



July 26, 2016

CERTIFIED MAIL
7011 3500 0002 1275 9513

Andy Loch
City of Bothell
Department of Public Works
9654 NE 182nd Street
Bothell, WA 98011

Subject: Aquatic Lands Conservation License No. 23-093224

Dear Mr. Loch:

Enclosed is a final original of Aquatic Lands Conservation License No. 23-093224.

This original document is for your records.

If you should have any questions, please contact me. My phone number is 253-341-7564 and my email address is vivian.roach@dnr.wa.gov.

Sincerely,

Vivian Roach, Aquatic Land Manager
Shoreline District Aquatics

Enclosure

c: District File
TRO File

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



AQUATIC LANDS CONSERVATION LICENSE

License No. 23-093224

THIS AGREEMENT is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and CITY OF BOTHELL, a Washington Government Agency/Entity ("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 King 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,
- (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 is effective on the 15th day of July, 2016 (the "Effective Date"), and ending on the 14th day of July, 2021 (the "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), which is due and payable on or before the Effective 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, the following Improvements are located on the Property: flood control facilities. The Improvements are Owned by Others.

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 (for example, floatation or fenders) 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 floatation material into the water.

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. Ownership of the Improvements does not alter the Licensee's obligations under Paragraph 2.1(d).

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.
- (b) “Claim” as used in this Subsection 8.1 means any financial loss, claim, suit, action, damages, expenses, fees (including attorneys’ fees), 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, and damages resulting from loss of use of the Property.
- (c) State shall not require Licensee to indemnify, defend, and hold State harmless for claims that arise from State’s sole or concurrent negligence.
- (d) Licensee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold State and its agencies, officials, agents, or employees harmless.

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) 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 (\$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 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 Licensee to provide insurance coverage in some circumstances. Licensee shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with law. Licensee is responsible for all civil and criminal liability arising from failure to maintain such coverage.
 - (3) Auto Policy Insurance. If Licensee operates, maintains, loads, or unloads vehicles as part of the Activities, Licensee shall maintain 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".

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
Shoreline District Aquatics
950 Farman Ave N
Enumclaw, WA 98022-9282

Contact: Vivian Roach, Aquatic Land Manager
Phone: 253-341-7564
Fax: 360-285-1672
E-mail: vivian.roach@dnr.wa.gov

Licensee: CITY OF BOTHELL
Department of Public Works
9654 NE 182nd Street
Bothell, WA 98011

Contact: Andy Loch
Phone: 425-486-2768
E-mail: andy.loch@ci.bothell.wa.us

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.

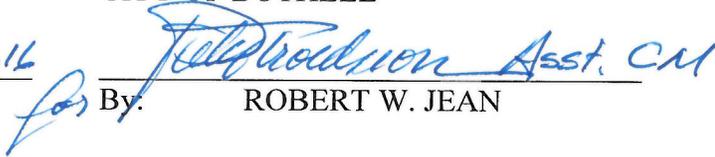
11.4 Modification. No modification of this License is effective unless in writing and signed by the Parties. Oral representations or statements do not bind either Party.

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 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.

CITY OF BOTHELL

Dated: July 11, 2016 *for* 
By: ROBERT W. JEAN
Title: Interim City Manager
Address: City of Bothell
18415 - 101st Ave NE
Bothell, WA 98011
Phone: 425-806-6140

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: 7/19, 2016 
By: KRISTIN SWENDDAL
Title: Aquatic Resources Division Manager
Address: Shoreline District Aquatics
950 Farman Avenue North
Enumclaw, WA 98022-9282

Approved as to form this
29 day of June 2015
Terry Pruitt, Assistant Attorney General

EXHIBIT A
“The Property”

AGREEMENT: Aquatic Lands Conservation License No. 23-093224

DESCRIPTION OF THE PROPERTY: A portion of the beds of navigable waters and unplatted 1st class shorelands of the Sammamish River located within King County, Washington in the SE1/4 NE1/4, Section 7, Township 26 North, Range 05 East, Willamette Meridian, King County.

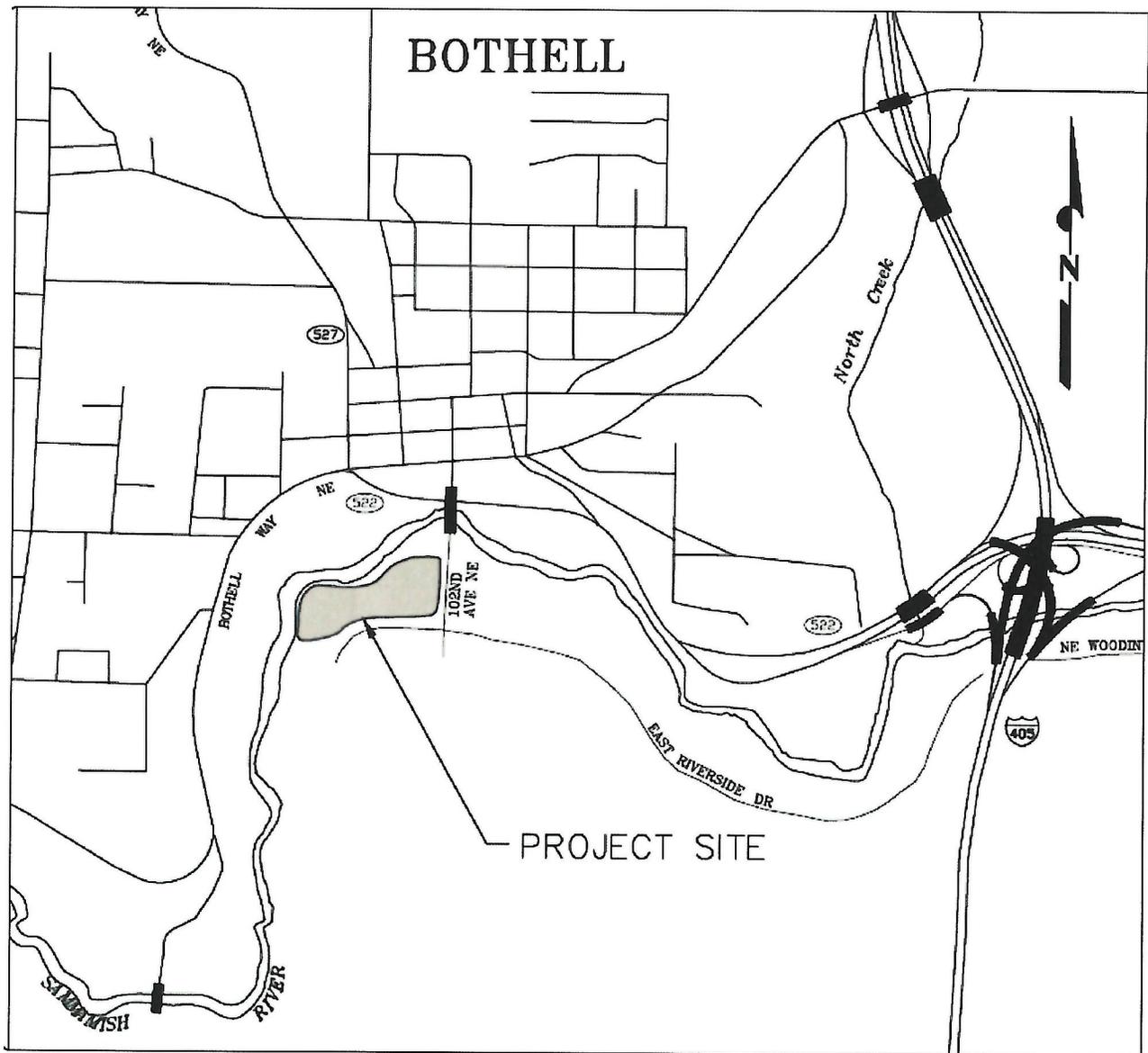


EXHIBIT B
The “Activities”

1. DESCRIPTION OF ACTIVITIES

A. Existing Conditions.

The proposed project site is located along the Sammamish River within the city limits of Bothell, WA. The Sammamish River Trail and Sammamish River Park are to the north and east. An apartment building occupies a parcel adjacent to the southeast corner of the area near the corner of East Riverside Drive and 102nd E. The proposed project site is presently an undeveloped area zoned Public Park Open Space on land located to the west of 102nd Ave NE. There are no developments within the proposed project area.

The project site is a former low elevation floodplain that was hydrologically abandoned and hydrologically disconnected, when the US Army Corps of Engineers (USACE) constructed the Lake Washington Ship Canal and consequently lowered the level of Lake Washington below its pre-development level by approximately 9 ft. (Chrzastowski 1983), decoupling the floodplain from the Sammamish River. There is evidence of relic channels on site, although much of the area was swampy prior to lowering of the lake level, reflecting long term deposition of fine grained sediments in what appears to have been a shallow water wetland complex at the head of the lake based on site ground elevations. The project area has seasonal ponding and groundwater seepage areas found along the toe of the adjacent north/northwest-facing hillslope.

The relic floodplain within the project area is dominated by monotypic stands of reed canarygrass. Stands of Himalayan blackberry form a perimeter around the historic floodplain upland transition zone. Wetland shrubs and small trees (e.g., *Spiraea douglasii*, *Cornus sericea*, *Salix lucida* ssp. *lasiandra*, *S. sitchensis*) occur in patches along the margins of the reed canarygrass plain. Willows (*Salix* spp.) dominate the western portion of the project area. Mature stands of black cottonwood are growing in areas along the Sammamish River Trail on what is likely a relic natural levee of the Sammamish River.

B. Proposed Conditions.

The conservation activities authorized by this License are associated with the Licensee’s Sammamish River Off-Channel Wetland Habitat Restoration Project. The Licensee has submitted detailed project drawings for the activities (the “Permitted Use”) which are on file and available from the State under License Number 23-093224. Licensee proposes to reconnect and restore approximately 1,100 ft. of a remnant channel and floodplain of the Sammamish River.

The project design includes restoration and enhancement measures to hydraulically reconnect the relic channel and floodplain to the Sammamish River at both upper and lower ends making the project site accessible as off-channel rearing habitat for salmonids, with an emphasis on Chinook (*Oncorhynchus tshawytscha*) and coho (*O. kisutch*) salmon. To reconnect the Sammamish River with the excavated relic channel, an excavator will be used to install concrete box culverts at the upstream and downstream ends of the proposed channel where it crosses the Sammamish River Trail.

Installation of the upstream culvert will have minor impacts (temporary excavation and fill) in the wetland and below Ordinary High Water in the Sammamish River. The culvert itself will be set back within the existing levee fill. A gravel apron will be constructed on each side of the culvert opening to reduce the potential for scour and at the same time reduce the potential for vegetation encroachment by reed canarygrass which would otherwise occur with an earthen substrate. Construction of the cobble apron will entail installation of 2.5 cubic yards of cobble fill. During construction, the upstream culvert installation will be isolated from the river using a double row of sand bag coffer dams that will be removed following construction. There is no existing culvert at the downstream end of the proposed channel. Installation of the downstream culvert will take place in within the FIRM 100-year floodplain limits.

LICENSEE HAS SECURED THE FOLLOWING PERMITS:

Jurisdiction	Permit	Issue Date
US Army Corps of Engineers	Nationwide Permit (NWP) 27, NWS-2015-465	06/28/2016
WA State Dept. of Ecology	Construction Stormwater General Permit WAR303809	05/16/2016
WA State Dept. of Fish & Wildlife	HPA 2015-4-455+01	06/26/2015
King County	Special Use Permit SUSP16-0014	05/10/2016
City of Bothell	Shoreline Substantial Development Exemption	03/27/2015
City of Bothell	Grading Permit GRA2016-12582	06/13/2016
SEPA	City of Bothell Determination of Non-Significance	10/22/2014

State grants its consent to this Work, except that Licensee shall conform all Work to all other requirements of Section 5 of this License.

2. ADDITIONAL OBLIGATIONS. None.

