATE RECREATION AND CONSERVATION OFFICE Document is hereby tendered and that the terms and obligations hereof shall not become binding upon the Assignor unless and until accepted and approved hereon in writing for the Assignor by the Chair of the Board of County Commissioners of Island County, State of Washington.

****

THIS ASSIGNMENT OF RIGHTS TO WASHINGTON STATE RECREATION AND CONSERVATION OFFICE Document is made and entered into this 25 day of FEBRUARY, 2013.

Helen Price Johnson, Chair
Board of County Commissioners

ATTEST: Elaine Marlow
Elaine Marlow, Clerk of the Board

BOARD OF CO. COMMISSIONERS EST ISLAND COUNTY 1853 WASHINGTON

ASSIGNEE:
THE STATE OF WASHINGTON, through its Recreation and Conservation Office

Kaleen Cottingham

Kaleen Cottingham

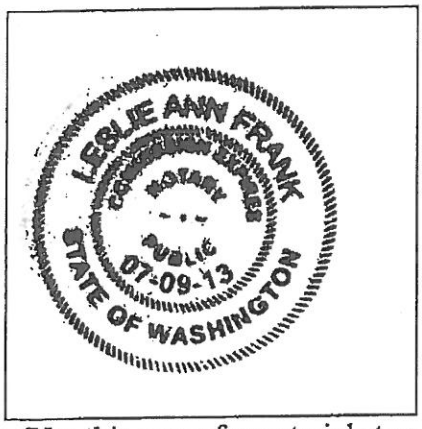
Its: Director

Date: February 4, 2013

STATE OF WASHINGTON)
) ss:
COUNTY OF THURSTON)

I certify that I know or have satisfactory evidence that Kaleen Cottingham is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: February 4, 2013



(Use this space for notarial stamp/seal)

Leslie Ann Frank
Notary Public

Leslie Ann Frank
Print Name

7-9-13
My commission expires

KC

EXHIBIT 1
Owner and Easement Recording Number

Owner: Edward Lawrence Stay and Amy L. Stay
Stay Appraisal
P.O. Box 1436
Bothell, WA 98041-1436

Easement Recording Number: Island County Auditor's File No. 4322295

END OF EXHIBIT 1

KC

EXHIBIT 2
Legal Description of Property Subject to Easement

All that certain real estate situated in Island County, Washington, more particularly described as follows:

Government Lot 1, Section 5, Township 31 North, Range 3 East, W.M.;

EXCEPT the West 40 acres thereof;

TOGETHER WITH second-class tidelands, as conveyed by the State of Washington located in front of, adjacent to and abutting thereon and lying between the meander line and a line parallel with and 600 feet Easterly of said meander line, the North boundary of this tidelands tract being the projection Easterly of the North line of said Government Lot 1 and the South line of said tract being the projection Easterly of the South line of said Government Lot 1.

END OF EXHIBIT 2

KC