

H1
2/15/22

An ordinance granting to MAPLE VIEW FARM a franchise for use of county roads.

Farm Waste Line Facility Franchise

Sections:

010	Application for Franchise
020	Hearing on Franchise
030	Grant of Franchise
040	Reservation of Rights
050	Record of Franchise
060	Severability
070	Effective Date

010 Application for Franchise. An application for a waste transmission line facilities franchise to allow the location of certain utilities within certain county properties has been signed by Ben Smith, Managing Partner of Maple View Farm, dated 12/24/2021. The approved application is attached hereto as Exhibit A and is by this reference expressly incorporated herein.

020 Hearing on Franchise. The Board of Clallam County Commissioners (Board) has conducted a public hearing in regard to the request for franchise. Public notice of the hearing was given by posting notices in three public places in Port Angeles, the county seat of Clallam County, at least fifteen days before the date fixed for the hearing and by publishing a like notice two times in the official newspaper of the county not less than five days before the date fixed for the hearing. The notice stated the name(s) of the applicant; a description of the county property by reference to section, township, and range; and the time and place fixed for the hearing.

030 Grant of Franchise. The Board deems it to be in the public interest to grant the franchise as described in the attached Exhibit A.

040 Reservation of Rights. The franchise granted by this ordinance shall be subject to the power of eminent domain and the right of the Board or the people acting for themselves through the initiative or referendum to repeal, amend, or modify the franchise in the interest of the public.

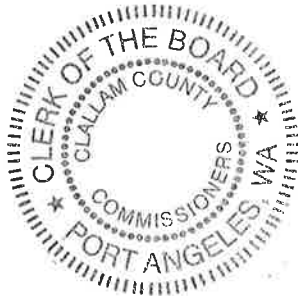
050 Record of Franchise. This chapter shall be recorded with the County Auditor.

060 Severability. If any section, subsection, paragraph, sentence, clause or phrase of the chapter is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this chapter, it being hereby expressly declared that this chapter and each section, subsection, paragraph, sentence, clause, and phrase thereof would have been adopted irrespective of the fact that any one (1) or more other sections, subsections, paragraphs, sentences, clauses, or phrases be declared invalid or unconstitutional.

070 Effective Date. This chapter shall take effect ten (10) days after adoption.

PASSED AND ADOPTED this 15th day of February, 2022

BOARD OF CLALLAM COUNTY COMMISSIONERS



Mark Ozias
Mark Ozias, Chair

Randy Johnson
Randy Johnson

William Peach
William Peach

ATTEST:

Loni Gores

Loni Gores
Clerk of the Board

UTILITIES FRANCHISE

Granted by Clallam County Board of Commissioners to

MAPLE VIEW FARM

This franchise to construct, extend, connect, repair, maintain, operate and remove manure line facilities along, the county roads within Clallam County ("County") is granted, to Maple View Farm, ("Grantee") upon the following express terms and conditions:

1. DEFINITIONS: The term "county roads" or "roads" as used herein shall include, but not be limited to, county road, avenues, alleys, streets, boulevards, public ways, public rights-of-way, viaducts, and bridges. Specifically, the road included in this franchise is the west side of Schmuck Road, Road #54070 from milepost 0.36 to milepost 1.18 The geographic location is in Sections 16 and 21, Township 30 North, Range 3 West, W.M.
2. LOSS OF JURISDICTION: Whenever any of the roads as designated in this franchise shall fall outside the County's authority by reason of change in political jurisdiction such as by subsequent incorporation or annexation, then all the rights and privileges herein granted shall terminate in respect to said roads; but this franchise shall continue in force and effect in respect to all roads not so removed from County authority.
3. POWERS: The Grantee shall have the right and authority to enter over, under, along, across, and upon the above-mentioned roads for the purpose of construction, extension; connection, repair, maintenance, operation, and removal of facilities as authorized herein in conformity with such county, state, and federal codes, regulations and standards, as now enacted or hereafter amended, governing such facilities.
4. TERM: The franchise granted by this ordinance shall last for a term of Five (5) years from the date of this grant unless terminated for reasons of material noncompliance with the terms of this franchise, by either party upon 180 days written notice to the non-terminating party. Said notice of termination shall be deemed complete on the third day following mailing to, by certified mail, return receipt requested, or upon personal service at, the non-terminating party's principal place of business.
5. PERMITS: Before any work is done by the Grantee under this franchise, it shall first file with the Clallam County Road Engineer (hereinafter the Engineer) an application for a permit to do such work, accompanied by design drawings in triplicate showing the position, location, and type of facilities sought to be constructed, extended, connected, repaired, maintained, operated or removed, showing the relative positions to existing roads and property lines. Such prints shall be submitted on 24-inch by 36-inch or smaller paper (but not smaller than 8-1/2"x11"). Such drawings shall be drawn to scale 1 inch = 50 feet (unless otherwise approved). Such drawings shall give an accurate graphic representation of local improvements including, but not limited to, sidewalks, roadways, property lines, turnouts, parking strips, telephone lines, electric lines, poles, conduits, culverts, ditches, drainage facilities, sewer lines, water lines, as may exist over, under, along, and upon the

roads sought to be occupied and immediately adjacent thereto and said locations shall be drawn in such a manner that identification in the field is possible. Such drawings shall indicate the nature of the materials being installed (e.g.: concrete, PVC, HDPE, asbestos cement, copper, steel, treated wood, etc.). Such drawings shall also show the location by cross sections of the utility to be installed by the Grantee.

The Engineer shall either approve and issue the permit, approve subject to conditions, or reject the application. If the application is rejected, the Engineer shall provide the Grantee, in written form, with an explanation of the reasons that the application was rejected.

Permits shall not be required for work performed by Grantee's personnel, contractors, and equipment relating to the following, provided that no obstruction, improvement, or construction is located so as to constitute a hazard to motor or pedestrian traffic:

- a. Tree trimming and brushing, unless the vegetation in need of trimming or brushing is the subject of a "no trim" agreement between Clallam County and the property owner, his heirs, successors, or assigns, where the vegetation is located. The Grantee shall contact the County Engineer prior to trimming or brushing to ascertain whether or not a tree trimming agreement is in effect.;
- b. Maintenance repairs where no damage to the road or its appurtenances will occur;
- c. Installation of customer service laterals from existing lines where no damage to the road or its appurtenances will occur;
- d. Emergency work provided that Grantee shall notify the Engineer of the nature and scope of said emergency work as soon thereafter as possible but in no event later than forty-eight (48) hours after commencement of said emergency work and shall provide the Engineer, if requested to do so, with as-built drawings which are consistent with the requirements for permit drawings hereunder.

6. **COMPLIANCE WITH LAW AND STANDARDS:** The Grantee shall construct, extend, connect, repair, maintain, operate, and remove its facilities at its own risk. The Engineer may inspect said construction, extension, repair, maintenance, or removal to determine whether the construction, extension, repair, maintenance, or removal materially or adversely impacts the county road. Approval by the Engineer of the construction, extension, repair, maintenance, or removal shall not be construed as an approval of the nature, extent, quality, or workmanship of the Grantee's work and shall be construed to mean nothing other than that the Grantee's work does not materially adversely impact the physical characteristics of the county road. The location of all the Grantee's facilities, their depth below or height above the surface of the ground or grade of any road, and their lateral location in relation to the road centerline shall be in compliance with all county, state, and federal codes, regulations, and standards, including WAC 136-40. All underground facilities shall be installed with a locate wire of 10-gauge stranded copper wire with 600 volt insulation; Essex, or approved equal. Where conflicts occur between the aforesaid codes, regulations, and standards vs. the terms of this franchise, the stricter of the two shall apply. The Grantee shall at all times insure

its construction, extension, connection, repair, maintenance, operation, and removal of its facilities does not diminish the safety of the public using, or in proximity to, county roads.

7. RECORDS: Grantee shall at all times keep at its principal place of business full and complete plans, maps, and records showing the location and details of all franchise facilities located over, under, along, across, or upon the roads. Grantee shall make copies of the maps, plans, and records available, free of charge, to the County at any time upon request: Such maps shall be drawn in the same manner as design drawings as set forth in Section 5 of this franchise, showing the location of all franchise facilities installed over, under, along, across, or upon the roads within the limits of Clallam County. One complete set of said maps, plans, and records shall be provided on reproduction quality mylar or, alternatively, up to four sets shall be provided on paper. Maps, plans, and records may be provided in electronic form, instead of mylar or paper, if approved by the County.

In addition to the above described plans, maps, and records the Grantee shall maintain a paper or mylar map at a scale of 1 inch = 2000 feet (or other scale approved by the County) showing all county roads within the bounds of this franchise and showing where Grantee's facilities are located in respect to said roads. An up to date copy of this map shall be provided, free of charge, annually to the County.

8. RESTORATIONS AND MAINTENANCE: The Grantee shall leave all roads in as good and safe condition in all respects as they were before the commencement of such work by the Grantee, its officers, agents, contractors, or employees, or in such condition as meets with the approval of the Engineer.

In case of any damage to said roads or their appurtenances, including, but not limited to, turnouts, gutters, curbs, ditches, wood or concrete walks, drain pipes, culverts, catch basins, manholes, hand or guard rails, retaining walls, bridges, trestles, wharves or landings, or to the property of third parties, resulting from any work performed or failed to be performed by the Grantee, the Grantee agrees to immediately repair said damage at its own cost and expense to the satisfaction of the Engineer. Clallam County may at any time, do, order, and have done any and all work considered necessary to restore to a good and safe condition any such roads or appurtenances left by the Grantee, its officers, agents, contractors, or employees in a condition different from that which existed prior to the work and the Grantee, upon demand, shall pay to the County all costs of such construction or repair and of doing such work; provided, that Clallam County shall have first made written demand upon the Grantee to perform the work necessary to return the road or appurtenances to the condition which they existed prior to the work by the Grantee, and the Grantee shall have failed, for a period of forty-eight (48) hours after receipt of such written demand, to commence the work necessary to return the road or appurtenance to its pre-existing condition. Provided further, that in the event it is reasonably determined by Clallam County that an emergency exists, which requires immediate restoration, then the County may perform such work and the Grantee shall pay all reasonable costs thereof.

The grantee shall trim brush, grass, trees, and all other vegetative matter from within the county right of way within a 10-foot radius of all aboveground appurtenances so as to aid in visual location of the utilities by county personnel. Trimming shall be performed as necessary to keep vegetative growth shorter than the appurtenance. Herbicides and other chemical agents shall not be used.

9. **HOLD HARMLESS** : The Grantee shall defend and indemnify Clallam County, its officers, agents, and employees, and any and all other public agencies and their members, officers, agents, and employees, against any and all claims, demands, suits, actions, damages, expenses and costs, including a reasonable attorney fee, for injury to or death of any person or any damage to any property caused by the fault of the Grantee, as defined in R.C.W. 4.22.015, as now enacted or hereafter amended, its officers, agents, contractors, or employees, by any manner whatsoever, in the construction, extension, connection, repair, maintenance, operation, or removal of its facilities, or arising out of the exercise of any right or privilege under this franchise.

The Engineer shall notify Grantee, in writing, as soon as practicable after the presentation of any claims, demands, suits, actions, damages, expenses or costs (collectively "claims") made or accrued against the County on account of any fault on the part of Grantee. Failure by the Engineer to notify Grantee properly in accordance with the foregoing of any such claims against the County shall not release Grantee from its obligation to defend or indemnify the County unless Grantee can establish that it has been materially prejudiced by such failure.

Approval by the county pursuant to Section 5 of this franchise shall be no defense for avoidance of this covenant.

10. **CONCURRENT POWERS**: The construction, extension, connection, repair, maintenance, operation, or removal of the Grantee's facilities shall not preclude Clallam County, its officers, agents, contractors, or employees from blasting, grading, or doing other necessary road work contiguous to the Grantee's facilities, provided that the Grantee shall have advance notice of said blasting, excavating, or embanking in order that the Grantee may protect its facilities.

If, at any time, Clallam County, deems it advisable to improve any of its roads by, including, but not limited to, grading, regrading, paving, altering, repairing, realigning, widening, or draining, the Grantee, upon advance notice by Clallam County, shall, at its own expense, except as detailed below, promptly so raise, lower, or move its facilities to allow Clallam County to complete its road improvements and to conform to such improved roads and the County shall in no way be held liable for any damages to Grantee that may occur by reason of the County's improvements or by the exercise of any rights so reserved in this section or grant, except as a result of negligence or fault on the part of the County. Said advance notice shall indicate the date by which the Grantee is required to raise, lower, or move its facilities and said notice will be given to the Grantee in advance of said date by a length of time consistent with the urgency of the situation (less time for emergencies and more time for scheduled projects). Clallam County will strive for as much advance notice as is practical so as to allow time for designing, bidding, and completing the work. Failure of the Grantee to raise, lower or move its facilities by the date set forth in the written notice shall entitle Clallam County to liquidated damages in the amount of Two Hundred Fifty Dollars (\$250.00) per day for each day of non-compliance. Said dollar amount will increase in accordance with Section 18, Inflation Adjustments.

The Grantee shall raise, lower, or move its facilities at the County's expense if the Grantee shall have prior easement or right-of-use rights, or as otherwise agreed to between the parties.

11. **FRANCHISE NOT EXCLUSIVE:** This grant or privilege shall not be deemed or held to be an exclusive franchise. It shall in no manner prohibit Clallam County from granting other franchises of a like nature for other public or private purposes over, under, along, or upon any of the county roads and shall in no way prevent or prohibit Clallam County from using any of said roads or affect its jurisdiction over them or any part of them, with full power to make all necessary changes, relocation, repairs, maintenance, etc., as it deems fit.
12. **ASSIGNMENT:** Except for assignment or hypothecation for security purposes, Grantee shall not have the right to assign the franchise or otherwise transfer it in any manner whatsoever, or sell, lease, license, or permit others to use or transfer in any manner whatsoever any interest in all or any part of its facilities that are installed or operated hereunder, except on prior written approval of the Board of Clallam County Commissioners, which consent shall not be unreasonably withheld.
13. **FORFEITURE:** The franchise may be forfeited, at the option of the County, upon failure or violation by Grantee to observe the material terms and conditions set forth herein. Forfeiture may be exercised only following written notice to Grantee of failure to observe the terms and conditions hereof, detailing the breach of this franchise with specificity, followed by Grantee's failure or refusal to eliminate or correct such failure or to commence correction of such within 120 days. In the event of any failure or violation, the County may bring suit in the manner provided by law for the forfeiture of the franchise without the necessity of resorting to procedures in quo warranto, and the exercise of such remedy of forfeiture shall not preclude exercise of any other right or remedy given to the County by law, whether exercised concurrently or subsequently.
14. **ABANDONMENT:** Grantee may at any time abandon the rights and authority granted hereunder, provided that six (6) months' prior written notice of intention to abandon is given to the Board of County Commissioners and provided further that all roads occupied by Grantee's facilities are restored to that condition existing immediately before such facilities were removed.
15. **AMENDMENTS:** Clallam County reserves for itself the right at any time upon forty-eight (48) hours' notice to the Grantee to change, amend, modify, or amplify any of the provisions or conditions herein enumerated to conform to any local, state, or federal law or regulation or recognized engineering practice relating to the public welfare, health, safety, or highway design as may hereinafter be adopted or recognized.
16. **MONUMENT REFERENCE:** Before any work is performed under this franchise, the Grantee shall reference all monuments and markers of every nature relating to subdivision plats, highways, and all other surveys that are affected by such work. The reference points shall be so located that they will not be disturbed during the Grantee's operations under this franchise. The method of referencing these monuments or other points to be referenced shall be approved by the Engineer before placement. The replacement of all such monuments or markers disturbed during the Grantee's operation shall be made as expeditiously as conditions permit and as directed by the Engineer. The cost of monuments or other markers lost, destroyed, or disturbed and the expense of replacement of approved monuments shall be borne by the Grantee. Said reference and replacement of monuments shall be performed by a surveyor licensed by the State of Washington or such other person authorized by state law to prepare and file a survey.

17. REMOVAL: Except as otherwise provided herein, within six (6) months after the use of any facilities has been permanently discontinued or this franchise expires or is otherwise terminated, Grantee shall forthwith remove its facilities from the roads. Grantee shall restore such roads to that condition existing immediately before such facilities were removed; provided that such property shall not be removed if the Engineer shall reasonably determine that such removal will cause unreasonable damage to such roads and provided further, that should the Engineer request that any facilities be allowed to remain in place for the use of the County or other franchise(e), then such facilities shall not be removed, and title thereto shall be transferred to County at no cost to the County. The Engineer may, at his discretion, permit facilities to be abandoned in place, provided that Grantee provide the Engineer with a detailed description of the facilities being abandoned (type of material, condition, size, extent, etc.), and provided such facilities are not considered hazardous, problematic, or otherwise undesirable, and further provided that Grantee shall submit to the Engineer an instrument transferring to the County ownership of such facilities. Said instrument shall certify that the utilities being abandoned are disconnected from service and are inactive. In the event that the Grantee does not forthwith remove its facilities as required herein, Clallam County reserves the right to effect such removal and assess all reasonable costs associated therewith against the Grantee. Upon presentation of an invoice, the Grantee shall pay the amounts stated therein to Clallam County.

18. INFLATION ADJUSTMENTS: The dollar amounts fixed under this franchise in Section 10, Concurrent Powers, shall be increased annually on the anniversary date of this franchise by Three and One-Half percent (3.5%),

INFLATION ADJUSTMENTS: The dollar amounts fixed under this franchise in the second paragraph of Section 24, Compensation, shall be increased annually on the anniversary date of this franchise by Three and One-Half percent (3.5%).

19. INSURANCE: Grantee shall maintain in full force and effect during the term of this franchise public liability and property damage insurance in the following amounts:

Bodily injury, including death
\$1,000,000 per person
\$2,000,000 per occurrence

Property damage
\$1,000,000 per occurrence

Clallam County, its officers, and employees shall be named as additional insureds and a certificate of insurance establishing coverages, limits of coverage and insureds shall be provided to Clallam County within thirty (30) days after the date the franchise is passed and adopted by the Clallam County Commissioners. Failure to provide a certificate of insurance to Clallam County or to maintain insurance as required herein shall constitute failure of consideration and this franchise shall be void and a nullity provided that Clallam County shall have first given written notice to Grantee of its failure to provide insurance, and Grantee shall not, within ten working days of the receipt of such notice, have corrected the deficiency. No termination or change in the coverage provided herein shall be effective without 30 days prior notice to the county and the certificate shall provide for said notice to the County.

20. SEVERABILITY: If any article, section, sentence, clause, or phrase of this ordinance is for any reason held illegal, invalid, or unconstitutional, such invalidity shall not affect the validity of the franchise or any of the remaining portions. The invalidity of any portion of this franchise shall not abate, reduce, or otherwise affect any consideration or other obligation required of Grantee.
21. ADDITIONAL POWERS: This franchise shall be subject to the power of eminent domain and the right of the Board of Clallam County Commissioners or the people acting for themselves through the initiative or referendum to repeal, amend, or modify the franchise in the interests of the public.
22. ENFORCEMENT: In the event that Clallam County seeks judicial enforcement of any term of this agreement, the Grantee shall reimburse Clallam County for all disbursements and costs incurred, including a reasonable attorney's fee, if Clallam County prevails and expert witness fees.
23. COMPENSATION: In consideration for the granting of this franchise, Grantee shall pay Clallam County for the actual costs incurred by the County in the processing and administration of this franchise. An accounting of actual costs will be sent to Grantee within 30 days of the completion and approval of the work. Payment to cover actual costs shall be paid by Grantee within 30 days of billing by Clallam County.

In additional consideration for the granting of this franchise the Grantee shall pay Clallam County the sum of Nine hundred ninety-four dollars and eighty-six cents (\$994.86) per year each and every year that this franchise is in effect. Said compensation shall be paid within 30 days of the granting of this franchise and annually within 30 days of each anniversary date thereof. Said dollar amount will increase in accordance with Section 18, Inflation Adjustments.'

24. CONTACTS/NOTICES: Any notices required to be given under this franchise shall be given by certified mail, return receipt requested, to the designated contact. The following identified persons shall be the designated contact persons for administration of this franchise:

FOR GRANTEE: Contact Name: Ben Smith

 Mailing Address Maple View Farm
 373 Schmuck Road
 Sequim, WA 98382

 Billing Address Maple View Farm
 373 Schmuck Road
 Sequim, WA 98382

Phone Number (360)683-3465

FOR COUNTY

Clallam County Franchise Department-BOCC
Clallam County Courthouse
223 East 4th Street, Suite 4
Port Angeles, WA 98362

Phone Number - (360) 417-2233

Notice of any changes in the contact person, address, or telephone number for the Grantee shall be communicated to the County, in writing, within 3 business days.

25. EFFECTIVE DATE CLAUSE: This franchise shall become effective upon adoption of the ordinance granting it, which is ten days following signature of such ordinance.
26. ACCEPTANCE AND APPLICATION: The undersigned hereby accepts all the rights and privileges of this franchise, if approved by the Board of Clallam County Commissioners, subject to all the terms, conditions, stipulations, and obligations contained herein. The undersigned hereby applies for this franchise.

COMPANY NAME MAPLE VIEW FARM LLC

BY (SIGNATURE) Bennett L. Smith 12-24-2021
Date

(PRINT) BENNETT L. SMITH

TITLE OWNER-MEMBER

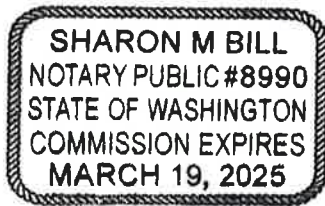
State of Washington
County of Clallam

I certify that I know or have satisfactory evidence that Bennett L. Smith is the person who appeared before me, and said person acknowledged that (he/she) was authorized to execute the instrument and acknowledged it as the OFFICER of

(type of authority, e.g. (officer, president, trustee, etc))

MAPLE VIEW FARM LLC.
(name of company or party on behalf of whom instrument was executed)

to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



Dated: 12/29/2021

Signature: Sharon M Bill

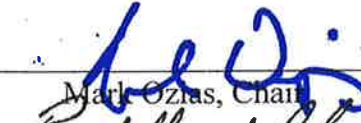
Title: Notary

Residing at: Port Ludlow


My appointment ends: 03/19/2025

PASSED AND ADOPTED BY:

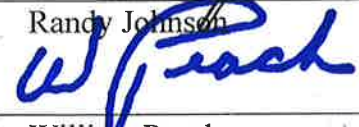
BOARD OF CLALLAM COUNTY COMMISSIONERS



Mark Ozias, Chair



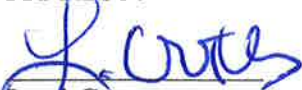
Randall Johnson



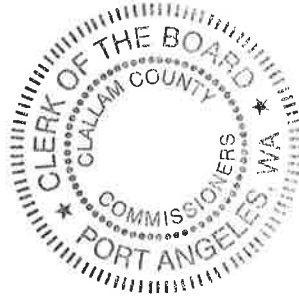
William Peach

Date: 2-15-2022

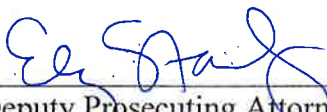
ATTEST:



Lori Gores
Clerk of the Board



Approved as to Form:



Deputy Prosecuting Attorney
Clallam County