



WASHINGTON STATE DEPARTMENT OF
NATURAL RESOURCES
HILARY S. FRANZ | COMMISSIONER OF PUBLIC LANDS

ROAD USE PERMIT

Permit No. 50-103913

THIS PERMIT, made and entered into this 20 day of, MARCH 2023, by and between the STATE OF WASHINGTON, acting by and through the Department of Natural Resources, **herein called the "Grantor" and UNITED STATES OF AMERICA**, acting by and through the BUREAU OF LAND MANAGEMENT and their Representatives, herein called the "Grantee."

Conveyance. Grantor, for and in consideration of the terms and conditions specified herein, hereby grants and conveys to the Grantee, for the purpose of preparing roads, hauling timber products and timber sales related activities, a nonexclusive permit to use a road over and across a strip of land, hereinafter defined as the "premises," in the East Half, of Section 9, Township 40 North, Range 34 East, W.M., in Ferry County, State of Washington. The location of said premises located approximately as shown on Exhibit A, attached hereto. Said premises shall be confined to such widths as indicated on Exhibit A. The word premises when used herein mean a strip of land whether or not there is an existing road located thereon. The word "road" shall mean roads now existing or hereafter constructed on the premises, or any segment of such road.

The permit is subject to the terms and conditions hereinafter set out.

Consideration. Grantor hereby acknowledges the mutual benefit of road improvements by Grantee as equitable consideration.

Termination. This permit shall terminate April 15, 2028, or earlier when requested by the Grantee; provided, however, that this permit may be suspended or terminated upon the breach of any of the conditions herein.

Reservations. Grantor reserves all rights incident to fee ownership of the premises and the profits thereon (including timber) and the right of use for any purpose including but not limited to the right to remove profits within the premises; the right at all times to cross and re-cross the premises at any place on grade or otherwise; and the right to use, maintain, patrol, reconstruct or repair the premises. Grantor may grant to third parties any and all rights reserved.

Export Restrictions. Any export-restricted timber originating from state land under this Permit shall not be exported until processed. Grantee shall comply with all applicable requirements of

WAC 240-15-015 (relating to the prohibitions on export and substitution), WAC 240-15-025 (relating to reporting requirements), and WAC 240-15-030 (relating to enforcement). All export restricted timber from state lands shall be painted and branded in compliance with WAC 240-15-030(2). If Grantee knowingly violates any of the prohibitions in WAC 240-15-015, Grantee shall be barred from bidding on or purchasing export restricted timber as provided. Grantee shall comply with the Export Administration Act of 1979 (50 U.S.C. App. Subsection 2406(i)) which prohibits the export of unprocessed western cedar logs harvested from state lands.

Compliance with Laws. For all activities conducted pursuant to this Permit, each party shall, at its own expense, comply with all applicable laws in effect now and as hereafter modified.

Permittees. The Grantee may permit its respective employees, agents, contractors, Grantees, lessees, purchasers of timber or other profits and their agents, herein individually referred to as "Permittee" and collectively referred to as "Permittees", to exercise the rights granted to the Grantee herein. Acts or omissions of the Permittees operating under this Permit shall be deemed an act of the Grantee. Restrictions or requirements placed on the Grantee herein shall apply equally to the Permittees.

Maintenance. Maintenance is defined as work normally necessary to preserve and keep the roads in their present condition or as hereafter improved. At a minimum, the roads will be maintained to meet applicable forest practice standards set forth in Chapter 222-24 WAC as now written or hereafter amended.

When a road is being used solely by one party, that party shall be solely responsible for maintaining that portion of the road so used to the standards existing at the time sole use is commenced. During periods when either party and/or other parties with an easement or license jointly use the road(s), or any portion thereof, the cost of maintenance and resurfacing shall be allocated among such users on the basis of their respective use including that of their Permittees. During periods of joint maintenance, the users shall meet at times to be set by mutual agreement and establish necessary maintenance provisions. Such provisions shall include, but not be limited to the following:

The appointment of a maintainer, which may be one of the parties or any third party, to perform or contract the maintenance;

The extent of resurfacing necessary to keep the road safe and to reduce environmental impacts; and

A method of payment by which each party using the road or a portion thereof shall pay its pro rata share of the cost of maintenance and resurfacing.

Repairs. Grantee shall repair, or cause to be repaired at its sole cost, that damage to the Road

arising out of it's use which is in excess of that which it would cause through normal and prudent usage. Damage caused by an unauthorized user shall be repaired at the expense of the Grantee if the Grantee is the sole user of the road, the Grantor if the Grantor is the sole user of the road and shared jointly if there is joint use of the road.

Improvements. Unless the parties agree in writing to share the cost of improvements in advance of such improvements being made, such improvements shall be solely for the account of the improver.

Prior rights. This permit is subject to any rights and valid claims previously conveyed by Grantor, and to any rights and valid claims pending on said premises. Grantee rights herein are subject to all matters of public record and to all prior unrecorded or recorded easements, permits, leases and options affecting said lands or Grantee rights across, over or upon such lands. Grantee rights herein are also subject to the rights of the Grantor to use its own lands for any and all legal purposes including the use of the land by third parties with the permission of the Grantor.

Operational Restrictions. Site-specific operational requirements are listed in Exhibit B. Non-compliance with these requirements shall constitute a breach of contract and may result in the Grantor suspending operations until the breach is remedied.

Plan of Operation. In the event that Grantee intends to construct or reconstruct roads within the premises, Grantee shall obtain Grantor's written approval of the road construction plans prior to commencing construction work.

Damage. Grantee shall take all reasonable precautions to protect Grantor-owned timber, crops and improvements. The Grantee must notify the Grantor two (2) weeks in advance of completion of said operations for the purpose of inspection for compliance with the terms hereof. Grantee shall pay Grantor for any damage to timber, crops and improvements not identified and paid for under the terms and conditions of this Permit. Grantor shall appraise the damage at market value at the time of damage and bill Grantee for said damages at said value.

Waste. Grantee shall not cause or permit any filling activity to occur in or on the premises, except as approved by Grantor. Grantee shall not deposit refuse, garbage, or other waste matter or use, store, generate, process, transport, handle, release, or dispose of any hazardous substance, or other pollutants in or on the premises except in accordance with all applicable laws.

The term hazardous substance means any substance or material as those terms are now or are hereafter defined or regulated under any federal, state, or local law including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA 42 USC 9601 *et seq.*) as administered by the US Environmental Protection Agency, or the Washington Model Toxic Control Act (MTCA RCW 70.105D) as administered by the State Dept. of Ecology.

Grantee shall immediately assume responsibility for a hazardous substance release (spill) caused by Grantee or its Permittees on or adjoining the premises.

As responsible party, Grantee shall:

- Immediately notify all necessary emergency response agencies, as required under federal, state and local laws, regulations, or policies.
- Following emergency response agency notifications, notify State (Dept. of Natural Resources) of all spill releases and Grantee actions completed for spill reporting and actions planned or completed toward spill cleanup. **Grantor's notification requirements are "same business day" notification for normal state work days and "next available business day" notification for weekends and holidays.**
- At Grantees sole expense, conduct all actions necessary to mitigate the spill release. Mitigation response actions may include, but are not necessarily limited to, initial release containment, follow-up site cleanup and monitoring actions, and continued contact and coordination with regulators and Grantor, as defined under the aforementioned laws, regulations, policies and this agreement.
- Other than performing initial emergency response cleanup/containment actions; obtain approvals in advance of all site cleanup actions (e.g. site characterization investigations, feasibility studies, site cleanup and confirmation sampling, and groundwater monitoring) conducted on State lands, in coordination with regulatory agencies and Grantor.
- Obtain and understand all necessary hazardous substance spill release notification and response mitigation requirements, in advance of conducting Grantee operations on **Grantor's land.**

Survey Markers. Grantee shall not destroy any land survey monuments marking local control points, geodetic control points, and land boundary survey corners without prior written approval from the landowner, which shall not be unreasonably withheld. Land survey monuments that must necessarily be disturbed or destroyed during construction or maintenance activities must be **adequately referenced and replaced, at the Grantee's expense, under the direction** of a Professional Land Surveyor, licensed in the State of Washington, in accordance with all applicable laws of the State of Washington in force at the time of construction, including but not limited to RCW 58.24, and all Department of Natural Resources regulations pertaining to preservation of such monuments. As directed under Chapter 332-120 WAC, a Land Surveyor or Engineer must submit an application with the Department of Natural Resources for permission to temporarily remove or destroy a survey monument.

Fire Prevention and Control. The Grantee shall be responsible for satisfying the requirements of the laws of the State of Washington pertaining to Forest Protection and, in addition thereto, the Grantee shall during the closed season of April 15 through October 15 contact Grantor who shall

determine any extra requirements pertaining to burning procedure, blasting, watchman, extra patrol, pumpers, tankers, fire hoses, fire tools, etc., which are deemed necessary for prevention and suppression of fire which may result from the Grantee's operations.

Insurance. Grantee is a self-funded federal agency that satisfies State's insurance requirements. For purposes of this section, "contractor" is defined as any non-federal employees, agents, contractors, tribes and tribal entities, or other Permittees, and their agents, who are authorized by Grantee to exercise any of Grantee's rights.

State requires that all contractors obtain liability insurance policies while operating under the Permit. Grantee shall require all contractors to obtain the same liability insurance policy and to comply with all State of Washington workers' compensation statutes and regulations by incorporating the following or substantially similar language in its contracts or other authorizing instrument:

"The limits of insurance, which may be increased by DNR as deemed necessary, shall not be less than as follows: Commercial General Liability (CGL) insurance with a limit of not less than \$1,000,000 per each occurrence. If such CGL insurance contains aggregate limits, the general aggregate limits shall be at least twice the "each occurrence" limit, and the products-completed operations aggregate limit shall be at least twice the "each occurrence" limit.

Employer's liability ("Stop Gap") insurance, and if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

Business Auto Policy (BAP) insurance, and if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 per accident, with such insurance covering liability arising out of "Any Auto". Business auto coverage shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary the policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense" as provided in the 1990 or later versions of CA 00 01. The contractor waives all rights against DNR for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

For purposes of tribes or tribal entities working on state lands where the tribe does not carry a BAP covering the contractor; contractor's employees, agents, or members shall be required to purchase and maintain Personal Auto Policy (PAP) insurance which covers damages for bodily injury and property damage for which contractor's employees, agents,

or members become legally liable. Such insurance must cover the use of any auto used **by contractor's employees, agents, or members. Such coverage shall be on an occurrence basis.** The PAP shall provide liability coverage with limits not less than those specified below:

TYPE OF COVERAGE	PERSON	OCCURRENCE
Bodily Injury	\$100,000	\$300,000
Property Damage	N/A	\$50,000

Contractor shall comply with all State of Washington workers' compensation statutes and regulations. Workers' compensation coverage shall be provided for all employees of the contractor. Except as prohibited by law, contractor waives all rights of subrogation against State for recovery of damages to the extent they are covered by workers **compensation, employer's liability, commercial general liability** or commercial umbrella liability insurance.

All insurance must be purchased on an occurrence basis and should be issued by companies admitted to do business within the State of Washington and have a rating of A- or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved in advance by the Risk Manager for DNR. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW (Unauthorized insurers) and Chapter 284-15 WAC (Surplus line insurance.)

The State of Washington, Department of Natural Resources, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, and umbrella insurance policies. Before using any said rights granted herein, [contractor] shall furnish DNR with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified above.

DNR shall be provided written notice before cancellation or non-renewal of any insurance referred to herein, as prescribed in statute (Chapter 48.18 RCW (The insurance contract) or Chapter 48.15 RCW (Fees and taxes)).

Contractor must comply with all insurance requirements stated herein. **Failure of contractor to comply with insurance requirements does not limit the contractor's liability or responsibility.**

All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by DNR. Contractor shall waive all rights against DNR for recovery of damages to the extent that any claim for **damages is covered by contractor's general liability or umbrella insurance** required by this contract.

By requiring insurance herein, State does not represent that coverage and limits will be adequate to protect contractor and such coverage and limits shall not limit **contractor's liability under the indemnities and reimbursements granted to DNR in this contract.**"

Indemnity by the Grantee. Grantee shall defend, indemnify, and hold harmless Grantor from all claims that arise out of the negligence of the Grantee or its Permittee in their use of the permit. A "claim" as used in this section means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorneys' fees, attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the resulting loss of use. Notwithstanding the foregoing, Grantee's obligation to defend, indemnify, and hold harmless Grantor from any judgment, decree or arbitration award shall extend only to the percentage of negligence of Grantee and its Permittee in contribution to such claim. Grantee waives its immunity under Title 51 RCW only to the extent it is required to indemnify, defend and hold harmless Grantor. This indemnification shall survive the expiration or termination of the permit.

Notice. Unless otherwise specified herein, any notices required or permitted under this Permit may be delivered personally, sent by facsimile machine or mailed certified, return receipt requested, to the following addresses or to such other place as the parties hereafter direct. Notice will be deemed given upon delivery or upon confirmation of facsimile, whichever is applicable.

To Grantor:
Department of Natural Resources
Northeast Region
225 S Silke Road
Colville, WA 99114
509-684-7474
Fax 509-684-7484

To Grantee:
Bureau of Land Management
Spokane District Border Field Office
1103 N Fancher Rd
Spokane Valley, WA 99212
509-536-1216

Integrated Agreement; Modification. This Permit constitutes the entire agreement and understanding of the parties with respect to the subject matter of the Permit and supersedes all prior negotiations and representations. This Permit may not be modified except in writing signed by the parties. The parties agree to execute any additional documents reasonably necessary to effectuate the provisions and purposes of this Permit.

Severability. If any provision of this Permit is held to be invalid or unenforceable, this provision shall not affect or invalidate the remainder of this Permit, and to this end the provisions of this Permit are declared to be severable. If any such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Permit.

Waiver. Failure of either party to insist upon the strict performance of any of the terms and conditions of this Permit, or failure to exercise any rights or remedies provided in this Permit or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Permit, nor shall any purported oral modification or rescission of this Permit by either party operate as a waiver of any of the terms hereof. No waiver by either party of any breach, default, or violation of any term, warranty, representation, agreement, covenant, right, condition, or provision of this Permit shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, agreement, covenant, right, condition, or provision.

Assignment. This Permit, and any of the rights granted herein, shall not be assigned without prior written consent of Grantor, except that said rights granted herein may be used by any Permittee, while engaged in the Grantee's operations.

Construction. The terms of this Permit shall be given their ordinary meaning unless defined herein and shall not be presumptively construed against either party.

Exhibits. All exhibits referred to in this Permit are deemed to be incorporated in this Permit in their entirety.

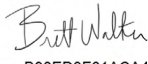
Headings. The headings in this Permit are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Permit nor the meaning of any of its provisions.

Counterparts. This Permit may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Permit at different times and places by the parties shall not affect its validity so long as all the parties execute a counterpart of this Permit.

IN WITNESS WHEREOF, the parties hereto have caused this Permit to be executed as below subscribed.


STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: 20 MARCH _____, 2023 .

DocuSigned by:

B98E03F01ACA444...
Brett Walker,
Acting NE Region State Uplands Assistant
225 S Silke Road, Colville, WA 99214
(509)684-7474

UNITED STATES OF AMERICA
BUREAU OF LAND MANAGEMENT

Dated: 20 MARCH _____, 2023 .

DocuSigned by:

C7BE0DA1B0E04CA...
Shevawn Sapp, Assistant Field Manager
Spokane District Border Field Office
1103 N Fancher Road, Spokane Valley, WA 99212
(509)536-1267



Approved as to Form this
11 day of June, 2004.
By: James Schwartz
Assistant Attorney General
State of Washington

Exhibit A Permit Premises

Existing DNR roads as shown in Exhibit A, 14 feet wide, 7 feet on either side of the centerline of the road.

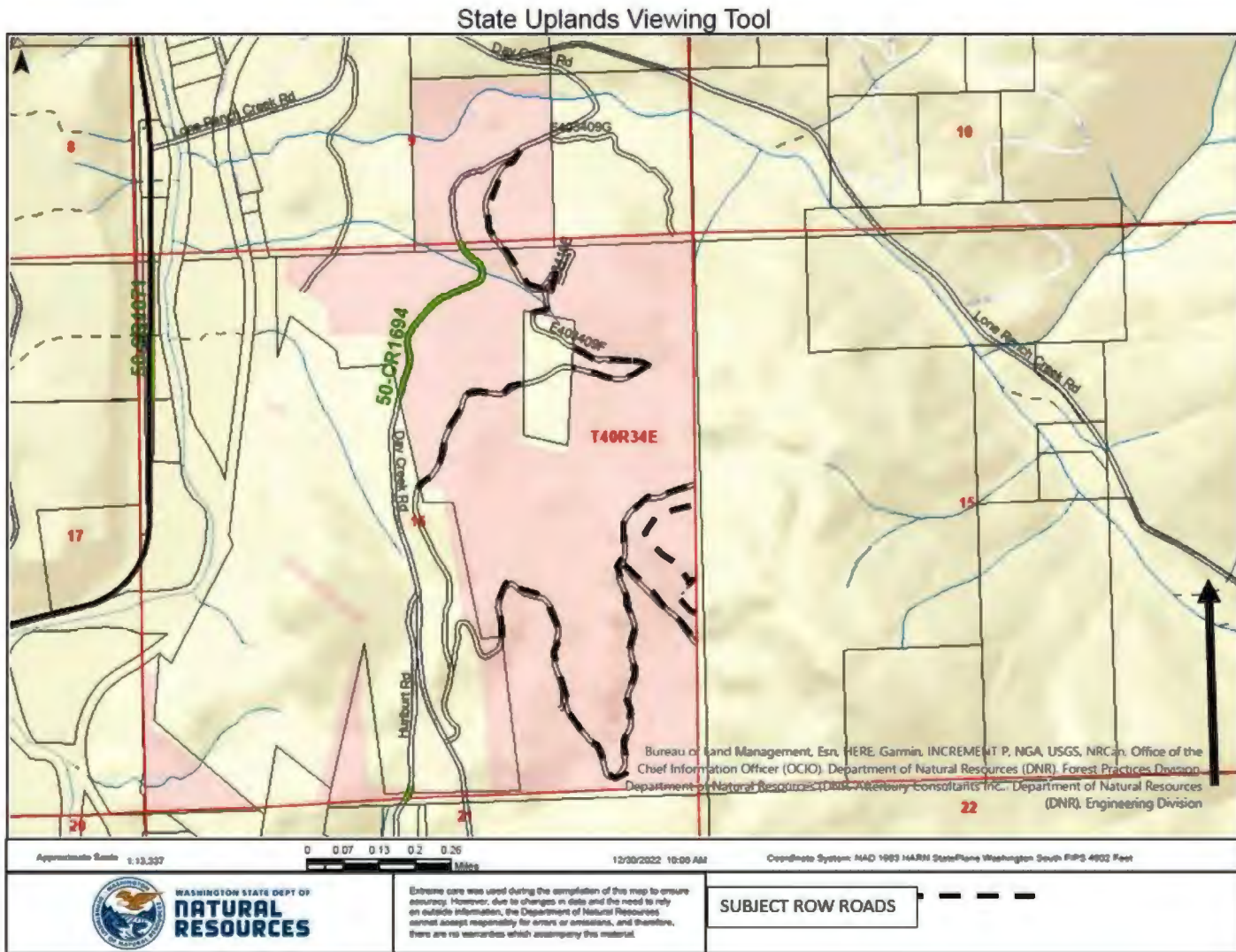


Exhibit B
Operational Requirements

- Roads may not be used when continued use will result in excessive damage due to weather or other conditions.
- No snow removal without permission from the landowner.
- Gates must be kept closed at all times.
- Hauling of forest products is not allowed between November 1st and March 31st.