



HILARY S. FRANZ
COMMISSIONER OF PUBLIC LANDS

AQUATIC LANDS CONSERVATION LICENSE

License No. 23-105031

THIS AGREEMENT is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and LEWIS COUNTY DEPARTMENT OF PUBLIC WORKS, a government agency ("Licensee").

THE Parties agree as follows:

SECTION 1 GRANT OF PERMISSION

1.1 Permission. Subject to the terms and conditions set forth below, State grants Licensee a revocable, nonexclusive license to enter upon the real property described in Exhibit A (the "Property"). In this agreement, the term "License" means this agreement and the rights granted.

1.2 Other Interests and Rights. This License is subject to all valid interests of third parties noted in the records of Lewis County, or on file in the Office of the Commissioner of Public Lands, Olympia, Washington. Licensee is responsible for obtaining approvals from other persons, if any, who have an interest in the Property. This License is subject to the rights of the public under the Public Trust Doctrine or federal navigation servitude and treaty rights of Indian Tribes.

SECTION 2 USE

2.1 Authorized Activities.

(a) Licensee shall enter the Property only for the purpose of:

conducting the conservation activities described in Exhibit B (the "Activities")

and for no other purpose. Licensee shall not conduct any other activities on the Property without the prior written permission of State.

(b) Warranties on Activities.

- (1) Licensee warrants that no permit, law, or regulatory authority obligates Licensee to conduct the Activities.
- (2) Licensee warrants that Licensee will not receive or gain compensatory mitigation or natural resource damage credits because of the Activities.
- (c) Licensee's breach of any warranty under Paragraph 2.1(b) is cause for Termination resulting from breach under Paragraph 9.3.
- (d) Restoration of Property Required Under Certain Conditions.
 - (1) If during the term of this License, the Activities cause unintended or unanticipated consequences that are deleterious to the Property or natural resources on the Property, or result in conditions that pose a threat to human health or safety, Licensee shall notify DNR immediately and make all necessary repairs or corrections to the natural resources and Property.
 - (2) If Licensee fails to take action in a timely manner, State may restore the natural resources or Property and charge Licensee restoration costs and/or charge Licensee for damages. On demand by State, Licensee shall pay all costs and/or damages.

2.2 Restrictions on Activities. The following limitations apply to the Property and adjacent state-owned aquatic land. Licensee shall not cause or permit:

- (a) Damage to natural resources, except to the extent expressly permitted in Exhibit B,
- (b) Waste, or
- (c) Deposit of material, unless approved by State in writing and except to the extent expressly permitted in Exhibit B. This prohibition includes deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter.

2.3 Conformance with Laws. Licensee shall keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding its activities on the Property.

2.4 Interference with Other Uses.

- (a) Licensee shall exercise Licensee's right of entry under this License in a manner that minimizes or avoids interference with the rights of State, the public or others with valid right to use or occupy the Property or surrounding lands and water.
- (b) Licensee and its agents, contractors, and subcontractors shall provide State with at least two (2) weeks notice before commencing any Activities. Licensee shall promptly notify State of any modifications in the schedule.

SECTION 3 TERM

3.1 Term Defined. This License commences on the 1st day of July, 2024 ("Commencement Date"), and terminates on the 30th day of June, 2029 ("Termination Date"), unless terminated sooner under the terms of this License.

3.2 End of Term. Upon termination of this License and except as otherwise provided in Exhibit B, Licensee shall restore the Property to a condition substantially like its natural state before Licensee's Activities, except for alterations necessary under the Activities or otherwise authorized by State.

SECTION 4 CONSIDERATION

The consideration is a fee in the amount of Nine Hundred Dollars (\$900.00), which is due and payable on or before the Commencement Date.

SECTION 5 IMPROVEMENTS

5.1 Improvements Defined.

- (a) "Improvements," consistent with RCW 79.105 through 79.145, are additions within, upon, or attached to the land. This includes, but is not limited to, fill, structures, and fixtures.
- (b) "Personal Property" means items that can be removed from the Property without
 - (1) injury to the Property, adjacent state-owned lands or Improvements or
 - (2) diminishing the value or utility of the Property, adjacent state-owned lands or Improvements.
- (c) "Improvements Owned by Others" are Improvements made by Others with a right to occupy or use the Property or adjacent state-owned lands.

5.2 Existing Improvements. On the Commencement Date, ten (10) large woody material (LWM) structures and twelve (12) untreated piling are located on the Property.

5.3 Construction, Major Repair, Modification, and Demolition.

- (a) Licensee shall construct no Improvements and make no modification of the Property ("Work") except as described in Exhibit B.
- (b) Licensee shall preserve and protect Improvements Owned by Others, if any.
- (c) Before completing Work, Licensee shall remove all debris and restore the Property, as nearly as possible, to a substantially natural state, except for alterations necessary under the Activities or otherwise authorized by State.
- (d) Upon completing Work, Licensee shall promptly provide State with as-built plans and specifications.

5.4 Standards for Work.

- (a) Licensee shall not use or install treated wood at any location above or below water.
- (b) Licensee shall not use or install tires at any location above or below water.
- (c) Licensee shall install only floatation material encapsulated in a shell resistant to ultraviolet radiation and abrasion. The shell must be capable of preventing breakup and loss of flotation material into the water.

- (d) Licensee shall only conduct in-water activities during time periods authorized for such activities under WAC 220-660-110, Authorized Work Times in Freshwater Areas, or as otherwise directed by the Washington Department of Fish and Wildlife (WDFW).

5.5 Improvements at End of Term. Improvements installed by Licensee merge with the Property upon termination of the License, unless the Parties agree otherwise.

5.6 Disposition of Personal Property. Licensee shall remove Personal Property from the Property before termination of the License.

SECTION 6 ENVIRONMENTAL LIABILITY

6.1 Definitions.

- (a) "Hazardous Substance" means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup.
- (b) "Release or threatened release of Hazardous Substance" means a release or threatened release as defined under any law described in Paragraph 6.1(a).
- (c) "Utmost care" means such a degree of care as would be exercised by a very careful, prudent, and competent person under the same or similar circumstances; the standard of care applicable under the Washington State Model Toxics Control Act ("MTCA"), Chapter 70.105 RCW, as amended.
- (d) "Licensee and affiliates" when used in this Section 6 means Licensee or Licensee's subcontractors, agents, employees, guests, invitees, or any person on the Property with the Licensee's permission.

6.2 General Conditions. Licensee shall exercise the utmost care with respect to Hazardous Substances.

6.3 Use of Hazardous Substances.

- (a) Licensee and affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.
- (b) Licensee shall not undertake, or allow others to undertake by Licensee's permission, acquiescence, or failure to act, activities that result in a release or threatened release of Hazardous Substances.

6.4 In the Event of a Release or Threatened Release.

- (a) Licensee shall immediately notify State if the Licensees become aware of any release or threatened release of Hazardous Substance on the Property.
- (b) If a Licensee's act or omission results in a release of Hazardous Substances, Licensee, at its sole expense, shall promptly take all actions necessary or

advisable to clean up, contain, and remove the Hazardous Substances in accordance with applicable laws.

SECTION 7 ASSIGNMENT

Licensee shall not assign this License.

SECTION 8 INDEMNITY AND INSURANCE

8.1 Indemnity.

- (a) Licensee shall indemnify, defend, and hold State, its employees, officers, and agents harmless from any Claims arising out of the Activities or related activities by Licensee, its contractors, agents, invitees, guests, employees or affiliates to the fullest extent permitted by law and subject to the limitations provided below.
- (b) "Claim" as used in this Subsection 8.1 means any financial loss, claim, suit, action, damages, expenses, costs, fees (including attorneys' fees), fines, penalties, or judgments attributable to bodily injury, sickness, disease, death, and damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "Damages to tangible property" includes, but is not limited to, physical injury to the Property, including damage resulting from Hazardous Substances, diminution of value, and/or damages resulting from loss of use of the Property.
- (c) State shall not require Licensee to indemnify, defend, and hold State harmless for claims caused solely by or resulting solely from the negligence or willful act of the State or State's elected officials, employees, or agents.
- (d) Licensee specifically and expressly waives any immunity that may be granted under the Washington State Industrial Insurance Act, Title 51 RCW in connection with its obligation to indemnify, defend, and/or hold State and its agencies, officials, agents, or employees harmless. Further, the indemnification obligation under this License shall not be limited in any way by any limitation on amount or type of damages, compensation, or benefits payable to or for any third party under the worker's compensation acts.
- (e) Only to the extent RCW 4.24.115 applies and requires such a limitation, if a claim, suit, or action for injuries or damage is caused by or results from the concurrent negligence of (a) the State or State's agents or employees and (b) the Licensee or Licensee's agents or employees, these indemnity provisions shall be valid and enforceable only to the extent of the negligence of the Licensee and those acting on its behalf.

8.2 Insurance Terms.

- (a) Insurance Required.
 - (1) Licensee certifies that it is self-insured for all the liability exposures, its self-insurance plan satisfies all State requirements, and its self-insurance plan provides coverage equal to that required in this Subsection 8.2 and by

Subsection 8.3, Insurance Types and Limits. Licensee shall provide to State evidence of its status as a self-insured entity. Upon request by State, Licensee shall provide a written description of its financial condition and/or the self-insured funding mechanism. Licensee shall provide State with at least thirty (30) days' written notice prior to any material changes to Licensee's self-insured funding mechanism.

- (2) Unless State agrees to an exception, Licensee shall provide insurance issued by an insurance company or companies admitted to do business in the State of Washington and have a rating of A- or better by the most recently published edition of Best's Reports. Licensee may submit a request to the risk manager for the Department of Natural Resources to approve an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies shall comply with Chapter 48.15 RCW and 284-15 WAC.
- (3) All insurance policies must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, agents, and employees as an additional insured.
- (4) All insurance provided in compliance with this License must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.
- (b) Waiver.
 - (1) Licensee waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this License covers these damages.
 - (2) Except as prohibited by law, Licensee waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this License.
- (c) Proof of Insurance.
 - (1) Licensee shall provide State with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this License and, if requested, copies of policies to State.
 - (2) The certificate(s) of insurance must reference additional insureds and the License number.
 - (3) Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies.
- (d) State must receive written notice before cancellation or non-renewal of any insurance required by this License, as follows:
 - (1) Insurers subject to RCW 48.18 (admitted and regulated by the Insurance Commissioner): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State forty-five (45) days' advance notice of cancellation or non-renewal.
 - (2) Insurers subject to RCW 48.15 (surplus lines): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of

- cancellation; otherwise, provide State thirty (30) days' advance notice of cancellation or non-renewal.
- (e) Adjustments in Insurance Coverage.
 - (1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.
 - (2) Licensee shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.
 - (f) General Terms.
 - (1) State does not represent that coverage and limits required under this License are adequate to protect Licensee.
 - (2) Coverage and limits do not limit Licensee's liability for indemnification and reimbursements granted to State under this License.
 - (3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to property first to restore the real property covered by this License, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Licensee.

8.3 Insurance Types and Limits.

- (a) General Liability Insurance.
 - (1) Licensee shall maintain commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Licensee's use, occupation, or control of the Property and, if necessary, commercial umbrella insurance with a limit of not less than One Million Dollars (\$1,000,000) per each occurrence. If such CGL or MGL insurance contains aggregate limits, the general aggregate limit must be at least twice the "each occurrence" limit. CGL or MGL insurance must have products-completed operations aggregate limit of at least two times the "each occurrence" limit.
 - (2) CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.
 - (3) MGL insurance must have no exclusions for non-owned watercraft.
- (b) Workers' Compensation.
 - (1) State of Washington Workers' Compensation.
 - (i) Licensee shall comply with all State of Washington workers' compensation statutes and regulations. Licensee shall provide workers' compensation coverage for all employees of Licensee. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with Licensee's use, occupation, and control of the Property.

- (ii) If Licensee fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Licensee shall indemnify State. Indemnity shall include all fines; payment of benefits to Licensee, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.
- (2) Longshore and Harbor Worker's Act. The Longshore and Harbor Worker's Compensation Act (33 U.S.C. Section 901 *et seq.*) may require Licensee to provide insurance coverage for longshore and harbor workers other than seaman. Licensee shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with this Act. Licensee is responsible for all civil and criminal liability arising from failure to maintain such coverage.
- (3) Jones Act. The Jones Act (46 U.S.C. Section 688) may require Licensee to provide insurance coverage for seamen injured during employment resulting from negligence of the owner, master, or fellow crew members. Licensee shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with this Act. Licensee is responsible for all civil and criminal liability arising from failure to maintain such coverage.
- (c) Employer's Liability Insurance. Licensee shall procure employer's liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident or One Million Dollars (\$1,000,000) each employee for bodily injury by disease.

SECTION 9 TERMINATION

9.1 Termination by Revocation. State may terminate this License at any time upon thirty (30) days notice to the Licensee.

9.2 Termination by Completion of Activities. If Licensee completes Activities prior to the Termination Date, this License terminates upon Licensee's completion of all Activities, including restoration of the Property under Subsection 3.2.

9.3 Termination Resulting from Breach. If Licensee breaches any terms of this License, State may terminate this License immediately upon notice to Licensee. If the breach arises from Licensee's failure to comply with restrictions on use under Paragraph 2.2 or results in damage to natural resources or the Property, State may restore the natural resources or Property and charge Licensee restoration costs and/or charge Licensee for damages. On demand by State, Licensee shall pay all costs and/or damages.

SECTION 10 NOTICE

Following are the locations for delivery of notice and the Contact Person. Any Party may change the location of notice and/or the Contact Person upon reasonable notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES
Aquatic Resources Division, Rivers District
P.O. Box 280 | 601 Bond Road
Castle Rock, WA 98611
360-972-0923

Licensee: LEWIS COUNTY DEPARTMENT OF PUBLIC WORKS
57 West Main Street
Chehalis, WA 98532
360-740-1040

SECTION 11 MISCELLANEOUS

11.1 Headings. The headings used in this License are for convenience only and in no way define, limit, or extend the scope of this License or the intent of any provision.

11.2 Invalidity. The invalidity, voidness, or illegality of any provision of this License does not affect, impair, or invalidate any other provision of this License.

11.3 Applicable Law and Venue. This License is to be interpreted and construed in accordance with the laws of the State of Washington. Any reference to a statute means that statute as presently enacted or hereafter amended or superseded. Venue for any action arising out of or in connection with this License is in the Superior Court for Thurston County, Washington.

11.4 Modification. No modification of this License is effective unless in writing and signed by the Parties. Oral representations or statements do not bind either Party.

11.5 Survival. Any obligations of Licensee not fully performed upon termination of this License do not cease, but continue as obligations of the Licensee until fully performed.

11.6 Exhibits. All referenced exhibits and attachments are incorporated in this License unless expressly identified as unincorporated.

THIS AGREEMENT requires the signature of all Parties and is effective on the date of the last signature below.

LEWIS COUNTY DEPARTMENT OF PUBLIC
WORKS

Dated: _____, 20__

SCOTT J. BRUMMER
Chair, Lewis County Board of Commissioners
360 NW North Street
Chehalis, WA 98532
360-740-1123

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____, 20__

THOMAS GORMAN
Aquatic Resources Division Manager
1111 Washington Street SE
MS 47207
Olympia, WA 98504

**EXHIBIT A
PROPERTY DESCRIPTION**

Agreement Number: 23-105031

1. PROPERTY DESCRIPTION:

A portion of the bedlands of navigable waters and second class shorelands of the Newaukum River in front of a portion of Gov't Lot 9, Section 31, Township 14 North, Range 2 West, W.M., Lewis County.

2. COORDINATES OF THE RIGHT OF ENTRY:

Latitude: 46.648855N

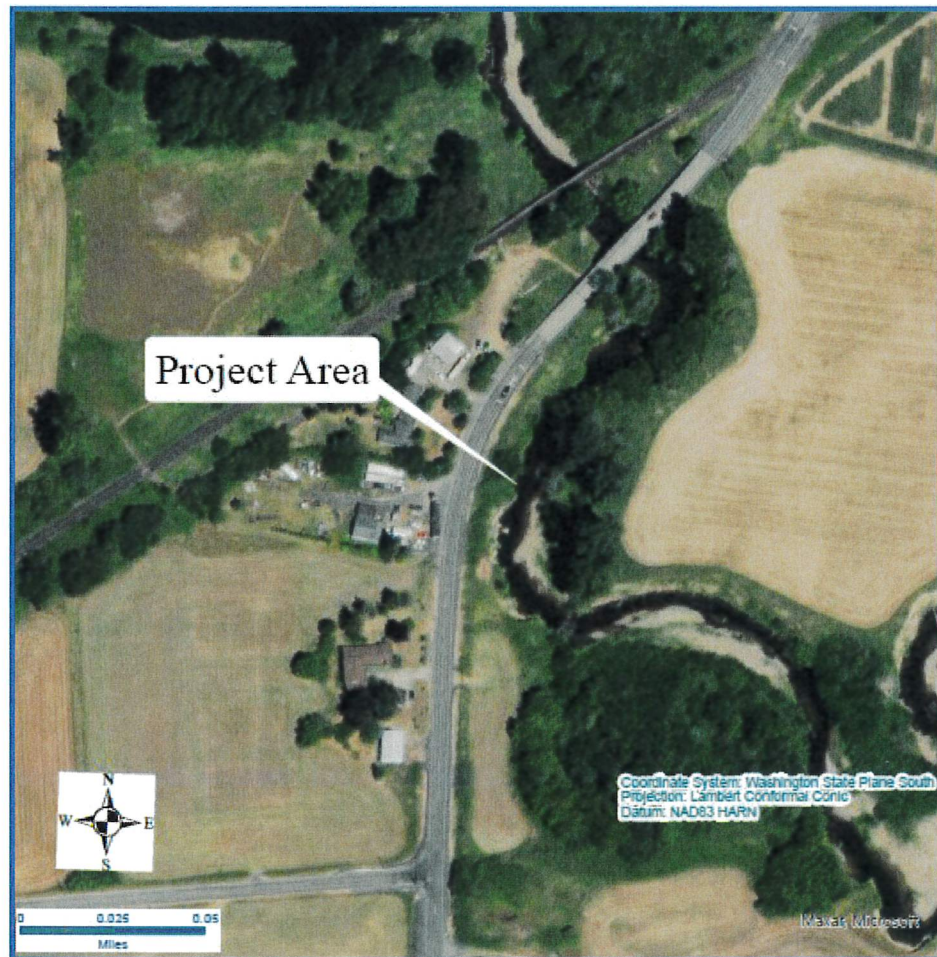
Longitude: -122.981639W

3. APPROXIMATE SQUARE FOOTAGE OF RIGHT OF ENTRY:

Total square feet 18,000

**EXHIBIT A
VICINITY MAP**

**Lewis County Public Works
Authorization No. 23-105031
Authorized Use: Bank Stabilization
Location: Newaukum River, Lewis County**



Vicinity Map

Every attempt was made to use the most accurate and current geographic data available. However, due to multiple sources, scales, and the currency of the data used to develop this map Washington Department of Natural Resources cannot accept responsibility for errors and omissions in the data. Furthermore, this data is not survey grade information and cannot be substituted for an official survey. Therefore, there are no warranties that accompany this material.

Legal Description:

Section 31, Township 14 North, Range 2 West, W.M.

Latitude: 46.648855N

Longitude: -122.981639W

Prepared By: RS Date: 02/08/2024

**PLAN OF OPERATIONS
EXHIBIT B**

1. DESCRIPTION OF ACTIVITIES

A. Existing Conditions. Licensee conducted an emergency interim bank stabilization project in the summer of 2021. At that time ten (10) large woody material (LWM) structures and twelve (12) untreated piling were installed in the Newaukum River to deflect the current away from Shorey Road. These improvements will be removed as part of the proposed project.

B. Proposed Conditions. Licensee intends the proposed project to provide long-term bank stabilization & habitat enhancement to approximately 240 feet of riverbank along the left bank of the Newaukum River. Project features include a vegetated rock revetment, inter-planted with native willow stakes in combination with thirty-two (32) boulder-ballasted large wood material (LWM) log triangles. Log triangles comprise logs with rootwads to provide roughness & decelerate flow energy along the project bank. Licensee intends the rootwad inclusion to improve habitat complexity with added flow diversity & cover. Licensee will place bioengineered log triangles below the ordinary high-water mark (OHWM) to further roughen the bank & enhance in-stream habitat. Licensee will construct the proposed vegetated rock revetment at a stable slope from the toe to the top of bank, underlain with quarry spalls & erosion control fabric to stabilize the roadway embankment & mitigate further erosion. Licensee anticipates placement of the vegetated rock revetment and underlying materials to require removal & replacement of a roadway section. Licensee will not add any new paved area.

Placement of temporary benches within OHWM may be required to achieve equipment reach/access to place the proposed revetment toe. Excavation of two hundred ten (210) cubic yards of native streambed will occur at the toe of the slope approximately 10 feet perpendicular to the bank & along the bank to provide a stable 1.5:1 slope; operator/workers will trim timber piles flush with the ground, lay out geotextile fabric, place one (1) foot of quarry spalls and three and a half (3.5) feet for a total of nine hundred fifty (950) cubic yards of rock for erosion & scour protection atop the quarry spalls. The two hundred ten (210) cubic yards of native streambed that was previously excavated will then be placed as backfill on top of the quarry spalls and rocks to fill in gaps between the rocks and provide structural integrity to the revetment. Operator/workers will place log triangles atop the rock revetment below the OHWM & install two rows of native willows landward of the log triangles.

Licensee installed signs both five hundred (500) feet upstream and downstream of the project area during the summer of 2021 warning recreationalists of the structures emplaced in the river at that time. Licensee will continue to maintain

and leave these signs in place for the proposed project. After installation Licensee will conduct biannual monitoring of these structures and will also conduct monitoring following flood events. State will require copies of these monitoring reports when they become available. State grants its consent to this Work, except that Licensee shall conform all Work to all other requirements of Section 5 of this License.

C. Permits. Licensee has secured the following permits for the Activities:

- Lewis County Community Development Department State Environmental Policy Act Determination of Non-Significance File Numbers SEP23-0012, SHO23-003, G23-00029, FD23-00021 & LDR23-0026. Issued: June 15, 2023.
- Washington State Department of Transportation National Environmental Policy Act Categorical Exclusion Documentation Form Number ER-2101 (001) JB. Issued: August 8, 2023.
- Lewis County Community Development Department Development Permit Number G23-00009. Issued: December 20, 2023.
- Lewis County Community Development Department Floodplain Development Permit Number G23-00009. Issued: December 20, 2023.
- Washington Department of Fish and Wildlife Hydraulic Project Approval Number 2023-5-84+01. Issued: September 27, 2023. Expires: August 31, 2027.
- Washington Department of Ecology Substantial Development Permit and Conditional Use Permit Number 2023-SWRO-7307. Issued: November 17, 2023.
- Washington Department of Ecology Water Quality Certification Number 22296. Issued: September 26, 2023.
- United States Army Corps of Engineers Permit Number NWS-2023-269. Issued: October 23, 2023. Expires: March 14, 2027.

2. ADDITIONAL OBLIGATIONS

None