

CLARK COUNTY STAFF REPORT

DEPARTMENT: Public Works/ Parks and Lands Division

DATE: September 26, 2017

REQUESTED ACTION: Approve a Clark County Railroad and Recreation Trail Easement (\$500) with Washington State Department of Natural Resources on Tax Parcel Number 229189000.

Consent Hearing County Manager

BACKGROUND

The Chelatchie Prairie Rail with Trail project envisions building a 33-mile multiuse trail paralleling the county-owned Chelatchie Prairie Railroad. The first phase of the project, a 1-mile section from Battle Ground Lake State Park southwest toward Battle Ground, opened for public use in December 2011.

Phase II would build an additional 0.6-mile trail segment beginning at the trail's existing termini south of Battle Ground Lake State Park. A portion of this 10-foot wide trail segment would be built on land owned by Washington State Department of Natural Resources. Clark County must have a trail easement with DNR to develop this portion of the trail.

COUNCIL POLICY IMPLICATIONS

The one-time county expense for the DNR easement is \$500. Funding will be provided within the General Fund Parks maintenance budget

ADMINISTRATIVE POLICY IMPLICATIONS

None.

COMMUNITY OUTREACH

The Comprehensive Parks, Recreation and Open Space Plan identifies Chelatchie Prairie Rail with Trail development as a priority project. The Parks Advisory Board also voted to prioritize this project.

BUDGET IMPLICATIONS

YES	NO	
X		Action falls within existing budget capacity.
	X	Action falls within existing budget capacity but requires a change of purpose within existing appropriation
	X	Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

PW17-097

BUDGET DETAILS

Local Fund Dollar Amount	\$500.00
Grant Fund Dollar Amount	
Account	General Fund - 0001
Company Name	

DISTRIBUTION:

Board staff will post all staff reports to The Grid. <http://www.clark.wa.gov/thegrid/>

Please notify Real Property Services of the Board's action by calling extension 4975.

Attachments: Easement document (2)




Bill Bjerke
Parks & Lands Division Manager



Heath H. Henderson, PE
Public Works Director/County Engineer

Primary Staff Contact: Gary Albrecht Ext: 4318

APPROVED: 

CLARK COUNTY, WASHINGTON
BOARD OF COUNTY COUNCILORS

DATE: 9/26/17

SR# 195417



APPROVED: _____
Jim Rumpeltes, Interim County Manager

DATE: _____

When recorded return to:
Department of Natural Resources
Pacific Cascade Region
Attn: Wayde Schaible
601 Bond Road
PO Box 280
Castle Rock, WA 98611-0280



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

COUNTY RAILROAD AND RECREATION TRAIL EASEMENT

Grantor(s): State of Washington Department of Natural Resources
Grantee(s): Clark County
Legal Description: S36, T4N, R2E.
Assessor's Property Tax Parcel or Account Number: 229189000
Cross Reference: 50-000937
DNR Easement No. 50-095722

This Easement is between CLARK COUNTY, a political subdivision of the State of Washington, acting by and through the Board of Clark County Commissioners herein referred to as "Grantee" and the STATE OF WASHINGTON, herein called "Grantee" and the STATE OF WASHINGTON, acting by and through the Department of Natural Resources, herein called "State" dated as of 9/26/17 "Effective Date".

RECITALS

- A. On July 2, 1902 the Washington State Commissioner of Public Lands issued a Certificate of Right-of-way (unrecorded), to the Portland, Vancouver and Yakima Railway Company, a copy of which is attached for reference as Exhibit A. Included in that Certificate was a grant of easement filed in the Office of the Commissioner of Public Lands in Olympia, Washington under Agreement No. 50-000937, located as legally described on Exhibit B, herein called "Original Easement." The Original Easement was granted for the operation of a railroad right-of-way;

- B. On August 29, 1985 abandonment was authorized by the Surface and Transportation Board and on November 14, 1986 Clark County purchased the railroad, and began leasing to private railroad operators;

Conveyance. State for and in consideration of the terms and conditions specified, and for the release of the Original Easement, hereby grants and conveys to the Grantee:

A non-exclusive 100 foot easement in gross for the sole purpose of construction, operation, use, and maintenance of a railroad (Railroad) and for the purpose of constructing, operating, using, and maintaining a not-for-profit, non-motorized, public recreational trail (Trail), over and across portions of the E1/2 of the NE1/4 of Section 36, Township 4 North, Range 2 East, W.M. as shown on Plat on file in Clark County, Bin 14-F Pg. 21 and shown as Exhibit C (hereinafter Easement Area), and by this reference made a part hereof, all in Clark County, Washington.

Consideration. The consideration paid by the Grantee to State is Five Hundred and NO/100 Dollars (\$500.00).

Relinquishment. As additional consideration, Grantee hereby relinquishes and quitclaims all rights and interest in and to the Original Easement.

Use. Authorized use shall include the right to travel, maintain, repair, construct, or reconstruct the Railroad and Trail in the Easement Area, subject to the restrictions set forth hereafter. The northernmost fifty feet in width to be used for the Railroad, and the southernmost fifty feet for the Trail. Any unauthorized use of the Easement Area shall be considered a material breach of this Easement.

Term. The Easement shall be perpetual unless terminated as set forth hereafter.

Assignment. Neither this Easement, nor any of the rights granted herein, shall be assigned without prior written consent of State.

Organized Events. Grantee shall not allow organized events in the Easement Area. Organized events are defined as pre-planned gatherings of thirty (30) or more people for the purpose of using the Easement Area. Event organizers shall apply for a separate license from State at least ninety (90) days prior to the event date. State may approve, disapprove, or condition any such request at its sole discretion.

Reservations: State reserves all rights incident to fee ownership of the Easement Area and all profits thereon (including timber). States reserves the right of use of the Easement Area for any purpose including but not limited to the right to remove profits within the Easement Area;

the right at all times to cross and re-cross the Easement Area at any place or otherwise; and the right to use, maintain, patrol, reconstruct or repair the Easement Area. State reserves the right to grant to third parties any and all rights reserved.

Permittees. Grantee may permit the public, its respective employees, agents, contractors, and their agents, herein individually referred to as "Permittee" and collectively referred to as "Permittees", to exercise the rights granted herein on the Railroad or Trail. Acts or omissions of Permittees operating under this License shall be deemed an act of Grantee. Restrictions or requirements placed on Grantee herein shall apply equally to Permittees.

Temporary Closure. State reserves the right to temporarily close the Trail Area or portions thereof, prohibit use, or limit access when State determines, at its sole discretion, such closure is necessary to protect public safety, natural resources or other property, or when continued use interferes with State management activities. State is under no obligation to post or otherwise provide public notice of such closures or restricted access.

When Grantee is notified by State more than 15 days in advance of State's land management activities that will affect the Trail Area, (1) Grantee shall close applicable portions of the Trail Area prior to and during these activities; and, (2) Grantee is solely responsible for notifying the public of State's activities and any closures of the Trail prior to the activity. Both parties will operate in good faith to minimize temporary closures as outlined herein and work cooperatively to provide public notice upon less than 15 days notice.

State Land Management Activities. The Grantee shall not interfere with State's land management activities in or adjacent to the Easement Area. The State is committed to minimize impacts to the Trail during such land management activities. The Grantee is responsible for all repairs to the Trail resulting from State's land management activities.

Compliance with Laws. Grantee shall, at its own expense, conform to all applicable laws, regulations, permits, or requirements of any public authority affecting the Easement Area and the use thereof. Upon request, Grantee shall supply State with copies of permits or orders.

Export Restrictions. Any export restricted timber originating from state land under this Easement 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.

Public Use. Grantee agrees that public recreational use of State's property under the terms of this Easement shall not prevent State from enjoying the full economic benefit from land involved in such use. Grantee further agrees not to object to or oppose any lawful management activity by State on its lands or the State's temporary closure or restrictions on use of the Trail resulting from such management activities.

Compliance with Habitat Conservation Plan. The Easement Area is located within an area that is subject to the State's Habitat Conservation Plan adopted in connection with Incidental Take Permit No. PRT-812521 as supplemented by Permit No. 1168 (collectively "ITP"). As long as the Habitat Conservation Plan remains in effect, Grantee and all contractors, subcontractors, invitees, agents, employees, licensees or permittees acting under Grantee shall comply with the terms and conditions set forth in Exhibit D while operating on the Easement Area.

Protection of Natural Resources and Improvements. Grantee shall take all reasonable precautions to prevent or minimize damage to natural resources (vegetation, wildlife, soil, water, etc.) and improvements (trails, crops, buildings, roads, etc.) within the Easement Area. Grantee shall cut no State timber, remove no State-owned valuable material (as defined in RCW 79.02.010(12) plus coal, minerals, oil or gas), disturb or remove any cultural, historical or paleontological (fossil) resources, without prior written consent of State, and, compensation when applicable. Damage to timber, crops and improvements not identified and paid for under the terms and conditions of this Easement shall be appraised by State. Grantee shall be liable for said damages at the appraised rate.

Indemnity. Grantee shall indemnify, defend with counsel acceptable to State, and hold harmless State, its employees, officers, and agents from any and all liability, damages, expenses, causes of action, suits, claims, costs, fees (including attorney's fees), penalties, or judgments, of any nature whatsoever, arising out of the use, occupation, or control of the Easement Area by Grantee, its contractors, subcontractors, invitees, agents, employees, licensees, or permittees, including but not limited to the use, storage, generation, processing, transportation, handling, disposal, release, or threatened release of any hazardous substance or materials. To the extent that RCW 4.24.115 applies, Grantee shall not be required to indemnify State from State's sole or concurrent negligence. This indemnification shall survive the expiration or termination of the Easement. Grantee waives its immunity under Title 51 RCW and under RCW 36.75.300 to the extent required to indemnify State.

Insurance. Before using any of said rights granted herein and at its own expense, the Grantee shall obtain and keep in force during the term of this Easement and require its contractors, sub-contractors, or other permittees to obtain while operating on the Easement Area, the following liability insurance policies, insuring Grantee against liability arising out of its operations, including use of vehicles. Failure to buy and maintain the required insurance may

result in the termination of the Easement at State's option. The limits of insurance, which may be increased by State, as deemed necessary, shall not be less than as follows:

- (a) Commercial General Liability (CGL) insurance with a limit of not less than \$10,000,000 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.
- (b) Employer's liability ("Stop Gap") insurance, and if necessary, commercial umbrella liability insurance with limits not less than \$5,000,000 each accident for bodily injury by accident or \$5,000,000 each employee for bodily injury by disease.
- (c) 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. Grantee waives all rights against State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.
- (d) Grantee shall comply with all State of Washington workers' compensation statutes and regulations. Workers' compensation coverage shall be provided for all employees of Grantee and employees of any contractors, sub-contractors or other permittees. Except as prohibited by law, Grantee(s) 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.
- (e) Pollution Legal Liability insurance,
 - (1) Grantee shall procure and maintain for the duration of this Agreement pollution legal liability insurance, including investigation and defense costs, for bodily injury and property damage, including loss of use of damaged property or of property that has been physically damaged or destroyed. Such coverage must provide for both on-site and off-site cleanup costs and cover gradual and sudden pollution, and include in its scope of coverage natural resource damage claims. Grantee shall maintain coverage in an amount of at least:

(i) \$5,000,000 each occurrence for Grantee's operations at the site(s) identified above as well as for all treatment, storage, and disposal facilities, including transportation to such facilities, and at least

(ii) \$10,000,000 general aggregate or policy limit, if any.

(2) Such insurance may be provided on an occurrence or claims-made basis. If such coverage is obtained as an endorsement to the CGL and is provided on a claims-made basis, the following additional conditions must be met:

(i) The Insurance policy must cover Hazardous Substance removal.

(ii) The policy must contain no retroactive date, or the retroactive date must precede abatement services.

(iii) Coverage must be continuously maintained with the same insurance carrier through the official completion of any work on the Property.

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 the Department of Natural Resources. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and Chapter 284-15 WAC.

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, Grantee shall furnish State with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified above. Certificate(s) must reference State's easement number.

State shall be provided written notice before cancellation or non-renewal of any insurance referred to herein, as prescribed in statute (Chapter 48.18 RCW or Chapter 48.15 RCW). Grantee shall include all contractors, sub-contractors and other permittees as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each. Contractors, sub-contractors and other permittees must comply with all insurance requirements stated herein. Failure of contractors, sub-contractors and other permittees to comply with insurance requirements does not limit Grantee's liability or responsibility.

All insurance provided in compliance with this Easement shall be primary as to any other insurance or self-insurance programs afforded to or maintained by State. Grantee waives all rights against State for recovery of damages to the extent these damages are covered by

general liability or umbrella insurance maintained pursuant to this Easement.

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

If Grantee is self-insured, evidence of its status as a self-insured entity shall be provided to State. If requested by State, Grantee must describe its financial condition and the self-insured funding mechanism.

Waste. Grantee shall not cause or permit any filling activity to occur in or on the Easement Area, except as approved by State. Grantee shall not deposit, or allow deposit, from public use, any 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 Easement Area 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 Easement Area.

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. State 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 State, 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 State.

- Obtain and understand all necessary hazardous substance spill release notification and response mitigation requirements, in advance of conducting Grantee operations on State land.

Survey Markers. Grantee shall not destroy any land survey corner monuments and/or reference points (including but not limited to corner markers, witness objects, or line markers) without prior written approval from State, which shall not be unreasonably withheld.

Monuments or reference points that must necessarily be disturbed or destroyed during road construction or maintenance activities must be adequately referenced and replaced, at the Grantee's cost, under the direction of a State of Washington Professional Land Surveyor, 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 and reference points.

Operational Restrictions. Site-specific operational requirements are listed in Exhibits E, F, G and Exhibit H. Non-compliance with these requirements shall constitute a breach of this easement and may result in State suspending use of the Easement Area until the breach is remedied.

Construction/Reconstruction. Sixty (60) days prior to any construction or reconstruction by Grantee on the Easement Area, Grantee shall submit a written plan of construction to State outlining the construction or activity for State's approval, which shall not be unreasonably withheld. In the event of an emergency requiring immediate action to protect person or property, Grantee may take reasonable corrective action without prior notice to State. All construction or reconstruction shall comply with applicable state or local laws.

Maintenance, Repair, and Improvements. Grantee shall have sole responsibility for the maintenance, repair and improvement of the Railroad and Trail to county and applicable Federal railroad standards.

Weed Control/Pesticides. The Grantee shall control at its own cost, all noxious weeds on any portion of the Easement Area herein granted. Such weed control shall comply with county noxious weed control board rules and regulations established under the Uniform Noxious Weed Control Statute (Chapter 17.10 RCW). The Grantee shall be responsible for, or shall immediately reimburse State any weed control cost incurred as a result of the Grantee's failure to control weeds on the Easement Area.

All ground methods of chemical weed control shall be reported to State at the region office 30 days prior to weed control activities.

The aerial application of pesticides is not permitted.

Erosion and Damage to Soil. During operations, which include the maintenance and construction of trails and trail-related structures within the Trail Area, Grantee shall take such precautions as necessary to minimize potential erosion and soil damage.

Improvements. Grantee shall construct no structural improvements without the prior written consent of State, which shall be at State's sole discretion. Unless the parties agree in writing to share the cost of improvements, improvements shall be at the sole expense of the improver. Any improvements to the Easement Area shall become property of State unless the applicable consent specifically provides otherwise. Improvements installed by Grantee shall, at State's option, be removed by Grantee at the termination or expiration of the Easement.

Maintenance of Improvements. Grantee, at Grantee's sole cost and expense, shall at all times keep or cause all improvements (regardless of ownership) to be kept in as good condition and repair as originally constructed or as hereafter put, except for reasonable current wear and tear. In all cases, the Easement Area and improvements shall be maintained at a standard acceptable within the industry, to the State, or to any governing agency having legal right to inspect and hold in compliance the Easement Area and improvements thereon.

Notice. Any notices or submittals required or permitted under this Easement may be delivered personally, sent by facsimile machine or mailed first class, return receipt requested, to the following addresses or to such other place as the parties hereafter direct. Notice will be deemed given upon delivery, confirmation of facsimile, or three days after being mailed, whichever is applicable.

To State:
DEPARTMENT OF NATURAL RESOURCES
Pacific Cascade Region
601 Bond Road
PO Box 280
Castle Rock, WA 98611-0280

To Grantee:
CLARK COUNTY
1300 Franklin Street
PO Box 9810
Vancouver, WA 98666-9810

Recording. Grantee shall record this Easement Clark County, at Grantee's sole expense. Grantee shall provide State with a copy of the recorded Easement. Grantee shall have thirty

(30) days from the date of delivery of the final executed agreement to comply with the requirements of this section. If Grantee fails to record this Easement, State may record it and Grantee shall pay the costs of recording, including interest, upon State's demand.

Danger Tree Removal. Individual trees located within the danger tree zones outside of the Easement Area and within the Easement Area, which shall be dangerous to the operation and maintenance of the Railroad or Trail, may be removed subject to the following:

1. Grantee shall mark the trees.
2. Grantee shall timber cruise the trees.
3. Grantee shall notify DNR in writing of their request to remove the danger trees and include the cruise and a map showing the location of the trees.
4. State will determine the fair market value of the trees it authorizes to be removed.
5. State will approve the removal of danger trees contingent upon payment in full by Grantee prior to removal.

In the event of an emergency requiring immediate action to protect person or property, Grantee shall:

1. Fall and/or remove the necessary danger tree(s) without advance authorization from State.
2. Cruise the felled and/or removed tree(s).
3. Grantee shall notify State in writing of the tree(s) felled and/or removed and include a map of the location and a cruise within fourteen (14) days after felling.
4. DNR will determine the fair market value of the tree(s) felled and/or removed and bill the Grantee.
5. Grantee shall pay for the tree(s) within thirty (30) days of receipt of the billing notice.

Abandonment. In the event any portion of the Railroad or Trail is to be abandoned, Grantee shall seek approval from the Surface and Transportation Board. Following Federal approval, the Grantee shall take the necessary legal action to vacate such portions and shall immediately restore the land within all vacated portions to natural conditions as may be directed by State. In restoring the land, all railroad tracks, ties, ballast or other materials used in either the Railroad or Trail, shall be removed from the vacated portion; the debris shall not be deposited on the adjacent State land. In addition, the land surface shall be scarified to blend with the adjoining landscape.

Noncompliance. State shall notify the Grantee of any instance of noncompliance by the Grantee, its contractors, subcontractors, invitees, agents, employees, licensees, or permittees

with any of the terms and conditions hereof. Such notice will specifically identify the manner of noncompliance herewith.

In the event the Grantee does not undertake, or cause to be undertaken, remedial action within fifteen (15) days following receipt of said notice, State, acting by and through its Region Manager at Castle Rock, Washington, may suspend the Grantee's use of the Easement Area until such time as effective remedial action is taken.

Construction. The terms of this Easement shall be given their ordinary meaning unless defined herein and shall not be presumed construed against the drafter.

Effective Date. The Effective Date of this Easement shall be the date on which the last party executes this Easement. The Effective Date will be inserted on the first page of the Easement when such date is determined.

Exhibits. All exhibits referenced in this Easement are incorporated as part of the Easement.

Headings. The headings in this Easement 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 Easement nor the meaning of any of its provisions.

Modification. Any modification of the Easement must be in writing and signed by the parties. State shall not be bound by any oral representations or statements.

Non-waiver. The waiver by State of any breach or the failure of State to require strict compliance with any term herein shall not be deemed a waiver of any subsequent breach.

Severability. If any provision of this Easement shall be held invalid, it shall not affect the validity of any other provision herein.

IN WITNESS WHEREOF, the parties hereto have executed this instrument, in duplicate, as of the day and year first above written.

CLARK COUNTY BOARD OF COUNTY COUNCILORS

Dated: 9-26-17, 2017. By: [Signature]
Chair: ~~MARC BOLDT~~
Address: 1300 Franklin St, Vancouver WA 98666
Phone: 360-397-2232

Dated: _____, 2017. By: _____
Councilor: JEANNE E. STEWART
Address: 1300 Franklin St, Vancouver WA 98666
Phone: 360-397-2232

Dated: _____, 2017. By: _____
Councilor: JULIE OLSON
Address: 1300 Franklin St, Vancouver WA 98666
Phone: 360-397-2232

Dated: _____, 2017. By: _____
Councilor: JOHN BLOM
Address: 1300 Franklin St, Vancouver WA 98666
Phone: 360-397-2232

Dated: _____, 2017. By: _____
Councilor: EILEEN QUIRING
Address: 1300 Franklin St, Vancouver WA 98666
Phone: 360-397-2232

Approved as to form
8/17, 2017
[Signature]
Amanda Migchelbrink
Clark County
Deputy Prosecuting Attorney



STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____, 2017. By: _____



ANGUS W. BRODIE
Deputy Supervisor for Uplands
P.O. Box 7000
1111 Washington Street SE
Olympia WA 98504-7000

Approved as to form
July 19, 2017
by Jason Foust
Assistant Attorney General
for the State of Washington

REPRESENTATIVE ACKNOWLEDGMENT

State of Washington

County of Clark

I certify that I know or have satisfactory evidence that _____ are the individuals who appeared before me, and said individuals acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the County Councilor of Clark County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Seal or stamp)

(Signature)

(Print Name)

Notary Public in and for the State of Washington,
residing at _____.

My appointment expires _____.

REPRESENTATIVE ACKNOWLEDGMENT

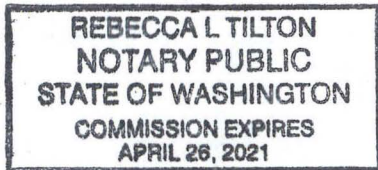
State of Washington

County of Clark

I certify that I know or have satisfactory evidence that Marc Boldt ^{is} are the individual~~s~~ who appeared before me, and said individual~~s~~ acknowledged that ~~they~~ signed this instrument, on oath stated that ~~they~~ ^{was} were authorized to execute the instrument and acknowledged it as the County Councilor of Clark County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 9/26/17

(Seal or stamp)



Rebecca L. Tilton
(Signature)

REBECCA L. TILTON
(Print Name)

Notary Public in and for the State of Washington,
residing at Vancouver

My appointment expires 4/26/2021

REPRESENTATIVE ACKNOWLEDGMENT

State of Washington

County of Clark

I certify that I know or have satisfactory evidence that _____ are the individuals who appeared before me, and said individuals acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the County Councilor of Clark County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Seal or stamp)

(Signature)

(Print Name)

Notary Public in and for the State of Washington,
residing at _____.

My appointment expires _____.

REPRESENTATIVE ACKNOWLEDGMENT

State of Washington

County of Clark

I certify that I know or have satisfactory evidence that _____ are the individuals who appeared before me, and said individuals acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the County Councilor of Clark County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Seal or stamp)

(Signature)

(Print Name)

Notary Public in and for the State of Washington,
residing at _____.

My appointment expires _____.

REPRESENTATIVE ACKNOWLEDGMENT

State of Washington

County of Clark

I certify that I know or have satisfactory evidence that _____ are the individuals who appeared before me, and said individuals acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the County Councilor of Clark County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Seal or stamp)

(Signature)

(Print Name)

Notary Public in and for the State of Washington,
residing at _____.

My appointment expires _____.

STATE ACKNOWLEDGEMENT

State of Washington

County of Thurston

I certify that I know or have satisfactory evidence that ANGUS W. BRODIE is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Deputy Supervisor for Uplands of the Department of Natural Resources of the State of Washington to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Seal or stamp)

(Signature)

(Print Name)

Notary Public in and for the State of
Washington, residing at _____

My appointment expires _____

EXHIBIT A
ORIGINAL CERTIFICATE OF RIGHT-OF-WAY

STATE OF WASHINGTON

To Portland, Vancouver and Yakima Railway Company.

CERTIFICATE OF RIGHT-OF-WAY.

This is to Certify, That Portland, Vancouver and Yakima Railway Company.

a railroad company, doing business in and operating a line of railroad in the State of Washington, has complied with the provisions of Chapter 173, relating to "granting rights-of-way to railroad companies over State lands," being "An act granting rights-of-way to railroad companies over the lands of the State of Washington, and providing for the appraisal and disposition of the lands included in and used for such rights-of-way, and declaring an emergency," contained in the Session Laws for the year 1901, at pages 353 to 356, inclusive.

By virtue of compliance with the provisions of said act, and the payment to the State of Washington of the sum of One hundred Forty and 20/100 (\$140.20) Dollars, the receipt of which is hereby certified to, the Portland, Vancouver and Yakima Railway Company

a railway company doing business in the State of Washington, has hereby been granted the right to occupy for purposes of right-of-way lands situate in the County of Clark and said State of Washington, more particularly described as follows:

A strip of land one hundred feet in width extending through section 35, township 4 north, range 2 east of the Willamette Meridian, being fifty (50) feet on either side of the center line of the Portland, Vancouver and Yakima Railway Company's line over and across said section, said center line being described as follows, to wit:

Beginning at a point on the west boundary line of said section 35, said point being 478.3 feet south of the quarter section corner on said section line; thence North 87° 40' east (variation 24° east) 2604 feet; thence by a 2° curve to the left having a central angle of 42° 21' a distance of 1411.8 feet; thence north 45° 18' east on a tangent to said curve 2264.4 feet to intersection with the east boundary line of said section 35 at a point 1049 feet south of the northeast corner thereof.

The above described tract of land containing 14.02 acres, more or less.

Given under my hand and official seal, this 2nd day of JULY, A. D. 1908

(SEAL)

S. A. CALLVRE

Commissioner of Public Lands.

EXHIBIT B
ORIGINAL EASEMENT LEGAL DESCRIPTION

Granted under Application No. 937

A strip of land one hundred feet in width extending through section 36, township 4 north, range 2 east of the Willamette Meridian, being fifty (50) feet on either side of the center line of the Portland, Vancouver and Yakima Railway Company's line over and across said section, said center line being described as follows, to wit:

Beginning at a point on the west boundary line of said section 36, said point being 478.3 feet south of the quarter section corner on said section line; thence north $87^{\circ}40'$ east (variation 24° east) 2404 feet; thence by a 3° curve to the left having a central angle of $42^{\circ}21'$ a distance of 1411.6 feet; thence north $45^{\circ}19'$ east on a tangent to said curve 2264.4 feet to intersection with the east boundary line of said section 36 at a point 1040 feet south of the northeast corner thereof.

The above described tract of land containing 14.02 acres, more or less.

EXHIBIT C-1 ORIGINAL RAILROAD PLAT MAP

14-F

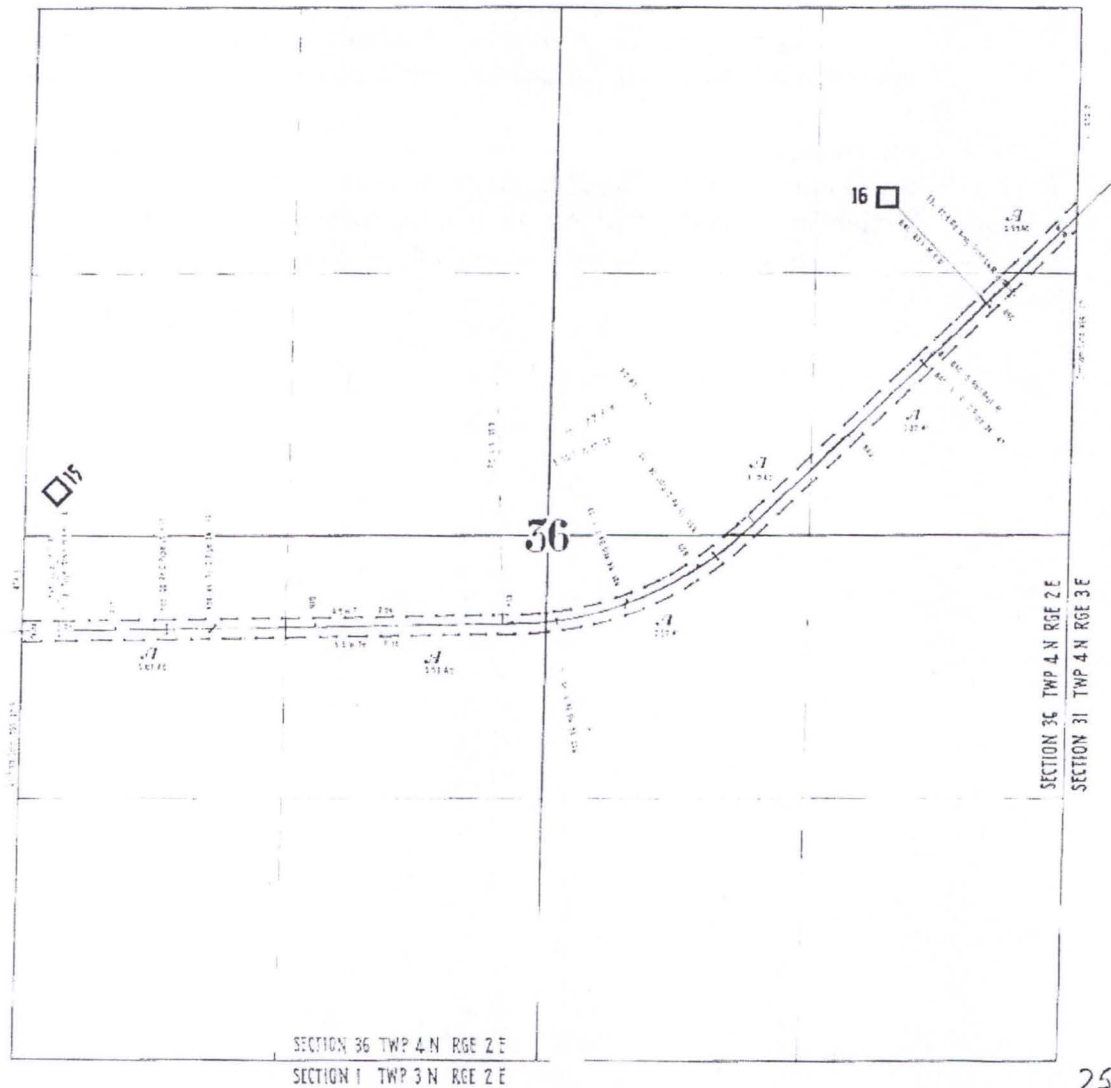
25

BIN
14-F

Scale 400 ft = 1 Inch

Pg.
21

N. P. Ry
 (Vancouver & Yacolt Branch Deed File) Yacolt Branch *Right of Way Plat*
 State of Washington County of Clark
 Section 36 Township 4 North Range 2 East of Willamette Meridian



25

EXHIBIT C-2 ORIGINAL RAILROAD PLAT MAP



**EXHIBIT C-3
ORIGINAL RAILROAD PLAT MAP**

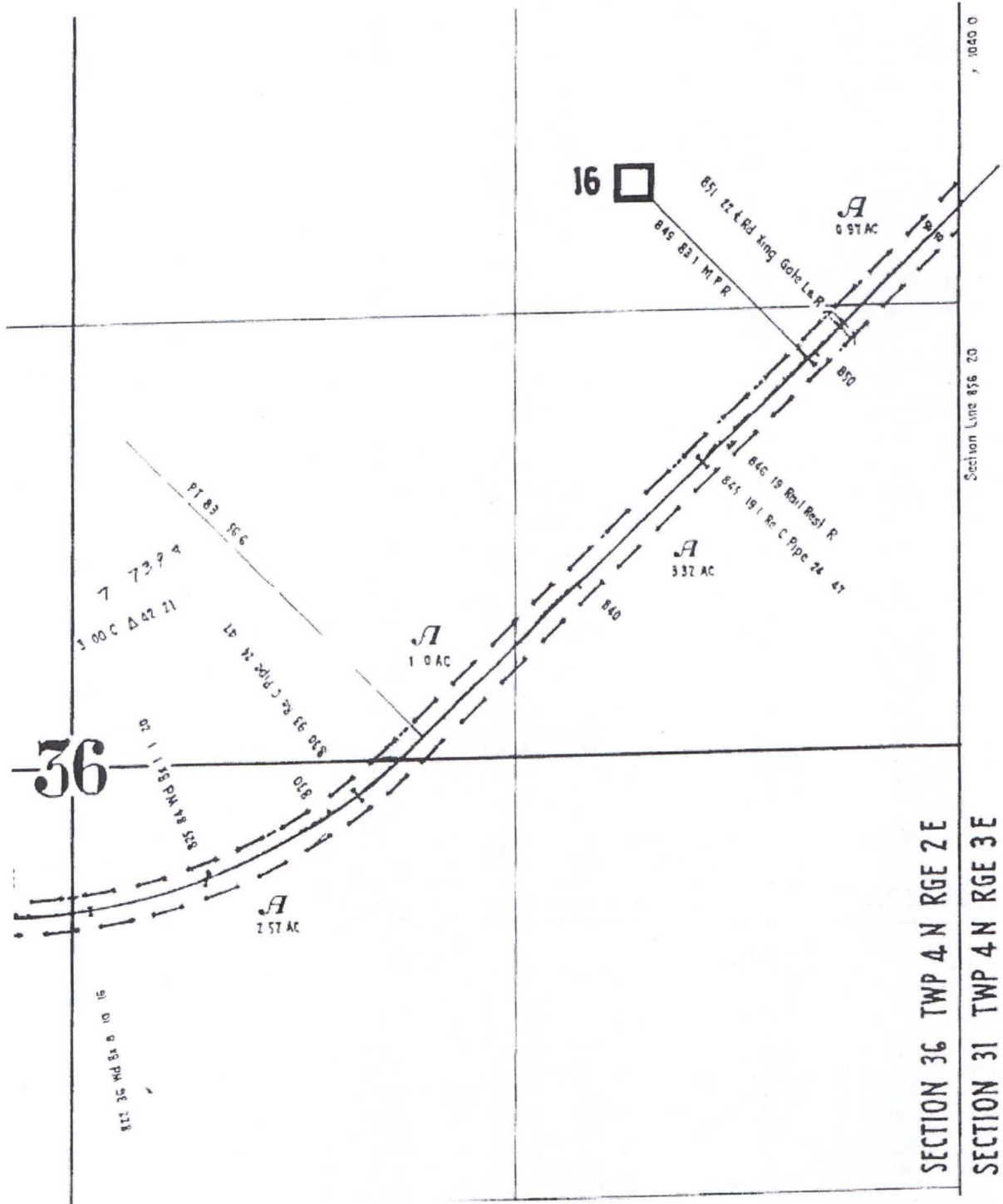


EXHIBIT D
HCP REQUIREMENTS

- 1) Grantee shall immediately notify State of the following:
 - a) That Grantee has discovered locations of any species listed by the U.S. Fish and Wildlife Service as threatened or endangered species (listed species) under the Endangered Species Act as such list may be updated from time to time; and
 - b) That Grantee has located any live, dead, injured, or sick specimens of any listed species.
- 2) Notification required in subsection 1) must in all circumstances occur as soon as practicable but in any event within 24 hours.
- 3) Grantee may be required to take certain actions to help State safeguard the well-being of any live, injured or sick specimen of any listed species until the proper disposition of such specimen can be determined by State.
- 4) Any application for a Forest Practices Permit submitted by Grantee for activities on the State Easement Area must identify that the State Easement Area is covered by the HCP.

EXHIBIT E
OPERATIONAL REQUIREMENTS

- Take all reasonable precautions to protect the Easement Area from fire, and make every reasonable effort to report and suppress such fires as may affect the Easement Area.
- Not allow debris or refuse to accumulate on the Easement Area and patrol and clean-up debris and/or refuse monthly or as otherwise directed by State.
- Prohibit unauthorized use of the Easement Area, and take enforcement action against violators as warranted
- Not charge for access to or use of the Trail.
- Take reasonable measures to ensure the Trail is used for non-motorized purposes only.
- Discourage use of the Trail at night.

EXHIBIT F
TRAIL AND SIGN RESTRICTIONS

Grantee shall provide State with a trail construction design and sign plan prior to commencing construction activity.

- Trail location(s) to be approved by State.
- Grantee shall install and maintain access control barriers at Trail access locations, to minimize unauthorized use of the Easement Area. Barrier materials may include bollards or some alternative approved by State.
- Grantee shall post and maintain signs to notify Trail users at points of ingress and egress to Trail.
- Grantee shall post and maintain signs to notify users of all known latent hazardous conditions within the Trail.
- All signs on the Trail are subject to approval by State prior to installation.
- No signs shall be installed on trees.
- Grantee is responsible for addressing public concerns relating to use of the Trail. Signs and promotional materials located on the Trail are subject to prior State review and approval.
- Grantee shall not remove valuable materials without advance State approval.
- Trail shall not be used when continued use will result in excessive damage due to weather or other conditions.
- Gates on the Trail must be kept closed and locked at all times.

**EXHIBIT G
TRAIL AND SIGN PLAN
TRAIL CONSTRUCTION SPECIFICATIONS**

Grantee is responsible for meeting or exceeding the trail construction specifications listed below.

DESIGN FOR:	SPECIFICATIONS:	
Tread Width	One lane	Not less than 12 feet in width
Surface	Porous Asphalt	Various as terrain permits
Grade	Not to exceed 5% Slope	Maximum Slope 5% Maximum Cross Slope 2%
Clearing	Maximum Width Maximum Height	3 feet beyond trail shoulder 12 feet above trail

- Cross-drains must be able to freely pass water flow.
- Stream/wetland crossings shall be minimized.
- Stream crossing structures shall be constructed of durable materials and designed by an engineer approved by State's representative.
- Grantee shall employ best management practices to prevent erosion and control sediment movement. Such practices may include, but not necessarily be limited to:
 - Out-sloping
 - Tread hardening
 - Water diversion structures
- Cribbing materials shall be durable and shall be approved in writing by State's representative prior to installation.
- Trail construction with less than 40 feet from the main or primary auxiliary track centerline will require fencing, installed and maintained by Grantee, and approved by State, which shall prohibit the public from access to track and track facilities.
- Trail shall not be placed between tracks, unless track centers are 50 feet or greater.
- Trail amenities shall not be placed within the Trail Easement area. Trail amenities include benches, covered bench areas, bike racks, restrooms, litter receptacles, dog waste pickup stations, or information kiosks. Any desired Trail amenities, including those listed above will only be with prior written consent by State.

EXHIBIT H
TRAIL AND SIGN PLAN
TRAIL MAINTENANCE SPECIFICATIONS

- Grantee is responsible for all trail maintenance, including clean-up following State forest management operations, hazard tree abatement, and any necessary repairs.
- Trail must be routinely patrolled by Grantee to ensure erosion and sediment control measures are functioning, and to inspect for any necessary repairs.
- Grantee shall effect storm related repairs as quickly as practicable, subject to the terms of this Easement.
- Hazard tree abatement shall be performed by Grantee following notification of and approval by State, subject to the terms of this Easement.
- All bridge structures in Easement Area must be inspected by a licensed engineer every two years. Such inspections, and any related repairs/replacement, shall be at Grantee's expense, subject to the terms of this Easement.