

Recording Requested By And
When Recorded Mail To:

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



201608240068

Skagit County Auditor

\$84.00

8/24/2016 Page

1 of

12 2:25PM

DOCUMENT TITLE: TEMPORARY EASEMENT

REFERENCE NUMBER OF RELATED DOCUMENT: *Not Applicable*

GRANTOR(S): Lookout Arts Quarry Inc., a Washington corporation.

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

ABBREVIATED LEGAL DESCRIPTION: A temporary easement located within THAT PORTION OF LOT 5 LYING WEST OF OLD HIGHWAY 99, SECTION 6, TOWNSHIP 36 NORTH, RANGE 4 EAST, W.M.

ASSESSOR'S TAX / PARCEL NUMBER(S): P48946 (XrefID: 360406-0-006-0101)

TEMPORARY EASEMENT

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

The undersigned, **Lookout Arts Quarry Inc.**, a Washington corporation (herein "Grantor" 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 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 Resource 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 Landowner represents and warrants to the County that the Landowner is the legal owner of the property described in *Exhibit "D"* (the "Landowner's Property"), and further

represents and warrants 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 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.

1.5 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. The County and Landowner shall reasonably cooperate to coordinate mutually agreeable times for the performance of work and activities related to this Temporary Easement, and to the extent practicable the County shall reasonably accommodate requests by the Landowner to not conduct such work or activities at Landowner's Property when Landowner has notified the County that the Landowner is preparing for and/or is holding an event at the Landowner's Property. 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 site preparation, removal of invasive vegetation, and riparian planting, 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, not to include active maintenance, 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 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 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, 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

AUG 17 2016

Amount Paid \$
Skagit Co. Treasurer
By *ML* Deputy

GRANTOR:

Lookout Arts Quarry Inc., a Washington corporation.

By: _____

Heather Jones, President

DATED this 27th day of July, 2016.

STATE OF WASHINGTON

COUNTY OF SKAGIT

ss.

I certify that I know or have satisfactory evidence that Heather Jones, as the President of **Lookout Arts Quarry Inc.**, a Washington corporation, is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she executed the forgoing instrument as her duly authorized free and voluntary act for the uses and purposes herein mentioned.

DATED this 27 day of July, 2016.

(SEAL)

Notary Public

Print name: EMILY DARENNE

Residing at: Bellingham, WA

My commission expires: 5-23-20

GRANTEE:
DATED this 12 day of August, 2016.

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

Lisa Janicki, Chair

Ron Wesen, Commissioner

Kenneth A. Dahlstedt, Commissioner

Attest:

Clerk of the Board

Authorization per Resolution R20050224:



County Administrator

Recommended:



Department Head

Approved as to form:

 8/10/16


Civil Deputy Prosecuting Attorney

Approved as to indemnification:



Risk Manager

Approved as to budget:



Budget & Finance Director

EXHIBIT "A"

TEMPORARY EASEMENT LEGAL DESCRIPTION

A TEMPORARY EASEMENT FOR THE PURPOSE OF PLANTING RIPARIAN REVEGETATION WITHIN PARCEL NUMBER P48946 MORE PARTICULARLY DESCRIBED IN EXHIBIT "D";

COMMENCING ON THE NORTHWESTERN PROPERTY CORNER OF PARCEL 48946;

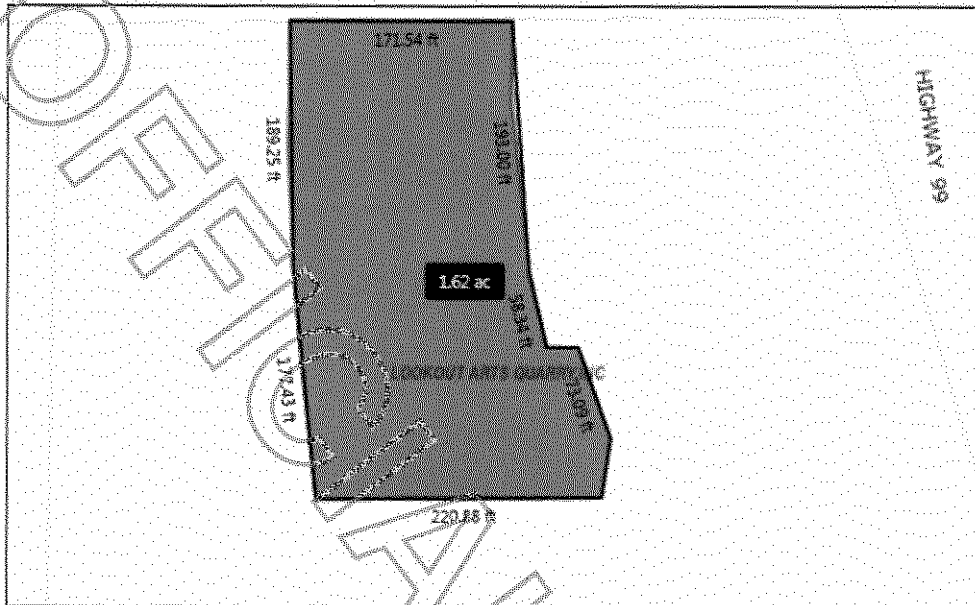
THENCE EASTERLY ALONG THE NORTHERN PROPERTY LINE ± 180 FEET TO THE ORDINARY HIGH WATER MARK (OHWM) OF THE EASTERN BANK OF AN UNNAMED WETLAND AND THE TRUE POINT OF BEGINNING;

1. THENCE EASTERLY ALONG THE NORTHERN PROPERTY LINE ± 171 FEET TO A POINT ± 254 FEET WEST OF THE NORTHEASTERN PROPERTY CORNER;
2. THENCE SOUTHERLY ± 193.00 FEET MAINTAINING AN AVERAGE DISTANCE OF 171 FEET FROM THE OHWM OF THE EASTERN BANK OF AN UNNAMED WETLAND;
3. THENCE SOUTHEASTERLY ± 58 FEET TO A POINT ± 190 FEET EASTERLY FROM THE OHWM OF THE EASTERN BANK OF AN UNNAMED WETLAND;
4. THENCE EASTERLY ± 24 FEET;
5. THENCE SOUTHEASTERLY ± 73 FEET TO A POINT ± 231 FEET EASTERLY FROM THE OHWM OF THE EASTERN BANK OF AN UNNAMED WETLAND;
6. THENCE SOUTHWESTERLY ± 46 FEET TO A POINT ± 221 FEET EASTERLY FROM THE OHWM OF THE EASTERN BANK OF AN UNNAMED WETLAND,
7. THENCE WESTERLY 220.9 FEET;
8. THENCE NORTHWESTERLY ± 177.4 FEET;
9. THENCE NORTHERLY ± 189.3 FEET TO THE TRUE POINT OF BEGINNING AND THE END OF THIS DESCRIPTION;

BEING AN AREA OF ± 1.62 ACRES

SITUATE IN SKAGIT COUNTY, STATE OF WASHINGTON.

EXHIBIT "B"
GRAPHIC DEPICTION OF TEMPORARY EASEMENT AREA



This temporary easement includes the above-depicted shaded area required for installation of riparian vegetation and associated site preparation and maintenance.

Parcel Number: P48946

Address: 246 Old Highway 99 North
Bellingham, WA 98229

Situate in the County of Skagit, State of Washington

EXHIBIT "C"

RIPARIAN RESTORATION AND MAINTENANCE PLAN SCOPE OF WORK

Overview

The Landowner, Lookout Arts Quarry, Inc. (LAQ) is an intentional arts community located on 80 acres of forested wetland. The area where work is proposed is along a small tributary to Friday Creek, a tributary to the Samish River. This 0.7 acre work area is split into two sections. The first is a 0.4 acre plot located along the greenhouse (Greenhouse Planting Area) which the community (LAQ) has requested to be designed so that it can be used as an educational native plant garden. The second is a 0.3 acre plot along a graveled and compacted road with established native vegetation along the tributary (Roadside Planting Area).

Site Preparations

There is an abundance of invasive weeds on LAQ proposed planting area but it can be managed with repeated maintenance and an initial herbicide application for controlling the various weeds on site with participation from Skagit Fisheries Enhancement Group (SFEG) and LAQ. Herbicide will be applied under the supervision of a licensed applicator. The applicator is required to be 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. Skagit County and the Landowner will be notified at least 7 days prior to any herbicide application. Application records will be maintained and provided to the County or Landowner on request and signs will be posted in as require by Washington law. The strategy for prepping and maintaining this planting as follows:

- Knotweed- this should be taken care of immediately and aggressively. The community has requested an herbicide-free weed management plan; however, this will not effectively control this extremely invasive weed. A foliar application of 1% imazapyr and 1% non-ionic surfactant is recommended to reduce the overall herbicide applied and increase the efficacy of the application. Knotweed treatment will be done prior to planting and then follow-up treatments should continue for 2 following years to ensure the knotweed is under control. Once knotweed is under control LAQ community members will take over management of knotweed maintenance with training from SFEG staff.
- Tansy and Canada thistle will be controlled by hand. If hand removal is not effective chemical treatment may be used in the future. The Landowner and SFEG will discuss how to adequately control these weeds.
- In an effort to use as little herbicide as possible on this site the blackberry will be manually removed by mowing and grubbing out the below surface root mass. The plant debris can then be left onsite to compost and has the added benefit of being great habitat for rodent, rabbits and some birds. Care will be taken to ensure blackberry roots are above the soil level and on dry soil so they will not re-root. The LAQ community members will be led by a SFEG staff member to remove this blackberry. This should take one volunteer event to control.
- Bull thistle, teasel and burdock- These plants are easily controlled manually by pulling out the tap root below the surface and bagging any flower head that have developed. Care should be taken to remove all the dirt from the taproot and send the bagged flower

heads to the landfill to ensure they don't contribute to the seed bank on site. SFEG will instruct community members in how to identify and control these species by hand.

- Nightshade- this can be manually controlled to reduce the amount of herbicide used on the site. Community members will pull plants out of the roadway, taking care to remove all roots from the ground; these roots can be extensive and care should be taken to get all of the roots removed or the nightshade will simply come back. Any berries on the plant will be bagged and sent to the landfill by LAQ community members.
- The road planting area will be ripped by Skagit County road crew and then a 4 ft. trail will be mulched to allow LAQ tractor access for the community to continue maintenance on their blueberry patch. Mulch will be provided by the County by October 2016. The mulch will be spread immediately prior to planting the area. If there is extra mulch available it will be placed by the greenhouse planting for mulch rings around the plants after installation.

Planting

The planting area will consist of approximately 0.7 acres. The greenhouse planting area is a place where the community regularly meets to enjoy their view of the wetland below. This area will have a small mowed trail and area for chairs. Also, trees will not be planted in this area (please see attached map) and a 5 ft. buffer will be left unplanted between the plant installation and LAQ's garden space to allow for adequate sun in the garden; the exact location will be approved by the community prior to plant installation. LAQ community members have requested this greenhouse planting be an educational planting where members can come and learn about sustainable management and plant identification. In addition, the community members have requested we leave an unplanted buffer with the viewing corridor for LAQ to install medicinal plants and additional ground cover plants provided by LAQ will be installed after the initial plants installed by SFEG staff. The area is a terrace with relatively dry soil conditions, and the recommended species consist of native trees and berries tolerant of full sun.

There is a well-established buffer between the two planting areas that already consists of healthy native vegetation such as spirea. The community member will be directing SFEG staff and WCC crews where to plant a small amount of the conifers in the planting list to accommodate for space needed to maintain full sun for the community garden.

The road planting will consist of plants tolerant of seasonal flooding because site conditions are wet due to a closer proximity to the Creekside. The LAQ community has requested to be involved in the planting of this area and will be invited out to plant with SFEG staff. Plants will be installed at 6-foot spacing in the fall of 2016 after chemical and mechanical treatment of invasive plants, and ripping the road. Plants recommended for installation have been selected for their ethnobotanical value, and include 30% conifer as required by NRSP program guidelines. Much of the established vegetation along the road planting is hardhack and willow, these plants should come back readily but machinery will need to be sure to avoid these plants to reduce damage to established vegetation.

Trees in both planting areas will be protected by plant tubes to protect them from rodent damage. Protectors are to remain on the plants until spring/summer 2019 when maintenance for this site is complete.

Specific vegetation in each planting area will be determined by the County, LAQ, and SFEG prior to installation but a minimum total of 638 plants will be installed. Of these, 30% will be

conifers. Trees in both planting areas will be protected by plant tubes to protect them from rodent damage. Protectors are to remain on the plants until spring/summer 2019 or when maintenance for this site is determined by LAQ, SFEG, and the County to be complete.

Maintenance

Maintenance will be conducted by SFEG for 3 seasons after planting is complete. The LAQ community will be invited to help participate in each maintenance visit. The knotweed, tansy and Canada thistle will be hand-pulled. Evaluation will occur to determine if treatment with herbicide would be more effective. The minimal reed canary grass on site will be stomped down by SFEG when we are on site for maintenance and it will be stomped as necessary by the community. Other minor weeds on site will be hand-pulled as needed by the community and during SFEG site visits.

Monitoring

Planting maintenance is intended to achieve at least 80% survival of installed plants in year 3 following planting. Vegetation survival will be monitored annually during the early summer. If survival rates of less than 80% are observed by the 3rd season following planting, then additional plants will be installed in the fall of that year to bring the stocking rate to at least 80% of the original planting target.

SFEG's site lead and/or Project Manager will conduct a final season site visit in 2019 to confirm project success and identify corrective actions if any.

Timeline

Invasive control to prepare the site for planting will begin summer 2016, starting with herbicide treatment and soil amendments in late summer. In the late fall of 2016 planting will begin. Following planting maintenance will begin twice a year in summer and early fall to follow-up of spot treatment of knotweed common tansy and Canada thistle; hand pulling blackberry, bull thistle, teasel and nightshade and stomping reed canary grass as needed. LAQ will be notified 7 days prior to any activity.



Figure 1. Riparian restoration

EXHIBIT "D"
LEGAL DESCRIPTION OF LANDOWNER'S PROPERTY

The Southeast ¼ of the Northeast ¼ lying East of Friday Creek, Section 1, Township 36 North, Range 3 East W.M., EXCEPT that portion of said premises conveyed to the State of Washington by deeds recorded July 26, 1962 and January 28, 1963 under Auditor's File Nos. 624332 and 631413; AND that portion of Government Lot 5 lying West of Old Highway 99, in Section 6, Township 36 North, Range 4 East, W.M.

Subject To: This conveyance is subject to covenants, conditions, restrictions and easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.