

Jefferson County
Board of Commissioners
Agenda Request

To: Board of Commissioners
Mark McCauley, County Administrator

From: Monte Reinders P.E., Public Works Director/ County Engineer 

Agenda Date: September 11, 2023

Subject: License for Use of County Property (Portion of Seal Rock Road Right-of-Way)

Statement of Issue:

Ms. Judith Meyers owns a waterfront parcel on Seal Rock Road just north of Brinnon. Her current septic system is failing and Jefferson County Public Health has concluded that there are no reasonable options for locating a new drainfield on the property. Ms. Meyers has requested permission to use a portion of the abutting Seal Rock Road right-of-way for part of her replacement septic system.

Analysis / Strategic Goals / Pros & Cons:

Similar to other properties along Seal Rock Road, Ms. Meyers is already using some of the abutting Seal Rock Road right-of-way for certain improvements (part of her garage, a brick wall and a fence - see Exhibit B to attached License). The proposed septic system components will be within that same already-used portion of the County's 60-foot-wide right-of-way.

Fiscal Impact/Cost Benefit Analysis:

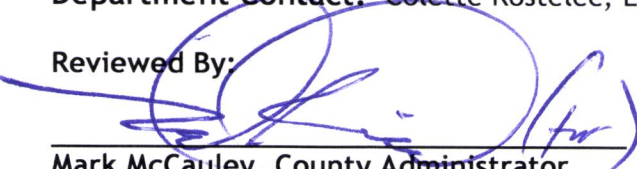
Although the County is constitutionally prohibited from gifting public funds or property when the public interest is not primarily served, the benefits accruing to the County as a result of Ms. Meyers being able to repair her septic system, including the protection of Hood Canal from untreated wastewater and maintaining a developed residential property in the County's tax base, are deemed to equal or outweigh the value of Ms. Meyers' use of the already encumbered portion of right-of-way at issue. Therefore, no additional monetary compensation is being required under the terms of the proposed License.

Recommendation:

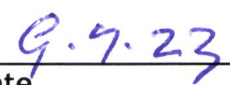
Public Works recommends grant of the attached License to Ms. Meyers for placement of a portion of her new septic system, as well as for conditional continuance of her existing improvements, all within a designated 13-foot-wide portion of Seal Rock Road right-of-way abutting parcel 602-264-005.

Please sign and notarize the attached License and return to Public Works for recording and distribution.

Department Contact: Colette Kostelec, Engineer III, 360-385-9218

Reviewed By: 

Mark McCauley, County Administrator


Date

CONTRACT REVIEW FORM

(INSTRUCTIONS ARE ON THE NEXT PAGE)

Clear Form

CONTRACT WITH: Judith Y. Meyers

Contract No:

PW 2023-081

Contract For: License for Use of County Property

Term: perpetual

COUNTY DEPARTMENT: Public Works

Contact Person: Colette Kostelec

Contact Phone: 360-385-9218

Contact email: ckostelec@co.jefferson.wa.us

AMOUNT: 0

Revenue: _____

Expenditure: _____

Matching Funds Required: _____

Sources(s) of Matching Funds: _____

Fund #: _____

Munis Org/Obj: _____

PROCESS:

☐

Exempt from Bid Process

☐

Cooperative Purchase

☐

Competitive Sealed Bid

☐

Small Works Roster

☐

Vendor List Bid

☐

RFP or RFQ

☒

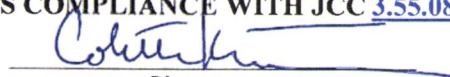
Other: _____

APPROVAL STEPS:

STEP 1: DEPARTMENT CERTIFIES COMPLIANCE WITH JCC 3.55.080 AND CHAPTER 42.23 RCW.

CERTIFIED: ☐

N/A: ☒


Signature

8/14/2023
Date

STEP 2: DEPARTMENT CERTIFIES THE PERSON PROPOSED FOR CONTRACTING WITH THE COUNTY (CONTRACTOR) HAS NOT BEEN DEBARRED BY ANY FEDERAL, STATE, OR LOCAL AGENCY.

CERTIFIED: ☐

N/A: ☒


Signature

8/14/2023
Date

STEP 3: RISK MANAGEMENT REVIEW (will be added electronically through Laserfiche):

✓ Electronically approved by Risk Management on 8/22/2023.
PA's signature block should be:
Philip C. Hunsucker

STEP 4: PROSECUTING ATTORNEY REVIEW (will be added electronically through Laserfiche):

✓ Electronically approved as to form by PAO on 8/25/2023.

STEP 5: DEPARTMENT MAKES REVISIONS & RESUBMITS TO RISK MANAGEMENT AND PROSECUTING ATTORNEY(IF REQUIRED).

STEP 6: CONTRACTOR SIGNS

STEP 7: SUBMIT TO BOCC FOR APPROVAL

Jefferson County
Department of Public Works
623 Sheridan St.
Port Townsend, WA 98368

Document Title: **License for Use of County Property**
Grantor: JEFFERSON COUNTY, a political subdivision of the State of Washington
Grantee: JUDITH Y. MEYERS, an unmarried woman
Legal Description: S26 T26N R2W Tax 7 & TL Tax F
Assessor's Parcel No.: 602-264-005
Related Documents: AFN 660840 (Notice to Title)

RECITALS

WHEREAS, Judith Y. Meyers ("Grantee", "Owner") holds fee simple title to that certain real property situated in Jefferson County, Washington abutting Hood Canal and legally described on attached Exhibit A and commonly known as 791 Seal Rock Road, Brinnon, WA 98320 ("the Property"); and

WHEREAS, the Property contains an existing residence built in 1940 whose septic system is now failing, in part due to the proximity of the drainfield to the beach of Hood Canal; and

WHEREAS, Jefferson County Public Health has confirmed that there are no reasonable options for locating a new drainfield within the boundaries of the property without risking potential contamination of Hood Canal; and

WHEREAS, Owner has existing encroachments in the Seal Rock Road right-of-way abutting the Property, including a portion of the garage, a fence and a brick wall; and

WHEREAS, given the exigent circumstances and the need to protect public health, safety and the environment, the Jefferson County Board of County Commissioners is willing to approve Owner's use of an approximately 60-foot by 13-foot section of Seal Rock Road right-of-way abutting the Property for placement of a portion of a new wastewater disposal system, as well as permitting continuance of the existing encroachments;

NOW THEREFORE,

Grantor, Jefferson County, does hereby grant and convey to Grantee/Owner, Judith Y. Meyers, a license over, across, under and upon a thirteen-foot (13') wide portion of Seal Rock Road right-of-way adjacent to and abutting the full sixty-foot (60') length of the Property fronting on that right-of-way, which is also identified as the "Affected Area" on Exhibit B and throughout this License, and hereby authorizes the Department of Public Works and Department of Environmental and Public Health to issue permits to Owner for the purposes and on the terms and conditions identified below;

LICENSE FOR USE OF COUNTY PROPERTY

LICENSE

1. **Limits to Owner's Use of Affected Area; Use of Licensed and Bonded Contractors.**

- a) Owner's use of the Affected Area shall be limited to the following purposes: (a) existing utilities serving Owner's property; (b) that area necessary to accommodate a portion of a new wastewater disposal system, and (c) the portion of Owner's garage, and the fence and brick wall that currently exist within that right-of-way, all as shown on the site plan and design prepared by Jess D. Godsalve dated 7-13-2023, an excerpt of which is attached as Exhibit B.
- b) Owner shall use only licensed and bonded contractors to perform work in the Affected Area. Except as authorized under this License, Owner shall not perform any work in the Affected Area or other part of Seal Rock Road right-of-way without first consulting with Jefferson County Public Works and obtaining any required permit(s).

2. **Retained Rights of County.** Except as otherwise explicitly limited under this License, Jefferson County retains all rights to access, use, and manage the Affected Area as part of the Seal Rock Road right-of-way. In the event the County is required to enter the Affected Area to remediate a public health or safety issue resulting from Owner's use of the Affected Area, the County shall have the right to seek compensation from Owner and to lien Owner's property in the event Owner fails to timely reimburse County for such work.

3. **Compensation for Owner's Use of Affected Area; Other Fees and Charges.**

- a) The County acknowledges that compensation is typically required for use of County property in order to comply with the state constitutional prohibition against conferring benefits on private interests where the public interest is not primarily served. In this particular case, the benefits to Owner in the limited use of the County right-of-way under this License are deemed fully offset by the following public benefits: Owner's investment in relocating and upgrading her septic system to 21st century standards will allow continued occupancy of much-needed residential property as well as maintaining improved residential property on the County's tax rolls. In addition, moving the existing drainfield out of the flood zone will reduce contamination of water quality in Hood Canal and protect shellfish; both of which serve a fundamental governmental purpose in protecting public health and the environment. Therefore, no additional monetary compensation is required in exchange for the County granting this License.
- b) Owner shall be responsible for all permit fees, staff time accrued in preparing this License, and the fee to record this License with the Jefferson County Auditor, all of which shall be paid prior to commencement of any work in the Affected Area under this License.

4. **Indemnification.** Owner shall defend, indemnify and hold the County, its officers, officials, employees, agents and volunteers (and their marital communities) harmless from any claims, injuries, damages, losses or suits, including attorney's fees, arising out of or resulting from the acts, errors or omissions of Owner in performance of this License, except for injuries and damages caused by the sole negligence of the County. Should a court of competent jurisdiction determine this License is subject to RCW 4.24.115 if liability for damages occurs arising out of

bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Owner and the County, its officers, officials, employees, agents and volunteers (and their marital communities) Owner's liability, including the duty and cost to defend, shall be only for Owner's negligence. It is further specifically understood that the indemnification provided constitutes Owner's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by Owner and the County. This paragraph shall survive the termination of this License.

5. **Insurance.** Owner shall obtain and keep in force during the term of this License, the following insurance: liability and property damage insurance in an amount not less than a single limit of one million and 00/100 dollars (\$1,000,000), two million aggregate (\$2,000,000) for bodily injury, including death and property damage pre occurrence. Jefferson County shall be named on all certificates of insurance as an additional insured. The certificates of insurance shall cover the activities allowed in the County's right-of-way under this License. All insurance shall be obtained from an insurance company authorized to do business in Washington State. Owner shall submit a certificate of insurance to the County within 14 days after the recording of this License.
6. **Termination of License.** This License commences upon recording of this document and will terminate, in whole or in part, upon the occurrence of any of the following:
 - a) Owner's voluntary removal of the encroachments from the right-of-way;
 - b) sixty (60) days written notice by the County, which notice shall only be given upon either Owner's violation of the terms of this License or upon County approval of a road or utility project which requires use of the abutting Seal Rock Road right-of-way or if necessary to address a public health or safety issue;
 - c) replacement of the existing residential structure as a result of damage, destruction or voluntary removal;
 - d) damage or destruction of the currently existing encroaching structures, which structures shall not be expanded or rebuilt in the right-of-way;
 - e) The installation of a group septic system capable of serving the Property, in which case Owner shall agree to connect to such system; or
 - f) the Seal Rock Road right-of-way, or portion thereof including the Affected Area, being vacated and abandoned through Resolution of the Jefferson County Board of County Commissioners.
7. **Runs with the Land.** This License shall be appurtenant to and run with the land, and shall be binding on Owner and her successors, heirs and assigns for as long as the County's right-of-way is encumbered by Owner's septic system components, garage, fence, brick wall, or other authorized improvement.
8. **Dispute Resolution/Litigation.** The County and Owner agree to use their best efforts and good faith negotiations to resolve disputes arising out of or related to this License.

- a) Prior to initiating legal action, the parties shall use the following dispute resolution process should any such disputes arise:

Level One: upon written notice by the Owner of a dispute, the Public Works Director shall meet with Owner to discuss and attempt to resolve the dispute promptly.

Level Two: if the Owner and Public Works Director are unable resolve the dispute within fifteen (15) business days, either party may refer the dispute to the County Administrator or his designee to discuss and attempt to resolve the dispute promptly.

Level Three: if the dispute is not resolved in Level Two, within fifteen (15) business days after that referral, then either party may submit the dispute to mediation to take place in Port Townsend, Washington before a single mediator. The parties shall agree upon the single mediator within thirty (30) business days, otherwise Jefferson County's Hearing Examiner shall select the mediator.

- b) Should either party bring any legal action, each party in such action shall pay for its own attorney's fees and court costs.

9. **Governing Law; Venue.**

- a) This License and all rights and obligations created hereby shall be governed by and construed in accordance with the laws of the State of Washington.
- b) The venue for any legal action shall be solely in the appropriate state court in Jefferson County, Washington, subject to the venue provisions for actions against counties in RCW 36.01.050.

10. **Authority to Execute this License.** Owner covenants that she is the lawful owner of the above-described Property and is fully authorized to execute this License.

11. **Severability.** Provided it does not result in a material change in terms of this License, if any provision of this License or the application of this License to any person or circumstance shall be deemed invalid, illegal, or unenforceable to any extent by a court of competent jurisdiction, the remainder of this License shall not be affected and shall be enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the undersigned Grantee/Owner has read, understands, acknowledges, and covenants to comply with the terms of this License, which shall be deemed fully executed upon the final signature below and shall be deemed effective upon its recording with the Jefferson County Auditor.

[Signatures on following pages]

Approved this _____ of _____, 2023 by the Jefferson County Board of County Commissioners.

**GRANTOR: Jefferson County
Board of County Commissioners
Jefferson County, Washington**

Approved as to form only:

By: _____
Greg Brotherton, Chair

By:  _____
Philip C. Hunsucker Date
Chief Civil Deputy Prosecuting Attorney August 25, 2023

State of Washington
County of Jefferson

This record was acknowledged before me on _____, by Greg Brotherton as the Chair of the Jefferson County Board of County Commissioners.

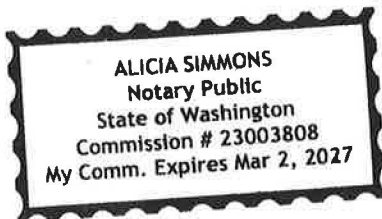
Notary Public in and for the State of Washington.
My Commission Expires _____

GRANTEE/OWNER:

Judith Y. Meyers ²⁹
JUDITH Y. MEYERS 8/20/2023
Date

State of Washington
County of Jefferson

This record was acknowledged before me on Aug 29, 2023 by Judith Y. Meyers.



Alicia Simmons
Notary Public in and for the State of Washington,
My Commission Expires 03-2-2027.

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

ALL THAT CERTAIN LAND SITUATED IN THE STATE OF WASHINGTON, COUNTY OF JEFFERSON, CITY OF BRINNON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 426.1 FEET EAST AND 360 FEET NORTH OF THE SOUTHWEST CORNER OF GOVERNMENT LOT 3 IN SECTION 26, TOWNSHIP 26 NORTH, RANGE 2 WEST, W.M., THENCE EAST 184.10 FEET TO THE TRUE POINT OF BEGINNING;

THENCE EAST 134.46 FEET TO THE MEANDER LINE ON HOODS CANAL;
THENCE NORTH 9°15' EAST 60.79 FEET;
THENCE WEST 147.01 FEET TO THE OLYMPIC HIGHWAY;
THENCE SOUTH ALONG SAID OLYMPIC HIGHWAY 60.00 FEET TO THE TRUE POINT OF BEGINNING;

BEING KNOWN AS TRACT 14 OF THE UNRECORDED PLAT OF HURD'S SEAL ROCK SUMMER HOME TRACTS, AND DESIGNATED ON THE COUNTY ASSESSOR'S PLAT AND DESCRIPTION BOOK AS TAX NO. 7 IN SAID SECTION 26;

TOGETHER WITH TIDELANDS OF THE SECOND CLASS, AS CONVEYED BY THE STATE OF WASHINGTON, IN FRONT OF ADJACENT TO, AND ABUTTING UPON THE ABOVE-DESCRIBED UPLANDS WITH A FRONTAGE OF 0.92 LINEAL CHAINS, MORE OR LESS; SAID TIDELANDS BEING DESIGNATED ON THE COUNTY ASSESSOR'S PLAT AND DESCRIPTION BOOK AS TIDELAND TAX "F" IN SAID SECTION 26;

ALL SITUATE IN THE COUNTY OF JEFFERSON, STATE OF WASHINGTON.

SITE PLAN*



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