

When recorded, return to:
Ann Weckback
2025 NE Kresky Avenue
Chehalis, WA 98532



WASHINGTON STATE DEPARTMENT OF
Natural Resources
Peter Goldmark - Commissioner of Public Lands

AQUATIC LANDS AGREEMENT AMENDMENT

Easement No. 51-088902

Grantor: Washington State Department of Natural Resources
Grantee(s): Lewis County Public Works
Legal Description: The NE 1/4 of Section 23, Township 13 North, Range 4 West, W.M.
Assessor's Property Tax Parcel or Account Number: Not Applicable
Assessor's Property Tax Parcel or Account Number for Upland parcel used in conjunction with this Easement: 019454001029, 019444001000, 019446001001

THIS EASEMENT AMENDMENT is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and LEWIS COUNTY PUBLIC WORKS, a government agency/entity (Grantee).

BACKGROUND

Easement No. 51-088902 was entered into on the 1st day of July, 2012, by and between LEWIS COUNTY PUBLIC WORKS as grantee and the STATE OF WASHINGTON, acting by and through the Department of Natural Resources, as landlord ("State"), and recorded with the Lewis County Auditor's office under recording number 3382001 (the "Agreement").

The Agreement was previously amended by agreement respectively dated September 19, 2013. Copies of the agreements are attached as Exhibits A and B. Grantee now possesses the rights, duties, and liabilities under the Agreement as amended.

The parties now desire to amend this Agreement under the following terms and conditions:

THEREFORE, the parties agree as follows:

SECTION 1 AMENDMENTS

Sections 1.2, 2.1, 4.1, 7.2, exhibit A, and exhibit B of the Easement are amended to read as specified in Exhibit C attached hereto.

SECTION 2 EFFECTIVE DATE

The amended provisions shall become effective as of April 1, 2016.

SECTION 3 NO RELEASE

State is not releasing any previous Assignor from fully performing the provisions of the Agreement in effect at the time of such assignment or as otherwise agreed in writing between the State, previous Assignor, and the Grantee.

SECTION 4 WARRANTIES

Grantee represents and warrants to State that (i) the Agreement is in full force and effect; (ii) Grantee is not in default or breach of the Agreement; (iii) Grantee has no knowledge of any claims, offsets, or defenses of the Grantee under the Agreement; and (iv) to the best of Grantee knowledge, the Property is in full compliance with all applicable federal, state, and local governmental permits, rules, ordinances, and laws.

SECTION 5 CONFIRMATION OF AGREEMENT

All other terms of the Agreement not inconsistent with this Amendment are hereby affirmed and ratified.

SECTION 6 RECORDATION

At Grantee's expense and no later than thirty (30) days after receiving the fully-executed Agreement, Grantee shall record this Agreement in the county in which the Property is located. Grantee shall include the parcel number of the upland property used in conjunction with the Property, if any. Grantee shall provide State with recording information, including the date of recordation and file number.

THIS AGREEMENT requires the signature of all parties and is executed as of the date of the last signature below.

LEWIS COUNTY

Dated: _____, 20__

By: P.W. Schulte
Title: Chair, Lewis County Board of
County Commissioners
Address: 360 NW North Street
Chehalis, WA 98532
Phone: (360)740-1123

**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES**

Dated: _____, 20__

By: Megan Duffy
Title: Deputy Supervisor of Aquatics and
Geology
Address: 1111 Washington Street SE
Olympia, WA 98504

Approved as to Form this
This 28 day of September 2011
Janis Snoey, Assistant Attorney General

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
COUNTY OF Lewis)

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

Dated: _____

(Signature)

(Print Name)
Notary Public in and for the State of Washington,
residing at _____

My appointment expires _____

Exhibit A: Agreement as Executed July 1st, 2012

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08/10/2012 03:35:36 PM Total Pages: 28 Fees: 0.00
Gary E. Zandell, Lewis County Auditor, Chehalis, Washington

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Lewis County
2025 NE Kresky Avenue
Chehalis, WA 98532



WASHINGTON STATE DEPARTMENT OF
Natural Resources
Peter Goldmark - Commissioner of Public Lands

AQUATIC LANDS EASEMENT

Easement No. 51-088902

Grantor: Washington State Department of Natural Resources
Grantee(s): Lewis County
Legal Description: Section 23, Township 13 North, Range 4 West, W.M. (Ceres Hill Rd)
Section 35, Township 15 North, Range 3 West, W.M. (Galvin Rd)
Assessor's Property Tax Parcel or Account Number: variable
Assessor's Property Tax Parcel or Account Number for Upland parcel used in conjunction with
this Easement: variable

THIS AGREEMENT is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and Lewis County, a government agency/entity ("Grantee"). State has authority to enter this Easement under Chapter 43.12 RCW, Chapter 43.30 RCW, and Title 79 of the Revised Code of Washington (RCW).

THE Parties agree as follows:

SECTION 1 GRANT OF EASEMENT

1.1 Easement Defined.

- (a) State grants and conveys to Grantee a nonexclusive easement, subject to the terms and conditions of this agreement, over, upon, and under the real property at Chehalis River: As described in Exhibit A-1 and A-2. In this agreement, the term

“Easement” means this agreement and the rights granted; the term “Easement Property” means the real property subject to the easement.

- (b) This Easement 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; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes.
- (c) This Easement does not include any right to harvest, collect or damage any natural resource, including aquatic life or living plants, any water rights, or any mineral rights, including any right to excavate or withdraw sand, gravel, or other valuable materials.
- (d) This Easement does not include the right to grant easements and franchises to third parties.

1.2 Survey and Easement Property Descriptions.

- (a) Grantee prepared Exhibit A, which describes the Easement Property. Grantee represents that Exhibit A is a true and accurate description of the Easement boundaries and the improvements to be constructed or already existing in the Easement area. Grantee’s obligation to provide a true and accurate description of the Easement Property boundaries is a material term of this Easement.
- (b) State’s acceptance of Exhibit A does not constitute agreement that Grantee’s property description accurately reflects the actual amount of land used by Grantee. State reserves the right to retroactively adjust fees if at any time during the Term State discovers a discrepancy between Grantee’s property description and the area actually used by Grantee.

1.3 Condition of Easement Property. State makes no representation regarding the condition of the Easement Property, improvements located on the Easement Property, the suitability of the Easement Property for Grantee’s Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Easement Property, or the existence of hazardous substances on the Easement Property.

SECTION 2 USE

2.1 Permitted Use. Grantee shall use the Easement Property for: Construction, modification, operation, maintenance, repair, replacement, and removal of 2 county bridges (the “Permitted Use”) with a bank stabilization/mitigation project and for no other purpose, including utilities unless specifically identified as part of the Permitted Use. The Permitted Use is described or shown in detail in Exhibit B.

2.2 Restrictions on Use.

- (a) The limitations in this Paragraph 2.2 apply to the Property and adjacent state-owned aquatic land. Grantee’s compliance with this Paragraph 2.2 does not limit Grantee’s liability under any other provision of this Easement.
- (b) Grantee shall not cause or permit:
 - (1) Damage to natural resources

- (2) Waste, or
- (3) Deposit of material, unless approved by State in writing. 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. Grantee 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 Grantee's use of the Easement Property.

2.4 Liens and Encumbrances. Grantee shall keep the Easement Property free and clear of any liens and encumbrances arising out of or relating to its use of the Easement Property, unless expressly authorized by State in writing.

2.5 Interference with Other Uses.

- (a) Grantee shall exercise Grantee's rights under this Easement 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 Easement Property or surrounding lands and water.
- (b) To the fullest extent reasonably possible, Grantee shall place and construct Improvements in a manner that allows unobstructed movement in and on the waters above and around the Easement Property.
- (c) Except in an emergency, Grantee shall provide State with written notice of construction or other significant activity on Easement Property at least thirty (30) days in advance. "Significant Activity" means any activity that may affect use or enjoyment by the State, public, or others with valid rights to use or occupy the Easement Property or surrounding lands and water.
- (d) Grantee shall mark the location of any hazards associated with the Permitted Use and any Improvements in a manner that ensures reasonable notice to the public. Grantee shall mark the location and limits of the Improvements. As required by applicable regulation, Grantee shall facilitate amendment of official navigational charts to indicate existence and location of submerged improvements.

SECTION 3 TERM

3.1 Term Defined. The term of this Easement is thirty (30) years (the "Term"), beginning on the 1st day of July, 2012 (the "Commencement Date"), and ending on the 30th day of June, 2042 (the "Termination Date"), unless terminated sooner under the terms of this Easement.

3.3 End of Term.

- (a) Upon the expiration or termination of this Easement, Grantee shall remove Improvements in accordance with Section 7, Improvements, and surrender the Easement Property to State in the same or better condition as on the Commencement Date, reasonable wear and tear excepted.
- (b) Definition of Reasonable Wear and Tear.

- (1) Reasonable wear and tear is deterioration resulting from the Permitted Use that has occurred without neglect, negligence, carelessness, accident, or abuse by Grantee or Grantee's contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees.
 - (2) Reasonable wear and tear does not include any deposit of material prohibited under Paragraph 2.2(b) unless expressly permitted by State in writing and regardless of whether the deposit is incidental to or the byproduct of the Permitted Use.
- (c) If Easement Property is in worse condition, excepting for reasonable wear and tear, on the surrender date than on the Commencement Date, the following provisions apply.
- (1) State shall provide Grantee a reasonable time to take all steps necessary to remedy the condition of the Easement Property. State may require Grantee to enter into a right-of-entry or other use authorization prior to the Grantee entering the Easement Property to remedy any breach of this Paragraph 3.3.
 - (2) If Grantee fails to remedy the condition of the Easement Property in a timely manner, State may take any steps reasonably necessary to remedy Grantee's failure. Upon demand by State, Grantee shall pay all costs of such remedial action, including but not limited to the costs of removing and disposing of any material deposited improperly on the Easement Property, lost revenue resulting from the condition of the Easement Property prior to and during remedial action, and any administrative costs associated with the remedial action.

SECTION 4 FEES

4.1 Fee. For the Term, Grantee shall pay to State a use fee of Two-Thousand, Five-Hundred, Ninety-Seven and 41/100 Dollars (\$2,597.41) and an administrative fee calculated in accordance with RCW 79.110.240(4) payable on or before the Commencement Date. Any payment not paid by State's close of business on the date due is past due.

4.2 Payment Place. Grantee shall make payment to Financial Management Division, 1111 Washington St SE, PO Box 47041, Olympia, WA 98504-7041.

SECTION 5 OTHER EXPENSES

5.1 Utilities. Grantee shall pay all fees charged for utilities required or needed by the Permitted Use.

5.2 Taxes and Assessments. Grantee shall pay all taxes, assessments, and other governmental charges, of any kind whatsoever, applicable or attributable to the Easement and the Permitted Use.

5.3 Failure to Pay. If Grantee fails to pay any of the amounts due under this Easement, State may pay the amount due, and recover its cost in accordance with Section 6.

SECTION 6 LATE PAYMENTS AND OTHER CHARGES

6.1 Failure to Pay. Failure to pay any fees or other expenses is a default by Grantee, State may seek remedies in Section 14 as well as late charges and interest as provided in this Section 6.

6.2 Late Charge. If State does not receive any payment within ten (10) days of the date due, Grantee shall pay to State a late charge equal to four percent (4%) of the unpaid or Fifty Dollars (\$50), whichever is greater, to defray the overhead expenses of State incident to the delay.

6.3 Interest Penalty for Past Due Fees and Other Sums Owed.

- (a) Grantee shall pay interest on the past due fee at the rate of one percent (1%) per month until paid, in addition to paying the late charges determined under Paragraph 6.2. Fee not paid by the close of business day on the due date will begin accruing interest the day after the due date.
- (b) If State pays or advances any amounts for or on behalf of Grantee, Grantee shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Grantee of the payment or advance. This includes, but is not limited to taxes, assessments, insurance premiums, costs of removal and disposal of unauthorized materials pursuant to Paragraph 2.2 above, costs of removal and disposal of improvements pursuant to Section 7 below, or other amounts not paid when due.

6.4 Referral to Collection Agency and Collection Agency Fees. If State does not receive payment within thirty (30) days of the due date, State may refer the unpaid amount to a collection agency as provided by RCW 19.16.500 or other applicable law. Upon referral, Grantee shall pay collection agency fees in addition to the unpaid amount.

6.5 No Accord and Satisfaction. If Grantee pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment constitutes accord and satisfaction.

SECTION 7 IMPROVEMENTS

7.1 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, structures and fixtures.
- (b) "Personal Property" means items that can be removed from the Easement Property without (1) injury to the Easement Property, adjacent state-owned lands

- or Improvements or (2) diminishing the value or utility of the Easement Property, adjacent state-owned lands or Improvements.
- (c) "State-Owned Improvements" are Improvements made or owned by State. State-Owned Improvements includes any construction, alteration, or addition to State-Owned Improvements made by Grantee.
 - (d) "Grantee-Owned Improvements" are Improvements made by Grantee with State's consent.
 - (e) "Unauthorized Improvements" are Improvements made on the Easement Property without State's prior consent or Improvements made by Grantee that do not conform with plans submitted to and approved by the State.
 - (f) "Improvements Owned by Others" are Improvements made by Others with a right to occupy or use the Easement Property or adjacent state-owned lands.

7.2 Existing Improvements. On the Commencement Date, the following Improvements are located on the Easement Property: Two (2) County bridges and one (1) bank stabilization/mitigation project. The Improvements are Grantee-Owned Improvements.

7.3 Construction, Major Repair, Modification, and Demolition.

- (a) This Paragraph 7.3 governs construction, alteration, replacement, major repair, modification alteration, demolition and deconstruction of Improvements ("Work"). Section 11 governs routine maintenance and minor repair of Improvements and Easement Property.
- (b) All Work must conform with State's standards for Improvements current at the time Grantee submits plans and specifications for State's approval. Paragraph 11.3 also applies to all Work under this Paragraph 7.3.
- (c) Except in an emergency, Grantee shall not conduct any Work without State's prior written consent, as follows:
 - (1) State may deny consent if State determines that denial is in the best interests of the State. State may impose additional conditions reasonably intended to protect and preserve the Easement Property. If Work is for removal of Improvements at End of Term, State may waive removal of some or all Improvements.
 - (2) Except in an emergency, Grantee shall submit to State plans and specifications describing the proposed Work at least sixty (60) days before submitting permit applications to regulatory authorities unless Grantee and State otherwise agree to coordinate permit applications. At a minimum, or if no permits are necessary, Grantee shall submit plans and specifications at least ninety (90) days before commencement of Work.
 - (3) State waives the requirement for consent if State does not notify Grantee of its grant or denial of consent within sixty (60) days of submittal.
- (d) Grantee shall notify State of emergency Work within five (5) business days of the start of such Work. Upon State's request, Grantee shall provide State with plans and specifications or as-builts of emergency Work.
- (e) Grantee or Grantee's contractors shall not commence or authorize Work until Grantee or contractors have:

- (1) Obtained a performance and payment bond in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of construction. Grantee or grantee's contractors shall maintain the performance and payment bond until Grantee or Grantee's contractor pays in full the costs of the Work, including all laborers and material persons.
- (2) Obtained all required permits.
- (3) Provided notice of Significant Activity in accordance with Paragraph 2.5(c).
- (f) Grantee shall preserve and protect Improvements Owned by Others, if any.
- (g) Grantee shall preserve all legal land subdivision survey markers and witness objects ("Markers.") If disturbance of a Marker will be a necessary consequence of Grantee's construction, Grantee shall reference and/or replace the Marker in accordance with all applicable laws and regulations current at the time, including, but not limited to Chapter 58.24 RCW. At Grantee's expense, Grantee shall retain a registered professional engineer or licensed land surveyor to reestablish destroyed or disturbed Markers in accordance with U.S. General Land Office standards.
- (h) Before completing Work, Grantee shall remove all debris and restore the Easement Property, as nearly as possible, to the condition prior to the commencement of Work. If Work is intended for removal of Improvements at End of Term, Grantee shall restore the Easement Property in accordance with Paragraph 3.3, End of Term.
- (i) Upon completing work, Grantee shall promptly provide State with as-built plans and specifications.
- (j) State shall not charge rent for authorized Improvements installed by Grantee during this Term of this Easement, but State may charge rent for such Improvements when and if the Grantee or successor obtains a subsequent use authorization for the Easement Property and State has waived the requirement for Improvements to be removed as provided in Paragraph 7.4.

7.4 Grantee-Owned Improvements at End of Easement.

- (a) Disposition
 - (1) Grantee shall remove Grantee-Owned Improvements in accordance with Paragraph 7.3 upon the expiration, termination, or cancellation of the Easement unless State waives the requirement for removal.
 - (2) Grantee-Owned Improvements remaining on the Easement Property on the expiration, termination, or cancellation date become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership.
 - (3) If Grantee-Owned Improvements remain on the Easement Property after the expiration, termination, or cancellation date without State's consent, State may remove all Improvements and Grantee shall pay the costs of removal and disposal.
- (b) Conditions Under Which State May Waive Removal of Grantee-Owned Improvements.

- (1) State may waive removal of any or all Grantee-Owned Improvements whenever State determines that it is in the best interests of the State.
 - (2) If Grantee renews the Easement or enters into a new Easement, State may waive requirement to remove Grantee-Owned Improvements. State also may consent to Grantee's continued ownership of Grantee-Owned Improvements.
 - (3) If Grantee does not renew the Easement or enter into a new Easement, State may waive requirement to remove Grantee-Owned Improvements upon consideration of a timely request from Grantee, as follows:
 - (i) Grantee must notify State at least one (1) year before the Termination Date of its request to leave Grantee-Owned Improvements.
 - (ii) State, within ninety (90) days, will notify Grantee whether State consents to any or all Grantee-Owned Improvements remaining. State has no obligation to grant consent.
 - (iii) State's failure to respond to Grantee's request to leave Improvements within ninety (90) days is a denial of the request.
- (c) Grantee's Obligations if State Waives Removal.
- (1) Grantee shall not remove Improvements if State waives the requirement for removal of any or all Grantee-Owned Improvements.
 - (2) Grantee shall maintain such Improvements in accordance with this Easement until the expiration, termination, or cancellation date. Grantee is liable to State for cost of repair if Grantee causes or allows damage to Improvements State has designated to remain.

7.5 Disposition of Unauthorized Improvements.

- (a) Unauthorized Improvements belong to State, unless State elects otherwise.
- (b) State may either:
 - (1) Consent to Grantee ownership of the Improvements, or
 - (2) Charge use and occupancy fee in accordance with RCW 79.105.200 of the Improvements from the time of installation or construction and
 - (i) Require Grantee to remove the Improvements in accordance with Paragraph 7.3, in which case Grantee shall pay use and occupancy fee for the Improvements until removal,
 - (ii) Consent to Improvements remaining and Grantee shall pay use and occupancy fee for the use of the Improvements, or
 - (iii) Remove Improvements and Grantee shall pay for the cost of removal and disposal, in which case Grantee shall pay use and occupancy fee for use of the Improvements until removal and disposal.

7.6 Disposition of Personal Property.

- (a) Grantee retains ownership of Personal Property unless Grantee and State agree otherwise in writing.

- (b) Grantee shall remove Personal Property from the Easement Property by the Termination Date. Grantee is liable for any damage to the Easement Property and to any Improvements that may result from removal of Personal Property.
- (c) State may sell or dispose of all Personal Property left on the Easement Property after the Termination Date.
 - (1) If State conducts a sale of Personal Property, State shall apply proceeds first to the State's administrative costs in conducting the sale, second to payment of amount that then may be due from the Grantee to the State, and State shall pay the remainder, if any, to the Grantee.
 - (2) If State disposes of Personal Property, Grantee shall pay for the cost of removal and disposal.

SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

8.1 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 8.1(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) "Grantee and affiliates" when used in this Section 8 means Grantee or Grantee's subgrantees, contractors, agents, employees, guests, invitees, licensees, affiliates, or any person on the Easement Property with the Grantee's permission.
- (e) "Liabilities" as used in this Section 8 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys' fees and disbursements), penalties, or judgments.

8.2 General Conditions.

- (a) Grantee's obligations under this Section 8 extend to the area in, on, under, or above:
 - (1) The Easement Property and
 - (2) Adjacent state-owned aquatic lands if affected by a release of Hazardous Substances that occurs as a result of the Permitted Use.
- (b) Standard of Care.
 - (1) Grantee shall exercise the utmost care with respect to Hazardous Substances.
 - (2) As relates to the Permitted Use, Grantee shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable consequences of those acts or omissions,

to the extent required to establish a viable, third-party defense under the law.

8.3 Current Conditions and Duty to Investigate.

- (a) State makes no representation about the condition of the Easement Property. Hazardous Substances may exist in, on, under, or above the Easement Property.
- (b) This Easement does not impose a duty on State to conduct investigations or supply information to Grantee about Hazardous Substances.
- (c) Grantee is responsible for conducting all appropriate inquiry and gathering sufficient information about the existence, scope, and location of Hazardous Substances on or near the Property necessary for Grantee to meet Grantee's obligations under this Easement and utilize the Property for the Permitted Use.

8.4 Use of Hazardous Substances.

- (a) Grantee and affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.
- (b) Grantee shall not undertake, or allow others to undertake by Grantee's permission, acquiescence, or failure to act, activities that result in a release or threatened release of Hazardous Substances.
- (c) If use of Hazardous Substances related to the Permitted Use results in a violation of law:
 - (1) Grantee shall submit to State any plans for remedying the violations, and
 - (2) Grantee shall implement any measures to restore the Easement Property or natural resources that State may require in addition to remedial measures required by regulatory authorities.

8.5 Management of Contamination, if any.

- (a) Grantee and affiliates shall not undertake activities that:
 - (1) Damage or interfere with the operation of remedial or restoration activities, if any;
 - (2) Result in human or environmental exposure to contaminated sediments, if any;
 - (3) Result in the mechanical or chemical disturbance of on-site habitat mitigation, if any.
- (b) If requested, Grantee shall allow reasonable access to:
 - (1) Employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, health department, or other similar environmental agencies; and
 - (2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Easement Property. Grantee may negotiate an access agreement with such parties, but Grantee may not unreasonably withhold such agreement.

8.6 Notification and Reporting.

- (a) Grantee shall immediately notify State if Grantee becomes aware of any of the following:
- (1) A release or threatened release of Hazardous Substances;
 - (2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence of Hazardous Substances;
 - (3) Any lien or action arising from Hazardous substances;
 - (4) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;
 - (5) Any notification from the US Environmental Protection Agency (EPA) or the Washington State Department of Ecology (DOE) that remediation or removal of Hazardous Substances is or may be required at the Easement Property.
- (b) Grantee's duty to report under Paragraph 8.6(a) extends to lands described in Paragraph 8.2(a) and to any other property used by Grantee in conjunction with the Easement Property if a release of Hazardous Substances on the other property could affect the Easement Property.
- (c) Grantee shall provide State with copies of all documents Grantee submits to any federal, state, or local authorities concerning environmental impacts or proposals relative to the Easement Property. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollution Discharge and Elimination System Permits; Army Corps of Engineers permits; State Hydraulic Project Approvals (HPA); State Water Quality certification; Substantial Development permit; and any reporting necessary for the existence, location, and storage of Hazardous Substances on the Property.

8.7 Indemnification.

- (a) Grantee shall fully indemnify, defend, and hold State harmless from and against Liabilities that arise out of, or relate to:
- (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Grantee and affiliates occurring whenever Grantee uses or has used the Easement Property;
 - (2) The release or threatened release of any Hazardous Substance resulting from any act or omission of Grantee and affiliates occurring whenever Grantee uses or has used the Easement Property.
- (b) Grantee shall fully indemnify, defend, and hold State harmless for any Liabilities that arise out of or relate to Grantee's breach of obligations under Paragraph 8.5.

8.8 Reservation of Rights.

- (a) For Liabilities not covered by the indemnification provisions of Paragraph 8.7, the Parties expressly reserve and do not waive any rights, claims, immunities, causes of action, or defenses relating to Hazardous Substances that either Party may have against the other under law.

- (b) The Parties expressly reserve all rights, claims, immunities, and defenses either Party may have against third parties. Nothing in this Section 8 benefits or creates rights for third parties.
- (c) The allocations of risks, Liabilities, and responsibilities set forth in this Section 8 do not release either Party from or affect the liability of either Party for Hazardous Substances claims or actions by regulatory agencies.

8.9 Cleanup.

- (a) If Grantee's act, omission, or breach of obligation under Paragraph 8.4 results in a release of Hazardous Substances that exceeds the threshold limits of any applicable regulatory standard, Grantee shall, at Grantee's sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances in accordance with applicable law.
- (b) Grantee may undertake a cleanup of the Property pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that Grantee cooperates with the Department of Natural Resources in development of cleanup plans. Grantee shall not proceed with Voluntary Cleanup without the Department of Natural Resources approval of final plans. Nothing in the operation of this provision is an agreement by the Department of Natural Resources that the Voluntary Cleanup complies with any laws or with the provisions of this Easement. Grantee's completion of a Voluntary Cleanup is not a release from or waiver of any obligation for Hazardous Substances under this Easement.

8.10 Sampling by State, Reimbursement, and Split Samples.

- (a) State may conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Easement Property at any time to determine the existence, scope, or effects of Hazardous Substances.
- (b) If such Tests, along with any other information, demonstrate a breach of Grantee's obligations regarding Hazardous Substances under this Easement, Grantee shall promptly reimburse State for all costs associated with the Tests, provided State gave Grantee thirty (30) calendar days advance notice in nonemergencies and reasonably practical notice in emergencies.
- (c) In nonemergencies, Grantee is entitled to obtain split samples of Test samples, provided Grantee gives State written notice requesting split samples at least ten (10) calendar days before State conducts Tests. Upon demand, Grantee shall promptly reimburse State for additional cost, if any, of split samples.
- (d) If either Party conducts Tests on the Property, the conducting Party shall provide the other with validated final data and quality assurance/quality control/chain of custody information about the Tests within sixty (60) calendar days of a written request by the other party, unless Tests are part of a submittal under Paragraph 8.6(c) in which case Grantee shall submit data and information to State without written request by State. Neither party is obligated to provide any analytical summaries or the work product of experts.

SECTION 9 ASSIGNMENT

Grantee shall not assign any part of Grantee's interest in this Easement or the Easement Property or grant any rights or franchises to third parties without State's prior written consent, which State shall not unreasonably condition or withhold. State reserves the right to reasonably change the terms and conditions of this Easement upon State's consent to assignment.

SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE

10.1 Indemnity. Each Party is responsible for the actions and inactions of itself and its own officers, employees, and agents acting within the scope of their authority.

10.2 Insurance Terms.

(a) Insurance Required.

- (1) Grantee 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 Paragraph 10.2 and by Paragraph 10.3, Insurance Types and Limits. Grantee shall provide to State evidence of its status as a self-insured entity. Upon request by State, Grantee shall provide a written description of its financial condition and/or the self-insured funding mechanism. Grantee shall provide State with at least thirty (30) days' written notice prior to any material changes to Grantee's self-insured funding mechanism.
- (2) Unless State agrees to an exception, Grantee 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. Grantee 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 must comply with Chapter 48.15 RCW and 284-15 WAC.
- (3) All general liability, excess, umbrella, property, builder's risk, and pollution legal liability 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 Easement must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.

(b) Waiver.

- (1) Grantee waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Easement covers these damages.
- (2) Except as prohibited by law, Grantee waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this Easement.

- (c) **Proof of Insurance.**
 - (1) Grantee 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 Easement and, if requested, copies of policies to State.
 - (2) The certificate(s) of insurance must reference additional insureds and the Easement 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 Easement, 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) Grantee shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.
- (f) If Grantee fails to procure and maintain the insurance described above within fifteen (15) days after Grantee receives a notice to comply from State, State may either:
 - (1) Deem the failure an Event of Default under Section 14, or
 - (2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Grantee shall pay to State the full amount paid by State, together with interest at the rate provided in Paragraph 6.2 from the date of State's notice of the expenditure until Grantee's repayment.
- (g) **General Terms.**
 - (1) State does not represent that coverage and limits required under this Easement are adequate to protect Grantee.
 - (2) Coverage and limits do not limit Grantee's liability for indemnification and reimbursements granted to State under this Easement.
 - (3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to Easement Property first to restore the Easement Property, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Grantee.

10.3 Insurance Types and Limits.

(a) **General Liability Insurance.**

- (1) Grantee 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 Easement Property and/or arising out of the Permitted Use 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) Grantee shall comply with all State of Washington workers' compensation statutes and regulations. Grantee shall provide workers' compensation coverage for all employees of Grantee. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with the Permitted Use or related activities.
 - (ii) If Grantee 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, Grantee shall indemnify State. Indemnity includes all fines; payment of benefits to Grantee, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.
- (2) Longshore and Harbor Workers' and Jones Acts. Longshore and Harbor Workers' Act (33 U.S.C. Section 901 *et seq.*) and/or the Jones Act (46 U.S.C. Section 688) may require Grantee to provide insurance coverage in some circumstances. Grantee shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with law. Grantee is responsible for all civil and criminal liability arising from failure to maintain such coverage.

(c) **Employers' Liability Insurance.** Grantee shall procure employers' 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.

(d) **Builder's Risk Insurance.**

- (1) Grantee shall procure and maintain in force, or require its contractor(s) to procure and maintain in force, builder's risk insurance on the entire work during the period construction is in progress and until completion of the project. Such insurance must be written on a completed form and in an amount equal to the value of the completed Improvements, subject to subsequent modifications to the sum. The insurance must be written on a replacement cost basis. The insurance must name Grantee, all contractors, and subcontractors in the work as insured. State must be named additional insured as required by Paragraph 10.2(a)(3)).
- (2) Insurance described above must cover or include the following:
 - (i) All risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse;
 - (ii) The entire work on the Easement Property, including reasonable compensation for architect's services and expenses made necessary by an insured loss;
 - (iii) Portions of the work located away from the Easement Property but intended for use at the Easement Property, and portions of the work in transit;
 - (iv) Scaffolding, falsework, and temporary buildings located on the Easement Property; and
 - (v) The cost of removing debris, including all demolition as made legally necessary by the operation of any law, ordinance, or regulation.
- (3) Grantee or Grantee's contractor(s) is responsible for paying any part of any loss not covered because of application of a deductible contained in the policy described above.
- (4) Grantee or Grantee's contractor shall buy and maintain boiler and machinery insurance required by contract documents or by law, covering insured objects during installation and until final acceptance by permitting authority. If testing is performed, such insurance must cover such operations. The insurance must name Grantee, all contractors, and subcontractors in the work as insured. State must be named additional insured as required by Paragraph 10.2(a)(3)).

(e) **Business Auto Policy Insurance.**

- (1) Grantee shall maintain business auto liability insurance and, if necessary, commercial umbrella liability insurance with a limit not less than One Million Dollars (\$1,000,000) per accident. Such insurance must cover liability arising out of "Any Auto."
- (2) Business auto coverage must be written on ISO Form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy must be endorsed to provide contractual liability coverages and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01.

10.4 Financial Security.

- (a) At its own expense, Grantee shall procure and maintain during the Term of this Easement a corporate security bond or provide other financial security that State may approve ("Security"). Grantee shall provide Security in an amount equal to Zero Dollars (\$0.00), which is consistent with RCW 79.105.330, and secures Grantee's performance of its obligations under this Easement, with the exception of the obligations under Section 8, Environmental Liability/Risk Allocation. Grantee's failure to maintain the Security in the required amount during the Term constitutes a breach of this Easement.
- (b) All Security must be in a form acceptable to the State.
 - (1) Bonds must be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better, in the most recently published edition of Best's Reports, unless State approves an exception. Grantee may submit a request to the Risk Manager for the Department of Natural Resources for an exception to this requirement.
 - (2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, *et. seq.*
 - (3) Savings account assignments, if approved by State, must allow State to draw funds at will.
- (c) Adjustment in Amount of Security.
 - (1) State may require an adjustment in the Security amount:
 - (i) At the same time as revaluation, if any,
 - (ii) As a condition of approval of assignment of this Easement,
 - (iii) Upon a material change in the condition or disposition of any Improvements, or
 - (iv) Upon a change in the Permitted Use.
 - (2) Grantee shall deliver a new or modified form of Security to State within thirty (30) days after State has required adjustment of the amount of the Security.
- (d) Upon any default by Grantee in its obligations under this Easement, State may collect on the Security to offset the liability of Grantee to State. Collection on the Security does not (1) relieve Grantee of liability, (2) limit any of State's other remedies, (3) reinstate or cure the default or (4) prevent termination of the Easement because of the default.

SECTION 11 ROUTINE MAINTENANCE AND REPAIR

11.1 State's Repairs. This Easement does not obligate State to make any alterations, maintenance, replacements, or repairs in, on, or about the Easement Property, during the Term.

11.2 Grantee's Repairs and Maintenance.

- (a) Routine maintenance and repair are acts intended to prevent a decline, lapse or, cessation of the Permitted Use and associated Improvements. Routine maintenance or repair is the type of work that does not require regulatory permits.

- (b) At Grantee's sole expense, Grantee shall keep and maintain all Grantee-Owned Improvements and the Easement Property as it relates to the Permitted Use in good order and repair and in a safe condition. State's consent is not required for routine maintenance or repair.
- (c) At Grantee's own expense, Grantee shall make any additions, repairs, alterations, maintenance, replacements, or changes to the Easement Property or to any Improvements on the Easement Property that any public authority requires because of the Permitted Use.
- (d) Upon completion of maintenance activities, Grantee shall remove all debris and restore the Easement Property, as nearly as possible, to the condition prior to the commencement of work.

SECTION 12 DAMAGE OR DESTRUCTION

12.1 Notice and Repair.

- (a) In the event of any known damage to or destruction of the Easement Property or any Improvements, Grantee shall promptly give written notice to State. State does not have actual knowledge of the damage or destruction of the Easement Property or any Improvements without Grantee's written notice.
- (b) Unless otherwise agreed in writing, Grantee shall promptly reconstruct, repair, or replace any Improvements in accordance with Paragraph 7.3, Construction, Major Repair, Modification, and Demolition, as nearly as possible to its condition immediately prior to the damage or destruction. Where damage to state-owned aquatic land or natural resources is attributable to the Permitted Use or related activities, Grantee shall promptly restore the lands or resources to the condition preceding the damage in accordance with Paragraph 7.3 unless otherwise agreed in writing.

12.2 State's Waiver of Claim. State does not waive any claims for damage or destruction of the Easement Property unless State provides written notice to Grantee of each specific claim waived.

12.3 Insurance Proceeds. Grantee's duty to reconstruct, repair, or replace any damage or destruction of the Easement Property or any Improvements on the Easement Property is not conditioned upon the availability of any insurance proceeds to Grantee from which the cost of repairs may be paid. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).

SECTION 13 CONDEMNATION

In the event of condemnation, the Parties shall allocate the award between State and Grantee based upon the ratio of the fair market value of (1) Grantee's rights in the Easement Property and Grantee-Owned Improvements and (2) State's interest in the Easement Property; the reversionary interest in Grantee-Owned Improvements, if any; and State-Owned Improvements.

In the event of a partial taking, the Parties shall compute the ratio based on the portion of Easement Property or Improvements taken. If Grantee and State are unable to agree on the allocation, the Parties shall submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

SECTION 14 REMEDIES AND TERMINATION

14.1 Breach.

- (a) State may terminate this Easement upon Grantee's failure to cure a breach of its terms within sixty (60) days of State's written notice of breach.
- (b) For nonmonetary breach not capable of cure within sixty (60) days, State will not unreasonably withhold approval of a reasonable alternative cure schedule. Grantee must submit a cure schedule with thirty (30) days of a notice of breach. State shall not terminate if State approves the schedule and Grantee works diligently and in good faith to execute the cure. State may terminate if Grantee fails to timely submit a schedule or fails to cure in accordance with an approved schedule.
- (c) If breach arises from Grantee's failure to comply with restrictions on Permitted use under Paragraph 2.2, State may, without terminating this Easement, restore the natural resources or Property and charge Grantee restoration costs and/or charge Grantee damages. On demand by State, Grantee shall pay all costs and/or damages.

14.2 Termination by Nonuse. If Grantee does not use the Easement Property for a period of three (3) successive years, this Easement terminates without further action by State. Grantee's rights revert to State upon Termination by Nonuse.

14.3 Termination by Grantee. Grantee may terminate this Easement upon providing State with sixty (60) days written notice of intent to terminate. Grantee shall comply with Paragraph 3.3, End of Term.

14.4 Remedies Not Exclusive. The remedies specified under this Section 14 are not exclusive of any other remedies or means of redress to which the State is lawfully entitled for Grantee's breach or threatened breach of any provision of this Easement.

SECTION 15 NOTICE AND SUBMITTALS

Following are the locations for delivery of notice and submittals required or permitted under this Easement. Any Party may change the place of delivery upon ten (10) days written notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES
Aquatic Resources Division/Rivers District
PO Box 280
Castle Rock, WA 98611

Grantee: LEWIS COUNTY
2025 NE Kresky Avenue
Chehalis, WA 98532

The Parties may deliver any notice in person, by facsimile machine, or by certified mail. Depending on the method of delivery, notice is effective upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after mailing. All notices must identify the Easement number. On notices transmitted by facsimile machine, the Parties shall state the number of pages contained in the notice, including the transmittal page, if any.

SECTION 16 MISCELLANEOUS

16.1 Authority. Grantee and the person or persons executing this Easement on behalf of Grantee represent that Grantee is qualified to do business in the State of Washington, that Grantee has full right and authority to enter into this Easement, and that each and every person signing on behalf of Grantee is authorized to do so. Upon State's request, Grantee shall provide evidence satisfactory to State confirming these representations.

16.2 Successors and Assigns. This Easement binds and inures to the benefit of the Parties, their successors, and assigns.

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

16.4 Entire Agreement. This Easement, including the exhibits and addenda, if any, contains the entire agreement of the Parties. This Easement merges all prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Easement Property.

16.5 Waiver.

- (a) The waiver of any breach or default of any term, covenant, or condition of this Easement is not a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Easement. State's acceptance of payment is not a waiver of any preceding or existing breach other than the failure to pay the particular payment that was accepted.

State: DEPARTMENT OF NATURAL RESOURCES
Aquatic Resources Division/Rivers District
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- (a) The waiver of any breach or default of any term, covenant, or condition of this Easement is not a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Easement. State's acceptance of payment is not a waiver of any preceding or existing breach other than the failure to pay the particular payment that was accepted.

- (b) The renewal of the Easement, extension of the Easement, or the issuance of a new Easement to Grantee, does not waive State's ability to pursue any rights or remedies under the Easement.

16.6 Cumulative Remedies. The rights and remedies of State under this Easement are cumulative and in addition to all other rights and remedies afforded by law or equity or otherwise.

16.7 Time is of the Essence. TIME IS OF THE ESSENCE as to each and every provision of this Easement.

16.8 Language. The word "Grantee" as used in this Easement applies to one or more persons, as the case may be. The singular includes the plural, and the neuter includes the masculine and feminine. If there is more than one Grantee, their obligations are joint and several. The word "persons," whenever used, includes individuals, firms, associations, and corporations. The word "Parties" means State and Grantee in the collective. The word "Party" means either or both State and Grantee, depending on context.

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

16.10 Applicable Law and Venue. This Easement 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 Easement is in the Superior Court for Thurston County, Washington.

16.11 Recordation. At Grantee's expense and no later than thirty (30) days after receiving the fully-executed Easement, Grantee shall record this Easement in the county in which the Property is located. Grantee shall include the parcel number of the upland property used in conjunction with the Property, if any. Grantee shall provide State with recording information, including the date of recordation and file number

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

16.13 Survival. Any obligations of Grantee not fully performed upon termination of this Easement do not cease, but continue as obligations of the Grantee until fully performed.

16.14 Exhibits. All referenced exhibits are incorporated in this Easement unless expressly identified as unincorporated.

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

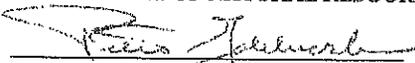
Dated: July 23, 2012

LEWIS COUNTY


By: F. LEE GROSE
Title: Chairman, Lewis County Board of
County Commissioners
Address: 360 NW North Street
Chehalis, WA 98532
Phone: (360) 740-1123

Dated: July 27, 2012

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES


By: PETER GOLDMARK
Title: Commissioner of Public Lands
Address: 1111 Washington Street SE
Olympia, WA 98504

Approved as to form this
2 day of July 2012
Christa Thompson, Assistant Attorney General

EXHIBIT A-1
Legal Description of Premises and Encumbrances

Section 23, Township 13 North, Range 13 West, W.M., Lewis County, Washington, containing
1.38 acres, more or less.

Current Survey recorded with Lewis County
Auditor's File No. 3382001
Book 28, Page 233
July 17, 2012

Aquatic Lands Easement

Page 25 of 28

Easement No. 51-088902

Agreement Amendment

Page 30 of 46

Easement No. 51-088902

EXHIBIT A-2
Galvin Road Bridge on Chehalis River, GPS coordinates

Galvin Road Bridge on the Chehalis River, GPS coordinates						
The coordinates were taken directly over the bridge drains on the Southeast (first row) and the Northwest (second row) corners of the bridge. The coordinates are in NAD83 Washington State Plane South Zone 4602 in feet.						
Northing	Easting	Max PPOF	Number of satellites	Correction Type	Number of Positions	Receiver Type
521497.398	1608736.750	2.1	10	Real-Time and Post-Process Differential	155	ProXR5
521616.513	1608367.388	2.0	10	Real-Time and Post-Process Differential	155	ProXR5

Section 35, Township 15 North, Range 3 West, W.M., Lewis County, Washington, containing 28 acres, more or less.

1. LEWIS COUNTY DEPARTMENT OF PUBLIC WORKS warrants that the proposed easement area(s) lies only in front of upland property owned or otherwise legally controlled by LEWIS COUNTY DEPARTMENT OF PUBLIC WORKS.
2. LEWIS COUNTY DEPARTMENT OF PUBLIC WORKS understands and agrees that the DNR is accepting a GPS position and diagram as the property description for a Use Authorization Exhibit A.
3. LEWIS COUNTY DEPARTMENT OF PUBLIC WORKS understands and agrees that should a boundary dispute arise pertaining to the described easement area(s) or if an adjacent area is considered for lease to another entity, LEWIS COUNTY DEPARTMENT OF PUBLIC WORKS may be required to survey the lease area(s) at their expense and provide a new Exhibit A containing these surveys.
4. LEWIS COUNTY DEPARTMENT OF PUBLIC WORKS agrees to "hold harmless" and will not seek damages from the State in the event a subsequent survey reveals an error in the above information contained in this exhibit.

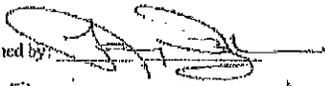
Signed by: 
 Title: Peter Stone, Sr. Survey Manager
 Date: March 30, 2010

EXHIBIT B
Plan of Operations and Maintenance

1. DESCRIPTION OF PERMITTED USE

- A. Existing Facilities.** The Ceres Hill Road Bridge spans the Chehalis River in Township 13 North, Range 4 West, Section 23, Lewis County.

The Chehalis River shoreline, under and upriver from the Ceres Hill Road Bridge, is eroding and is currently characterized by a 25 foot vertical cut bank while the right bank (facing downriver) of the site is an aggrading gravelly sandbar. The channel has been migrating to the north at this site at a rate of approximately 4-6 feet a year throughout the last two decades.

The Galvin Road bridge spans the Chehalis River in Township 15 North, Range 3 West, Section 35, Lewis County. The concrete bridge has been in place since 1969 and is an integral part of county road system serving western Lewis County.

- B. Proposed Facilities.** The existing Ceres Hill Road bridge and Galvin Road Bridge will be authorized under this easement. No new construction is planned for either bridge.

The proposed bank stabilization, upstream and under the Ceres Hill Road Bridge, is located on River Mile 90 of the Chehalis River. The project area encompasses 4.0 acres in which three barbs will be installed, approximately 300 feet, 465 feet and 630 feet, upstream of the Ceres Hill Road Bridge. Additionally supplemental riprap will be placed (within the roadway prism) along 155 feet of the bank, and 80 feet of new riprap will be placed west of the existing riprap, in order to protect the Ceres Hill Road Bridge. Approximately 1.86 acres of the project area is reserved for staging and construction access.

The Grantee has secured the following permits:

- Lewis County Planning - Shoreline Substantial Development Permit Exemption SHE12-0019 dated July 9, 2012.
- Washington Department of Fish & Wildlife -- HPA control number dated July 14, 2012.
- Department of Army, Corps of Engineers -- Letter of Authorization dated July 14, 2012. Nationwide Permit 13-will be received after construction is complete.

2. ADDITIONAL OBLIGATIONS

- A. Grantee shall provide and post clearly the following signs. These signs will be 24 inches by 24 inches and mounted on ¾ inch high-density overlay plywood faced with engineer grade, premium quality, reflective sheeting. Be secured on a 4inch by 4inch non-treated wooden post and placed at least 3 feet in the ground using native soil or rock:
1. 500ft upstream of structures on both banks of the river:
"CAUTION ARTIFICIAL STRUCTURE IN CHANNEL 500 FT
AHEAD KEEP RIGHT"
 2. At Structures:
"CAUTION ARTIFICIAL STRUCTURE KEEP RIGHT"
- B. Grantee shall monitor and provide to the Department of Natural Resources, for a period of five years, a copy of the project annual monitoring report or findings regarding the structural integrity of the bank stabilization and native plantings, respectively.

Exhibit B: Easement 51-088902 as Amended July 1, 2013

When recorded, return to:
Lewis County
2025 NE Kresky Avenue
Chehalis, WA 98532



WASHINGTON STATE DEPARTMENT OF
Natural Resources
Peter Goldmark - Commissioner of Public Lands

AQUATIC LANDS AGREEMENT AMENDMENT

Easement No. 51-088902

Grantor: Washington State Department of Natural Resources

Grantee: Lewis County

Legal Description:

Ceres Hill: Section 23, Township 13 North, Range 04 West, W.M.

Galvin Road: Section 35, Township 15 North, Range 03 West, W.M.

Assessor's Property Tax Parcel or Account Number: Not Applicable

Assessor's Property Tax Parcel or Account Number for Upland parcel used in conjunction with this Easement:

Ceres Hill: 019445000000, 019444001000, 019454001029, 019446001001

Galvin Road: 023915001003, 023890001000, 021961064000, 021900001003

THIS EASEMENT AMENDMENT is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and Lewis County a government agency/entity ("Grantee").

BACKGROUND

Easement No.51-088902 was entered into on the 1st day of July, 2012, by and between Lewis County, as Grantee, and the STATE OF WASHINGTON, acting by and through the Department of Natural Resources, as landlord ("State"), and recorded with the Lewis County Auditor's office under recording number 3383146 (the "Agreement").

The parties now desire to amend this Agreement under the following terms and conditions:

THEREFORE, the parties agree as follows:

SECTION 1 AMENDMENTS

Sections 1.2, 2.1, 4.1, 7.2, Legal Description of Premises and Encumbrances, and Plan of Operations of the Easement are amended to read as specified in Exhibit A attached hereto.

SECTION 2 EFFECTIVE DATE

The amended provisions shall become effective as of July 1, 2013.

SECTION 3 NO RELEASE

State is not releasing any previous Assignor from fully performing the provisions of the Agreement in effect at the time of such assignment or as otherwise agreed in writing between the State, previous Assignor, and the Grantee.

SECTION 4 WARRANTIES

Grantee represents and warrants to State that (i) the Agreement is in full force and effect; (ii) Grantee is not in default or breach of the Agreement; (iii) Grantee has no knowledge of any claims, offsets, or defenses of the Grantee under the Agreement; and (iv) to the best of Grantee knowledge, the Property is in full compliance with all applicable federal, state, and local governmental permits, rules, ordinances, and laws.

SECTION 5 CONFIRMATION OF AGREEMENT

All other terms of the Agreement not inconsistent with this Amendment are hereby affirmed and ratified.

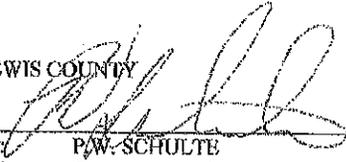
SECTION 6 RECORDATION

At Grantee's expense and no later than thirty (30) days after receiving the fully-executed Agreement, Grantee shall record this Agreement in the county in which the Property is located. Grantee shall include the parcel number of the upland property used in conjunction with the Property, if any. Grantee shall provide State with recording information, including the date of recordation and file number.

THIS AGREEMENT requires the signature of all parties and is executed as of the date of the last signature below.

Dated: September 10, 2013

LEWIS COUNTY


By: P.W. SCHULTE
Title: Chairman, Lewis County Board of
County Commissioners
Address: 360 NW North Street
Chehalis, WA 98532
Phone: (360) 740-1123

Dated: Sept 19, 2013

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES


By: PETER GOLDMARK
Title: Commissioner of Public Lands
Address: 1111 Washington Street SE
Olympia, WA 98504



Approved as to Form this
This 28 day of September 2011
Janis Snoey, Assistant Attorney General

EXHIBIT A
Amendment

1.2 Survey and Easement Property Descriptions.

- (a) Grantee prepared Exhibit A, which describes the Easement Property. Grantee represents that Exhibit A is a true and accurate description of the Easement boundaries and the improvements to be constructed or already existing in the Easement area. Grantee's obligation to provide a true and accurate description of the Easement Property boundaries is a material term of this Easement.
- (b) State's acceptance of Exhibit A does not constitute agreement that Grantee's property description accurately reflects the actual amount of land used by Grantee. State reserves the right to retroactively adjust fees if at any time during the Term State discovers a discrepancy between Grantee's property description and the area actually used by Grantee.
- (c) State accepts a preliminary Exhibit A for the Galvin Road Bridge upon the Commencement Date of this Easement. Grantee shall submit a final Exhibit A for State's approval within three (3) years of the Commencement Date. Upon State's written approval, the final Exhibit A supersedes the preliminary Exhibit A. Until superseded, the preliminary Exhibit A has full legal effect.

2.1 Permitted Use. Grantee shall use the Easement Property for two (2) bridges (Ceres Hill Road, and Galvin Road), and bank stabilization, pier protection, and mitigation at one (1) of the bridges (Ceres Hill Road) (the "Permitted Use"), and for no other purpose, including utilities unless specifically identified as part of the Permitted Use. The Permitted Use is described or shown in detail in Exhibit B.

4.1 Fee. For the Term, Grantee shall pay to State a fee of Three Thousand Three Hundred Eighty-Eight Dollars and Fifty-One Cents (\$3,388.51) and an administrative fee calculated in accordance with RCW 79.110.120 payable on or before the Commencement Date. Any payment not paid by State's close of business on the date due is past due.

7.2 Existing Improvements. On the Commencement Date, the following Improvements are located on the Easement Property: Ceres Hill: One (1) bridge, one (1) powerline, one (1) telecommunication line, and one (1) private irrigation line; Galvin Road: One (1) bridge, two (2) powerlines, one (1) fiber optic cable, and one (1) telecommunication line. The bridge Improvements are Grantee-Owned Improvements. All other Improvements are Improvements Owned by Others.

Legal Description of Premises and Encumbrances (Ceres Hill Road)

Agreement Number: 51-088902

**Recording number of final DNR approved survey in Lewis County: 3401121 (07/15/2013),
Supersedes original survey 3382001 (07/19/2012).**

Legal description of the Property: Section 23, Township 13 North, Range 04 West, W.M.

Acreage of each of these Use classifications:

Water-dependent	0.00 acres
Nonwater-dependent	1.70 acres
Public Access	0.00 acres
Total Acreage	1.70 acres

Legal Description of Premises and Encumbrances (Galvin Road)

Agreement Number: 51-088902

**Recording number of final DNR approved survey in Lewis County: Final Record of Survey
due by July 1, 2015.**

Legal description of the Property: Section 35, Township 15 North, Range 03 West, W.M.

Acreage of each of these Use classifications:

Water-dependent	0.00 acres
Nonwater-dependent	0.28 acres
Public Access	0.00 acres
Total Acreage	0.28 acres

By signing this Aquatic Lands Easement, the Grantee agrees that:

1. The proposed Easement area lies only in front of upland property owned or otherwise legally controlled by the Grantee.
2. The State may require a legal survey if circumstances arise that require the Easement area to be formally established and boundaries marked.
3. The Grantee will 'hold harmless' and will not seek damages from the State in the event a subsequent survey reveals an error in the above information.

Plan of Operations and Maintenance (Ceres Hill Road)

1. **DESCRIPTION OF PERMITTED USE**

- A. **Existing Facilities.** The following Improvements are located on the Easement Property: One (1) bridge; one (1) bank stabilization project (that includes three (3) barbs, located approximately 300 feet, 465 feet, and 630 feet upstream of the Ceres Hill Road bridge. Supplemental riprap was installed (within the roadway prism) along 155 feet of the bank, and 80 feet of riprap was placed west of the existing riprap); one (1) powerline; one (1) telecommunication line; and one (1) private irrigation line. The bridge and bank stabilization project Improvements are Grantee-Owned Improvements. All other Improvements are Improvements Owned by Others.
- B. **Proposed Facilities.** Grantee proposes no modifications to the existing bridge or bank stabilization project.

The Grantee proposes to install approximately 815 cubic yards of riprap, which will be keyed into the right bank from Pier #1 to an area approximately 70 feet upstream and 70 feet downstream of the bridge.

Grantee has submitted to State plans and specifications for Work shown in Attachment 1 to this Exhibit B-1, which is not incorporated in this Easement.

Grantee secured the following permits for the emergency stabilization project in 2012:

- Washington Department of Fish and Wildlife Hydraulic Project Approval Control No. 127634-1, dated July 23, 2012.
- USACOE, Letter of Authorization, dated July 12, 2012; including Nationwide Permit 3 and Nationwide Permit 13, both dated June 15, 2012.
- Lewis County Flood Plain Development Permit No. FD12-00015, dated July 9, 2012.
- Lewis County Fill/Grade Permit No. G12-00011, dated July 9, 2012.
- Lewis County Mitigated Determination of Nonsignificance, dated June 29, 2012.
- Lewis County Shoreline Substantial Development Permit Exemption SHE12-0019, dated June 11, 2012.

Grantee has secured the following permits for the pier protection project:

- WDFW Hydraulic Project Approval (HPA) Control No. 131158-1, dated July 23, 2013.

State grants its consent to this Work as provided under Paragraph 7.3(b) of the Easement, except that Grantee shall conform all Work to all other requirements of Section 7 of this Easement.

2. ADDITIONAL OBLIGATIONS

- A. Tenant shall submit to State for approval a Reach Analysis technical report by October 1, 2013.
1. Within sixty days after the State approves the Reach Analysis report, Grantee shall submit a technical memorandum that includes simple conceptual drawings that summarizes the pros and cons of all the alternatives for bank protection and mitigation.
 3. Within thirty days after receipt of the technical memorandum, State will set up a conference call or meeting with Grantee to establish State's preferred long-term bank stabilization alternatives and mitigation measures for Grantee's further development.
 4. Within sixty days of the conference call, Grantee shall submit the refined preferred alternatives to State and the appropriate regulatory agencies, either electronically or in hard copy format.
 5. Within sixty days of submission of the refined preferred alternatives, State will set up a meeting with Grantee and the appropriate regulatory agencies to reach consensus on the long-term stabilization and mitigation plan.
 6. Within ninety days after the meeting with Grantee and regulatory agencies, Grantee shall provide the final stabilization and mitigation plan to the agencies and DNR and appropriate regulatory agencies for final approval.

Plan of Operations and Maintenance (Galvin Road)

1. DESCRIPTION OF PERMITTED USE

- A. **Existing Facilities.** The following Improvements are located on the Easement Property: One (1) bridge, two (2) powerlines, one (1) fiber optic cable, and one (1) telecommunication line. The bridge Improvement is Grantee-Owned Improvements. All other Improvements are Improvements Owned by Others.
- B. **Proposed Facilities.** Grantee proposes no modifications to the existing bridge.

2. ADDITIONAL OBLIGATIONS

None.

Exhibit C: Amendment to Easement 51-088902

1.2 Survey and Easement Property Descriptions.

- (a) Grantee prepared Exhibit A, which describes the Easement Property. Grantee represents that Exhibit A is a true and accurate description of the Easement boundaries and the improvements to be constructed or already existing in the Easement area. Grantee's obligation to provide a true and accurate description of the Easement Property boundaries is a material term of this Easement.
- (b) State's acceptance of Exhibit A does not constitute agreement that Grantee's property description accurately reflects the actual amount of land used by Grantee. State reserves the right to retroactively adjust fees if at any time during the Term State discovers a discrepancy between Grantee's property description and the area actually used by Grantee.

2.1 Permitted Use. Grantee shall use the Easement Property for: removal of rock barbs, bank regrade, the installation of twenty (20) roughened log jams and riparian willow plantings (the "Permitted Use"), and for no other purpose, including utilities unless specifically identified as part of the Permitted Use. The Permitted Use is described or shown in detail in Exhibit B.

4.1 Fee. For the Term, Grantee shall pay to State a fee of Four Thousand One Hundred Eighty-Five Dollars and Twenty-Five Cents (\$4,185.25), which is due and payable on or before the Commencement Date. Any payment not paid by State's close of business on the date due is past due.

7.2 Existing Improvements. On the Commencement Date, the following Improvements are located on the Easement Property: One (1) bridge with bank stabilization, pier protection and mitigation, one (1) powerline, one (1) telecommunication line, and one (1) private irrigation line. The bridge improvements are Grantee-Owned Improvement. All other Improvements are Improvements Owned by Others.

Exhibit C: Amendment to Easement No. 51-088902

**PROPERTY DESCRIPTION (Exhibit A)
Supersedes all previous versions of Exhibit A**

Agreement Number 51-088902

**Recording number of final DNR approved survey in Lewis County: 3439889
Recorded 11/19/2015 Book 30, Page 160, Supersedes Amended Survey 3401121
(07/15/2013) and supersedes original survey 3382001 (07/19/2012)**

Legal description of the Property:

A portion of Section 23, Township 13 North, Range 04 West, W.M.

Square footage of each of these Use classifications:

Water-dependent
Nonwater-dependent 7,623
Public Access
Total square feet 7,623

Exhibit B: Amendment to Easement No. 51-088092

**PLAN OF OPERATIONS AND MAINTENANCE (Exhibit B)
Supersedes all previous versions of Exhibit B**

1. DESCRIPTION OF PERMITTED USE

A. Existing Facilities:

On the commencement date one (1) bridge with bank stabilization and additional pier protection and mitigation, one (1) powerline, one (1) telecommunication line, and one (1) private irrigation line exist on the easement property.

Bank stabilization has changed on the easement property following a series of emergency repairs: In response to the 2009 winter flood events, three barbs with supplemental riprap were installed. Following subsequent flood events in the winter of 2012-2013, scour to pier 1 required additional riprap replacement and in 2013, 815 cubic yards of riprap were keyed into the right bank from pier 1 to an area approximately 70 feet upstream and 70 feet downstream of the bridge. On the west side of the river, riprap was placed to protect against scour to the west bank bridge abutment and road prism extending to 155 feet upstream from the crossing.

In order to compensate for emergency bank stabilization, rip rap, and excavation below the ordinary high water mark, Lewis County has removed three barbs, regraded 450 feet of the west bank of the Chehalis River to a 3:1 slope, and has placed 20 bank roughening jams consisting of large woody debris, which has been anchored to 4-man boulders. Additionally, riparian plantings of willow are installed in the bank to anchor substrate and provide riparian habitat enhancement.

B. Proposed Facilities:

Grantee has secured the following permits:

- USACOE, Letter of Authorization, Reference Number NWS-2012-562 dated July 7, 2015; including Nationwide Permit 13, dated June 15, 2012.
- Lewis County Flood Plain Development Permit No. FD15-00030, dated July 2, 2015.
- Lewis County Fill/Grade Permit No. G15-00014, dated July 2, 2015.
- Lewis County Threshold Determination of Non-significance, dated June 9, 2015.
- Lewis County Shoreline Substantial Development Permit Exemption SHE15-0011, SEP15-0005, dated July 1, 2015.
- Washington Department of Ecology 401 Certification Exemption Letter, Dated August 7, 2015.

- Washington Department of Ecology NPDES Construction Stormwater General Permit, Permit No. WAR303302, Dated July 29, 2015, Expiration: December 31, 2015
- WDFW Hydraulic Project Approval (HPA) Permit No. 2015-5-72+01, Issued July 24, 2015, Project End Date: September 30, 2016

2. Additional Obligations

None