

When recorded return to:  
Department of Natural Resources  
Southeast Region  
Attn: Matt Fromherz  
713 Bowers Road  
Ellensburg, WA 98926



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

## UTILITY EASEMENT

Grantor: STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES

Grantee: CITY OF WHITE SALMON

Legal Description: SE1/4 Section 16, NE1/4 Section 21, W1/2 Section 22, E1/2NW1/4, W1/2NE1/4, SE1/4 Section 27, NE1/4 Section 34, NW1/4 Section 35, Township 04 North, Range 10 East, W.M., Klickitat County, WA.

Assessor's Property Tax Parcel or Account Number: 04101600000000, 04102100000000, 04102200000000, 041027000000100, 041034000000100

Cross Reference: 50-024949, 50-024950, 50-024951, 50-086670 (AFN 1148522), 50-094766 (AFN 1123119), 02-093664 (AFN 1123779)

DNR Easement No. 50-101897

## RECITALS

- A. On January 1, 1963 State granted an easement to Grantee in Klickitat County, WA, filed in the Office of the Commissioner of Public Lands under the file number 50-024949, authorizing the construction, operation and maintenance of a water pipeline over portions of Sections 16 and 21, Township 04 North, Range 10 East, W.M.; and,
- B. On January 1, 1964 State granted an easement to Grantee in Klickitat County, WA, filed in the Office of the Commissioner of Public Lands under the file number 50-024950, authorizing the construction, operation and maintenance of a water pipeline over portions of Section 22, Township 04 North, Range 10 East, W.M.; and,

- C. On January 1, 1964 State granted an easement to Grantee in Klickitat County, WA, filed in the Office of the Commissioner of Public Lands under the file number 50-024951, authorizing the construction, operation and maintenance of a water pipeline over portions of Section 27, Township 04 North, Range 10 East, W.M.; and,
- D. On January 4, 2013 State granted an easement to Grantee in Klickitat County, WA, filed in the Office of the Commissioner of Public Lands under the file number 50-086670 and recorded in Klickitat County on June 21, 2021 under Auditor File No. 1148522, authorizing the construction, operation and maintenance of a water pipeline over portions of Sections 34 and 35, Township 04 North, Range 10 East, W.M.; and,
- E. On April 4, 2017 State deeded to the Grantee land in portions of Section 16 and 21, Township 04 North, Range 10 East, W.M, through quitclaim deed recorded in Klickitat County under Auditor File Number 1123118 and filed in the Office of the Commissioner of Public Lands under the file number 02-093664; and,
- F. On March 28, 2017 State granted an easement to Grantee, recorded in Klickitat County, WA under Auditor's File Number 1123119 and filed in the Office of the Commissioner of Public Lands under file number 50-094766, providing ingress and egress along Buck Creek Road to lands owned by Grantee; and,
- G. Both parties desire to fully terminate the easements described under recitals B and C and provide for a process for removal of portions of Grantee's waterline that exists within that easement area; and,
- H. Both parties desire to partially terminate the easements described under recitals A and D and provide for a process for removal of portions of Grantee's waterline that exists within that easement area; and,
- I. Both parties desire to provide for a process for removal of Grantee's waterline that exists within the area that is subject to the easement that was terminated in the easement described under recital D; and,
- J. Grantee desires to construct a new waterline within Buck Creek Road to replace the waterline to be abandoned or partially abandoned as described in recitals G and H, connecting between Grantee's water system head works on Grantee's land described in recital E and the pipeline in Buck Creek Road described in recital D; and,

K. Both parties desire to specify the right to construct, maintain and operate a single fiber-optic communication line alongside the waterline within Buck Creek Road.

## **AGREEMENT**

The parties agree as follows:

This Easement is between CITY OF WHITE SALMON, a Washington municipal corporation, herein called "Grantee" and the STATE OF WASHINGTON, acting by and through the Department of Natural Resources, herein called "State" dated as of \_\_\_\_\_  
\_\_\_\_\_ "Effective Date."

**Conveyance.** State, hereby grants and conveys to Grantee a non-exclusive in-gross easement (hereafter Easement), over parcels of land in Klickitat County legally described as set forth in Exhibit A (hereafter Burdened Parcel), located approximately as shown on Exhibit B (hereafter Easement Area).

**Construction, Decommissioning and Access.** State grants to Grantee a nonexclusive easement, for construction purposes only (hereafter Construction Easement), over the Easement Area described in Exhibit B, which includes the Easement Area and such additional easement area as is reasonably necessary for construction on the Easement Area. Grantee shall complete construction of the waterline according to the plan titled City of White Salmon, Transmission Main Replacement Project Phase 1 2022, attached as Exhibit F and shall notify State in writing promptly upon completion. This Construction Easement shall terminate upon completion of construction by Grantee.

In addition; State grants to Grantee a nonexclusive easement for use, operation, access, decommissioning and abandonment purposes only (hereafter Abandonment Easement), over the Burdened Parcel, as described in Exhibit A, which includes the areas associated with those easements described under the partial release of easement and full release of easement clauses below and such additional easement area as reasonably necessary for the abandonment of the water transmission pipeline being abandoned. Grantee agrees to execute their fiscal and work responsibilities for the decommissioning of the transmission line and share of road abandonment as described in the Memorandum of Agreement (MOA, Agreement number 92-102857) between State and Grantee as consideration for this easement. The decommissioning and abandonment work shall be completed within TWO (2) years of completion of construction of the waterline. This Abandonment Easement shall terminate upon completion of decommissioning and abandonment by Grantee and State.

**Consideration.** The consideration paid by the Grantee to State is as follows:

The performance by Grantee of the terms and conditions specified herein and in receipt of other good and valuable consideration received from Grantee.

**Partial Release of Easement.** For valuable consideration, receipt of which is hereby acknowledged, the Grantee hereby relinquishes and quitclaims all rights and interest in and to:

- A. That easement dated January 1, 1963 between City of White Salmon, as Grantee, and State of Washington, acting by and through the Department of Natural Resources, acting as Grantor, and filed in the Office of the Commissioner of Public Lands under File No. 50-024949 as said easement affects Sections 16 and 21, Township 4 North, Range 10 East, except for that portion of the easement that crosses Buck Creek in Section 21, Township 4 North, Range 10 East; and,
- B. The portion of that easement dated January 4, 2013 between City of White Salmon, as Grantee, and State of Washington, acting by and through the Department of Natural Resources, acting as Grantor, filed in the Office of the Commissioner of Public Lands under File No. 50-086670 and recorded in Klickitat County on June 21, 2021 under Auditor File No. 1148522 that is located outside of the 20-foot easement right-of-way as described in that easement between City of White Salmon, as Grantee, and State of Washington, acting by and through the Department of Natural Resources, acting as Grantor, filed in the Office of the Commissioner of Public Lands under File No. 50-094766 and recorded in Klickitat County on April 19, 2017 under Auditor File No. 1123119, as said easement affects Section 34, Township 4 North, Range 10 East, W.M.

**Full Release of Easement.** For valuable consideration, receipt of which is hereby acknowledged, the Grantee hereby relinquishes and quitclaims all rights and interest in and to:

- A. That easement dated January 1, 1964 between City of White Salmon, as Grantee, and State of Washington, acting by and through the Department of Natural Resources, acting as Grantor, and filed in the Office of the Commissioner of Public Lands under File No. 50-024950 as said easement affects Section 22, Township 4 North, Range 10 East only. As part of that release; and,
- B. That easement dated January 1, 1964 between City of White Salmon, as Grantee, and State of Washington, acting by and through the Department of Natural Resources, acting as Grantor, and filed in the Office of the Commissioner of Public Lands under File No. 50-024951, as said easement affects Section 27, Township 4 North, Range 10 East only. As part of that release.

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

**Purpose.** This Easement is granted for the purpose of and is limited to constructing,

installing, operating, maintaining, repairing, replacing, and using an underground eighteen (18) inch diameter HDPE sixteen (16) inch diameter Ductile iron water transmission pipeline (hereafter Line), which includes a twelve (12) inch diameter Ductile iron pipe, enclosed in casing, for crossing Buck Creek. This easement is also granted for the purpose of and is limited to constructing, installing, operating, maintaining, replacing and using an underground conduit (hereafter Communication Line) for communication related to the management of the Line. Authorized use of the Communication Line is limited to the management and maintenance of the Line and communication with the intake facility on Grantee-owned land. Authorized use shall include the right to travel, maintain, repair, construct or reconstruct the Easement Area subject to the restrictions set forth hereafter and the requirements listed in Exhibit E. The purpose of this Easement shall not be changed or modified without the consent of State which shall be at its sole discretion. Any unauthorized use of this Easement Area shall be considered a material breach of this Easement.

In the event that the Communication Line benefits property other than property owned by Grantee, State shall be entitled to charge Grantee consideration in the manner prescribed by RCW 79.36.530, as presently codified or hereafter amended.

**As-built Survey.** Grantee shall file a Record of Survey that conforms to State survey standards as set on Exhibit C. Record of survey to be filed with the Klickitat County Auditor within one hundred twenty (120) days of the completion of construction of the Line and Communication Line. The Record of Survey shall clearly indicate the “as built” location of all improvements and facilities constructed or installed by Grantee within the Easement Area. Any changes to the location of the Easement Area as shown on Exhibit B requires prior approval of State, which may be contingent upon Grantee acquiring written approval from entities with prior rights in title. Upon recording, the specific location of the Easement Area shall be deemed to be as shown on the Record of Survey, which shall supersede and replace Exhibit B.

**Assignment.** This Easement, or any of the rights granted herein, shall not be apportioned, assigned, or transferred in whole or in part without the prior written consent of State, which shall be at State's sole discretion. In approving a request to apportion, assign, or transfer an interest in this Easement, State shall be entitled to charge for administrative costs for approving the transfer and require additional compensation for any additional use or user. These rights will be in addition to and not a limitation upon State's discretionary authority under this subsection.

**Reservations.** State reserves all ownership of the Easement Area and profits thereon (including timber) and the right of use for any purpose including but not limited to the right to remove profits within the Easement Area reserved by State; the right at all times to cross and recross the Easement Area at any place on grade or otherwise; and the right to use, maintain, patrol, reconstruct or repair the Easement Area so long as it does not unreasonably interfere with the rights granted herein. State may grant to third parties any and all rights reserved. Once Grantee clears timber conveyed under this Easement, if any, timber subsequently grown

in such cleared areas shall belong to State.

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

**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.

**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. TE812521-1 as supplemented by Permit No. 1168 (collectively "ITP"). As long as the Habitat Conservation Plan remains in effect, Grantee and all Permittees acting under Grantee shall comply with the terms and conditions set forth in Exhibit D while operating on the Easement Area.

**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 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 \$1,000,000 per each occurrence. If such CGL insurance contains aggregate limits, the general aggregate limits shall be at least twice the "each occurrence" limit, and the products-completed operations aggregate limit shall be at least twice the "each occurrence" limit.
- (b) Employer's liability ("Stop Gap") insurance, and if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.
- (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 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.

Physical Property Damage Insurance, covering all real and personal property located on or constituting a part of the Easement Area in an amount equal to at least 100 hundred percent (100%) of the replacement value of all improvements on the Easement Area (regardless of ownership). Grantee may obtain such insurance on an "Agreed Value" basis. Such insurance may have commercially reasonable deductibles. Any co-insurance provisions of the policy will be endorsed to be eliminated or waived.

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 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 permittees as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each. Contractors, sub-contractors and permittees must comply with all insurance requirements stated herein. Failure of contractors, sub-contractors and 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, which State is permitting within two locations outside the Easement Area (hereby Waste Area). Waste Area is hereby described in that document titled "City of White Salmon, Washington Transmission Main Replacement Phase I 2022 attached to this Easement as Exhibit F and hereafter described as "CWS Phase I 2022. Waste Area



requirements are described in Exhibit E and Grantee shall only deposit waste in the approved Waste Area locations during the construction of the Line. Grantee is responsible to ensure waste meets clean fill definitions, which is defined as clay, earth, rock, sand, and other unaltered nontoxic geological materials which have not been used in any type of industrial process. Grantee shall not deposit refuse, garbage, or other waste matter or use, store, generate, process, transport, handle, release, or dispose of any hazardous substance, or other pollutants in or on the 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 70A.305) 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 workdays 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.

**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 Line in the Easement Area, may be removed subject to the following:

1. Grantee shall mark the trees.
2. Grantee shall timber cruise the trees.
3. Grantee shall notify State 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 the 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. State 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.

**Ground-disturbing Activities.** Ground-disturbing Activities are defined as any activity that compacts or disturbs the ground within a project area. Ground disturbance can be caused by the use of hand tools (shovels, pick axe, posthole digger, etc.), heavy equipment (excavators, backhoes, bulldozers, boring, trenching and earthmoving equipment, etc.), and heavy trucks (large four wheel drive trucks, dump trucks and tractor trailers, etc.). Road improvement, bulldozing, excavating, scraping, trenching and plowing are typical examples of ground disturbance activities.

**Cultural and Archaeological Resources Inventory Survey.** During the Pre-development Period, Grantee may be required to retain a professional archaeologist meeting the United States Secretary of Interior's qualification standards for Archaeology and Historic Preservation found at [https://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](https://www.nps.gov/history/local-law/arch_stnds_9.htm), or as otherwise required by the Washington State Department of Archaeology and Historic Preservation, to perform a Cultural and Archaeological Resources Inventory Survey (hereinafter, "CAR Survey") that locates archaeological and historical resources on the Easement Area. The CAR Survey must follow the United States Secretary of the Interior's standards for identification and evaluation for archaeology and historic preservation. State's prior approval is required before finalizing or submitting Survey reports, site forms, and other cultural resource documents to regulatory agencies.

**Cultural Resources Monitoring.** When cultural resources monitoring is required by State or regulatory agency, Grantee shall submit for State's approval a Cultural Resources Monitoring Plan (Monitoring Plan). State's prior approval is required before finalizing or submitting Monitoring Plan reports, site forms, and other cultural resource documents to regulatory agencies.

**Inadvertent Discovery of Human Skeletal Remains (RCWs 68.50.645, 27.44.055, and 68.60.055).** Disturbance of human skeletal remains is subject to felony criminal prosecution and fines under state law. If human skeletal remains are encountered during any activities on Easement Area, Grantee shall cease all activity that may cause further disturbance to human skeletal remains. Grantee shall secure and protect from further disturbance the area of the human skeletal remains and a 100-foot buffer until State provides notice to proceed. Grantee shall immediately notify the county medical examiner or coroner, local law enforcement and State of the human skeletal remains. Grantee shall not touch, move or further disturb human skeletal remains.

**Operational Restrictions.** Site-specific operational requirements are listed in Exhibit E. Non-compliance with these requirements shall constitute a breach of this easement and may result in State suspending operations 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. Grantee shall notify State within thirty (30) days of any corrective action taken and all construction or reconstruction shall comply with applicable state or local laws.

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

When a road is being used solely by Grantee, Grantee shall be solely responsible for maintaining that portion of the road so used to the standards existing at the time solo use is commenced until joint use begins. During periods Grantee, State and/or other parties with an easement or license from State use the road, or any portion thereof the cost of maintenance and resurfacing shall be allocated among such users on the basis of their respective use including that of their Permittees.

During periods of joint maintenance, the users shall meet at times to be set at the discretion of State and establish necessary maintenance provisions. Such provisions shall include, but not be limited to the following:

- a) The appointment of a maintainer, which may be one of the parties or any third party, to perform or contract the maintenance; and
- b) The extent of resurfacing necessary to keep the road safe and to reduce environmental impacts; and
- c) A method of payment by which each party using the road or a portion thereof, shall pay its pro rata share of the cost of maintenance and resurfacing.

**Repairs.** Each party shall repair, or cause to be repaired at its sole cost, that damage to the road and improvements occasioned by it which is in excess of that which it would cause through normal and prudent usage. Should damage be caused by an unauthorized user, the cost of repair shall be treated as ordinary maintenance and handled as set forth above. Damage includes indirect damage to State roads caused by use of the Easement Area.

**Easement Closure Risk.** Grantee assumes all risk and costs associated with easement access due to road closures and blockages caused by any road closure event, including but not limited to environmental regulation, or natural disasters including, fire, flood, snow, slides, tree wind throw, or road wash out. State is not obligated to repair or unblock an existing road leading to the easement area or any part of the easement area described herein if State determines the road is no longer safe or viable for trust management purposes.

**Improvements.** Grantee shall construct no improvements in the Easement Area 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.

**Weed Control/Pesticides.** Unless otherwise provided, 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). Grantee shall be responsible for, or shall immediately reimburse State any weed control cost incurred as a result of Grantee's failure to control weeds on the Easement Area.

All ground methods of chemical weed control shall be approved in writing by State 30 days prior to beginning such activities.

The aerial application of pesticides and herbicides is not permitted.

**Notice.** Any notices or submittals required or permitted under this Easement may be delivered personally, sent by facsimile machine or mailed first class, certified return receipt requested, to the following addresses or to such other place as the parties hereafter direct. Notice will be deemed given upon delivery, confirmation of facsimile, or three (3) days after being mailed, whichever is applicable.

To State:  
Department of Natural Resources  
Southeast Region  
713 Bowers Road  
Ellensburg, WA 98926-9301  
Phone: (509) 925-8510

To: Grantee:  
City of White Salmon  
PO Box 2139  
White Salmon, WA 98672  
Phone: (509) 493-1133

**Recording.** Grantee shall record this Easement in the county in which the easement property is located, at Grantee's sole expense, provided, however, Exhibit F to this Easement shall not be recorded. 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.

**Forfeiture.** In the event that any portion of the Easement Area is not used by Grantee, or its assigns, for the purpose for which it was granted, within a period of five (5) years from the Effective Date of this Easement, the rights of Grantee within said portion(s) of the Easement Area shall revert to State, its successors or assigns; and said portion(s) of the Easement Area shall be freed from the Easement as fully and completely as if this Easement had not been granted; provided, however, an extension of time may be granted upon written request prior to the expiration date of said 5-year period and upon the terms and conditions as specified by State. Such terms and conditions shall include, but not be limited to the right to modify the consideration due State plus additional charges for administrative costs and appreciation of land and valuable material.

**Abandonment.** If Grantee ceases to use the Easement Area for the purposes set forth herein for a period of five (5) successive years, this Easement shall be deemed abandoned and

terminate without further action by State. Timber remaining on the Easement Area shall be deemed abandoned.

**Termination.** State shall have the right to terminate this Easement if Grantee fails to cure a material breach of this Easement within sixty (60) days of notice of default (Cure Period). If a breach is not reasonably capable of being cured within the Cure Period for reasons other than lack of or failure to expend funds, Grantee shall commence to cure the default within the Cure Period and diligently pursue such action necessary to complete the Cure. In addition to the right of termination, State shall have any other remedy available in law or equity. Any Grantee obligations not fully performed upon termination shall continue until fully performed. Designation of certain breaches as material throughout this Easement shall not preclude other breaches from being declared material.

**Removal of Improvements and Equipment.** All improvements, pipelines, buildings, fixtures and other property erected or permanently affixed over, upon, under or through State lands by Grantee during the term of said Easement, which remain over, upon, under or through said land sixty (60) days from the termination or abandonment of said Easement, shall become the property of State and be considered a part of the land upon which they are located; provided, however, that any time within sixty (60) days after the termination or abandonment of said Easement, Grantee shall be entitled to remove such of said improvements as can be removed without damage to said lands; or, State may require Grantee to remove all improvements, pipelines, buildings, fixtures and other structures fixed over, upon, under or through State lands by Grantee, at Grantee's cost. All tools, equipment and other property not permanently affixed upon the land by Grantee during the term of said Easement shall remain the property of Grantee, but shall be removed within sixty (60) days after the expiration of this Easement.

**Relocation.** State reserves to itself, its successors and assigns, the right to require Grantee to realign or relocate the Line at no cost to State if the location provided for by this Easement interferes with the use and development of the Easement Area. The State shall provide Grantee with no fewer than one hundred eighty (180) days written notice of its relocation request. Any new location for the buried Line resulting from such realignment or relocation shall be covered by the terms and conditions of this Easement and this Easement shall be construed as being modified to reflect any such realignment or relocation; PROVIDED, that State is fully compensated for any additional right of way required for such realignment or relocation in the manner prescribed by RCW 79.36.530, as presently codified or hereafter amended. Upon failure, neglect or refusal by Grantee to do and perform any realignment or relocation as hereby required, State may undertake and perform such realignment or relocation, the cost to be repaid by Grantee, together with attorney's fees, costs and interest should it be necessary to bring an action to recover such realignment or relocation costs.

**Advance by State.** If State advances or pays any cost or expense for or on behalf of Grantee, Grantee shall reimburse State the amount paid and shall pay interest on such amount at the rate of one percent (1%) per month until paid.

**Construction.** The terms of this Easement shall be given their ordinary meaning unless defined herein and shall not be presumptively 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.

CITY OF WHITE SALMON

Dated: \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
MARLA KEETHLER  
Mayor  
PO Box 2139  
White Salmon, WA 98672  
Phone: (509) 493-1133

Approved as to form  
Date: \_\_\_\_\_  
By \_\_\_\_\_  
Attorney for the City of White Salmon

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES

Dated: \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
ANGUS W. BRODIE  
Deputy Supervisor for State Uplands  
1111 Washington Street SE  
PO Box 47000  
Olympia, WA 98504-7000  
Phone: (360) 902-1000



Approved as to form  
July 7, 2021  
By Kirsten M, Nelsen  
Assistant Attorney General  
for the State of Washington



**REPRESENTATIVE ACKNOWLEDGEMENT**

State of Washington

County of Klickitat

I certify that I know or have satisfactory evidence that Marla Keethler is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Mayor of the City of White Salmon 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 State Uplands for 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 \_\_\_\_\_

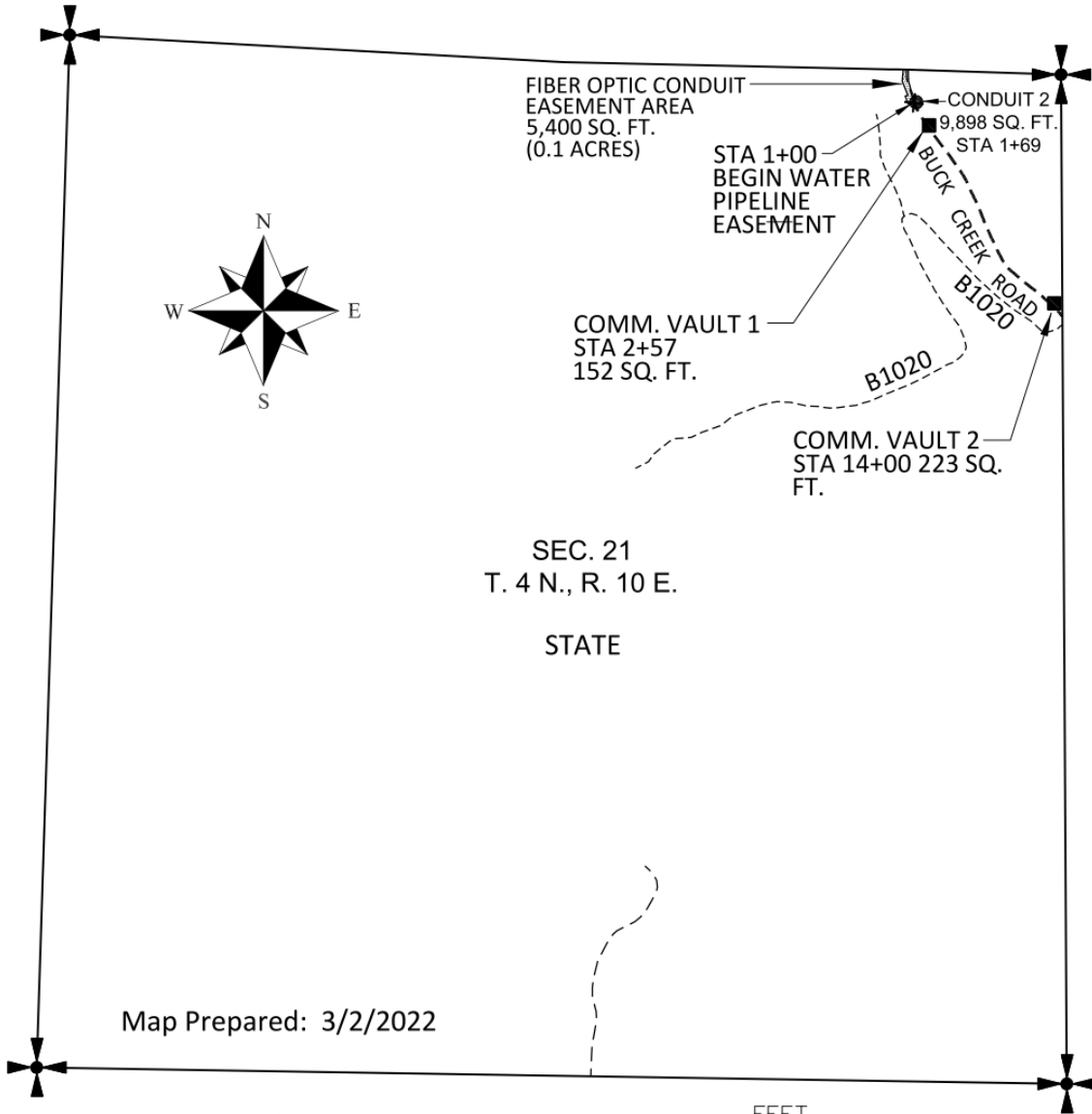
My appointment expires \_\_\_\_\_

**EXHIBIT A**  
**BURDENED PARCELS**

Legal Description: SE1/4 Section 16, NE1/4 Section 21, W1/2 Section 22, E1/2NW1/4,  
W1/2NE1/4, SE1/4 Section 27, NE1/4 Section 34, Township 04 North, Range 10 East, W.M.,  
Klickitat County, WA.




Assessor's Property Tax Parcel or Account Number: 04102100000000, 04102200000000,  
04102700000100, 04103400000100

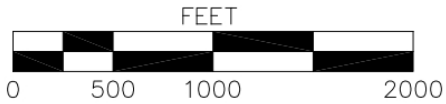
**EXHIBIT B**  
**EASEMENT AREA (Page 1 of 4)**



Map Prepared: 3/2/2022

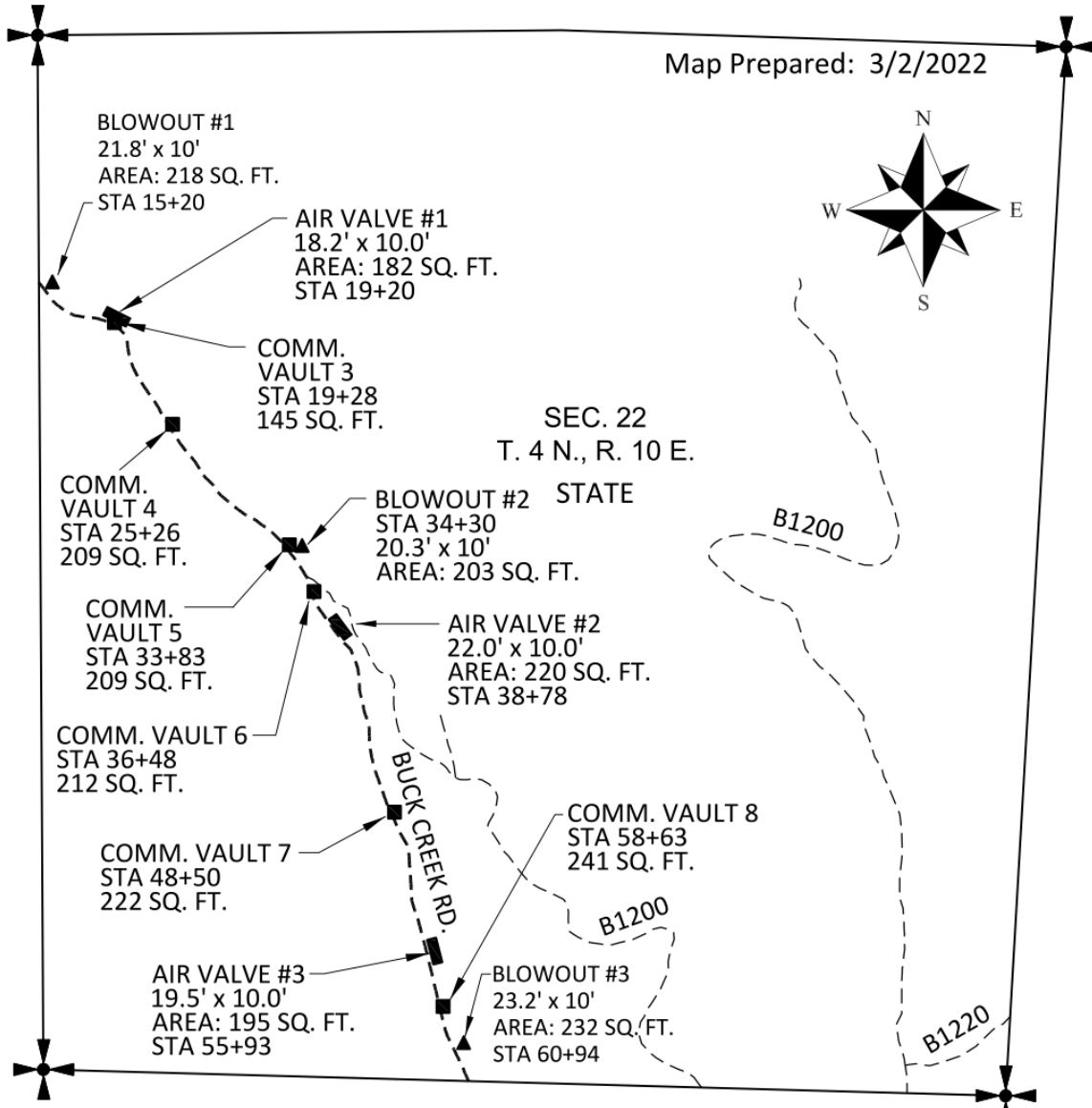
**LEGEND**

-  SECTION CORNER
-  EXISTING ROADS
-  WATER PIPELINE EASEMENT WITHIN EXISTING 20' ACCESS EASEMENT ALONG CENTERLINE OF BUCK CREEK ROAD LENGTH: 1,350 FEET


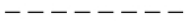



**EXHIBIT B**  
**EASEMENT AREA (Page 2 of 4)**

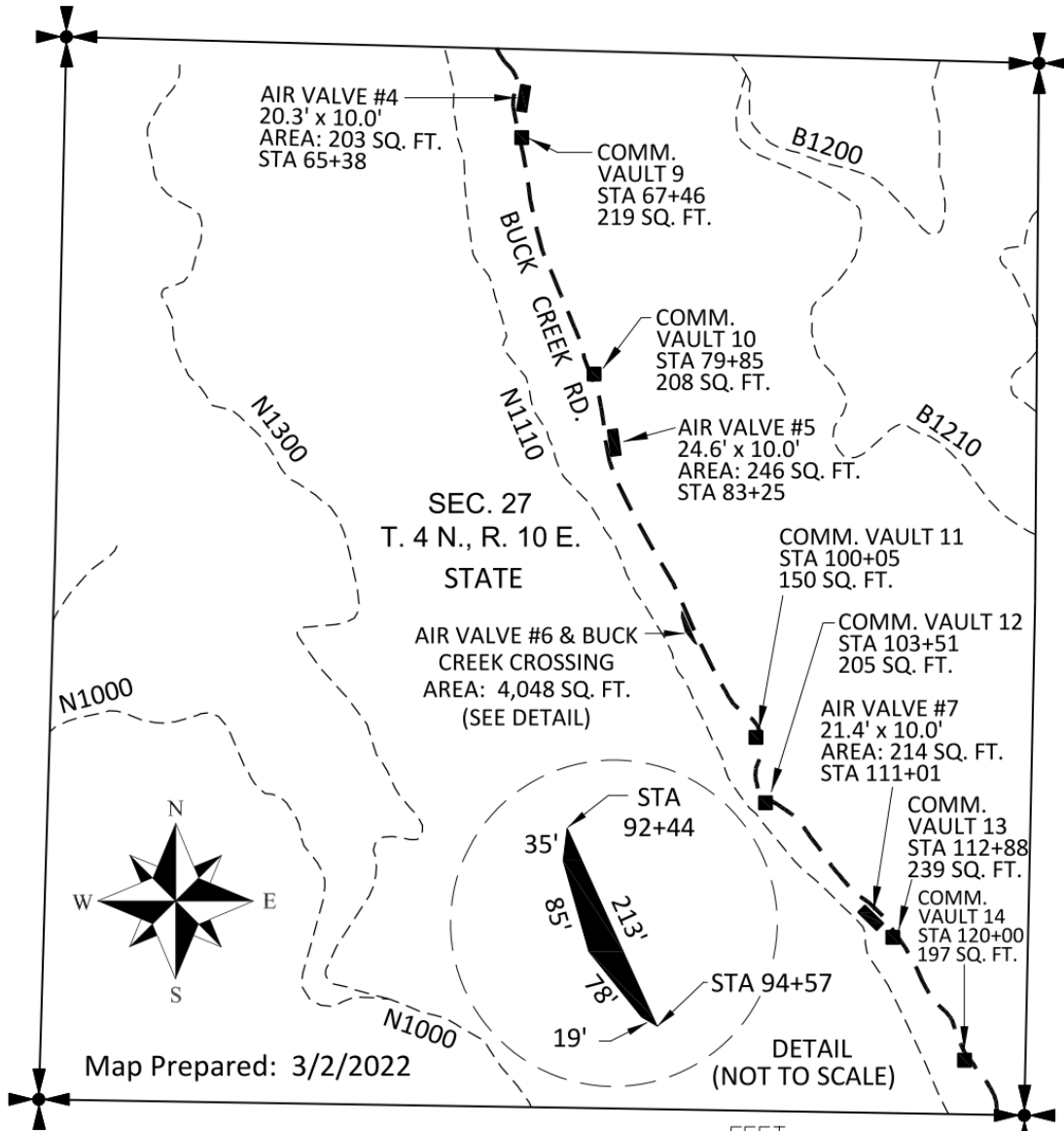
Map Prepared: 3/2/2022



**LEGEND**

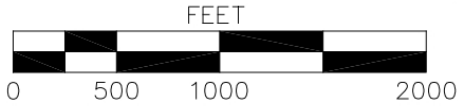
-  SECTION CORNER
-  EXISTING ROADS
-  WATER PIPELINE EASEMENT WITHIN EXISTING 20' ACCESS EASEMENT ALONG CENTERLINE OF BUCK CREEK ROAD LENGTH: 4,800 FEET




**EXHIBIT B  
EASEMENT AREA (Page 3 of 4)**



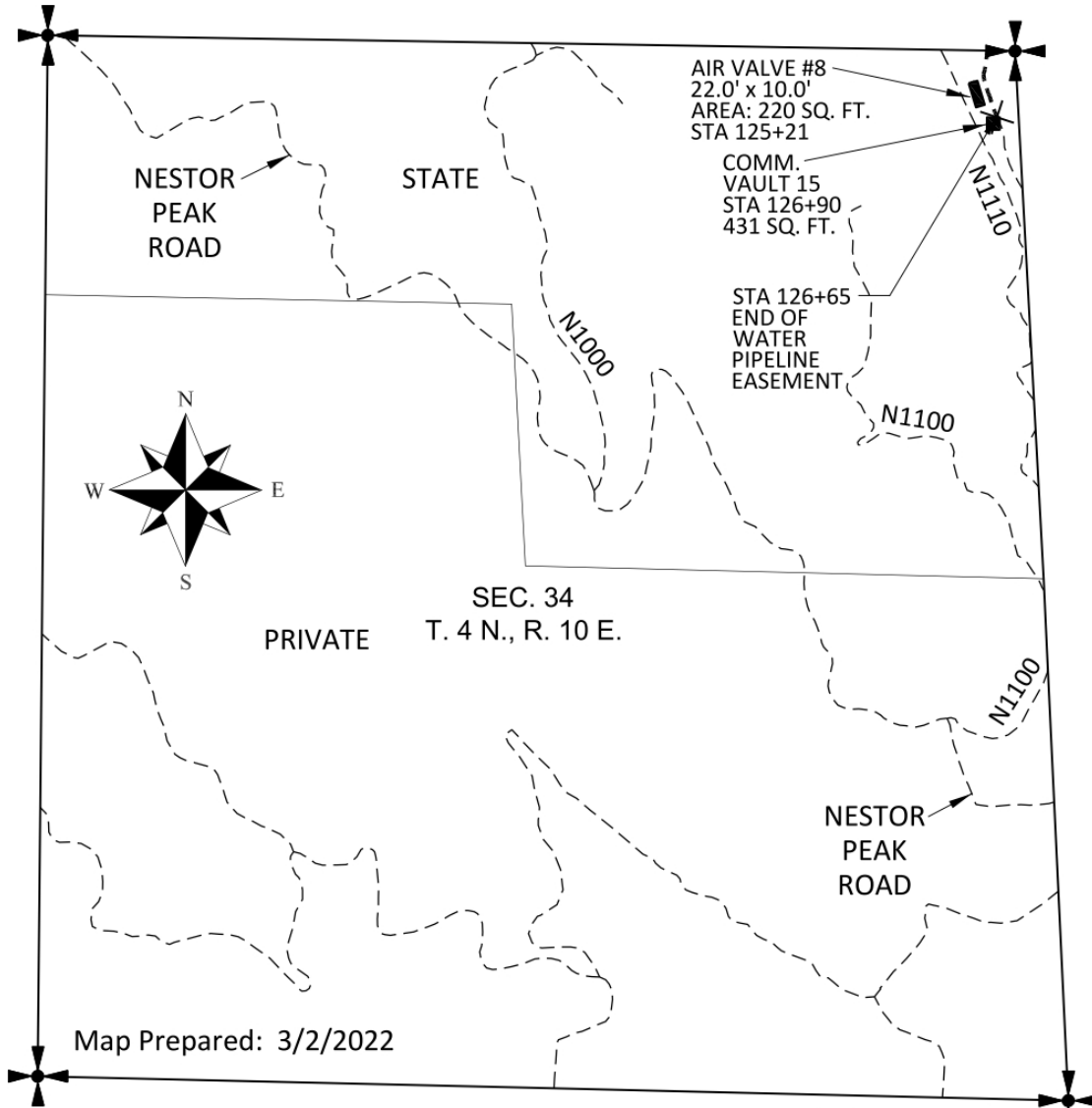
Map Prepared: 3/2/2022

**LEGEND**


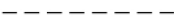



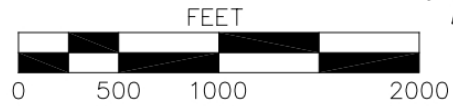
-  SECTION CORNER
-  EXISTING ROADS
-  WATER PIPELINE EASEMENT WITHIN EXISTING 20' ACCESS  
EASEMENT ALONG CENTERLINE OF BUCK CREEK ROAD  
LENGTH: 6,070 FEET

**EXHIBIT B**  
**EASEMENT AREA (Page 4 of 4)**



**LEGEND**

-  SECTION CORNER
-  EXISTING ROADS
-  WATER PIPELINE EASEMENT WITHIN EXISTING 20' ACCESS EASEMENT ALONG CENTERLINE OF BUCK CREEK ROAD LENGTH: 350 FEET



## EXHIBIT C SURVEY REQUIREMENTS

### As-Built Survey must:

- **Be produced by a licensed surveyor.**
- **Meet the requirements of RCW 58 and WAC 332-130 as presently codified or hereafter amended.**
- Include the name of the applicant, the purpose of the easement and the DNR easement number.
- Clearly show easement boundaries with distances and directions of all boundary lines.
- Show the easement area to an accuracy of ( $\pm$ ) 0.5% of the total area or ( $\pm$ ) 10 square feet, whichever is greater.
- Indicate the acreage encompassed by the easement within each quarter-quarter section or government lot.
- Show distances and directions from two or more controlling corners of a recorded subdivision, recorded survey or government survey (GLO) corners.
- Be related by meridian and coordinate to the Washington Coordinate System NAD'83(1991) by closed ties to NGS Control monuments, or the extension thereof. The designation of the control stations used shall appear on the plat.
- Include a narrative legal description describing the State's parcel on the Record of Survey.
- Show a detailed plan of improvements to be constructed or already existing on the easement area. All improvements must be shown in sufficient detail to determine what they are used for and to ensure they are entirely within the easement area.
- Show the location of any proposed utility.
- **(linear easement)** Show the lineal footage along the centerline.
- **(linear easement)** Show the complete alignment information and width including any necessary curve data.
- **(Easements crossing a section line or state ownership boundary)**, must provide ties to the centerline of an easement along the section or subdivision line from the nearest appropriate Public Land Survey System (PLSS) section corner, quarter section or subdivision corner, where the easement enters and leaves the section or state ownership.
- **(Easements falling entirely within one section and not crossing a section line or state ownership boundary)** Provide ties from both end points of the linear easement to PLSS corners or other subdivision corners shall be provided.



**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 FOR LINE CONSTRUCTION AND**  
**MAINTENANCE**

All bid documents, including construction plans, specifications and permits described in CWS Phase I 2022 are required work.

The underground Line shall be buried to depths in accordance with CWS Phase 1 2022.

State reserves the right to inspect the "open trench" during construction to ensure compliance with the installation specifications.

Grantee shall reference the location of the underground Line with metal rebar and cap or composite posts and signs placed at the approximate beginning and termination points of the Easement Area. The signs shall be offset on the cut bank, outside of the maintained roadway and shall identify the installation of the buried water Line and Communication Line and shall designate ownership of the installation.

Grantee shall submit to State an as-built report detailing the current burial depth of each Line shutoff valve box lid with the submission of the record drawings for CWS Phase I 2022 to the State.

Grantee shall ensure that the shutoff valve box lids continually meet or exceed the minimum burial depth of 12" below the road surface.

Grantee shall so place, protect, and/or bury the Line and Communication Line as to allow the unobstructed movement of any equipment or materials across the surface of the Easement Area and shall install the Line and Communication Line at such depth as to not interfere with the normal and usual use of the land.

Should Grantee not place, install, protect and maintain the Line and Communication Line according to the specifications designated by State, Grantee shall be responsible for and hold State harmless from any and all damage to the Line and Communication Line.

Grantee agrees that no construction will commence until Utility Easement and Memorandum of Agreement have been signed by all parties.

Grantee shall notify State in writing when planned construction is to begin and describe when construction will be completed.

Grantee is responsible for obtaining all necessary permits that relate to the Grantee's activities. Grantee is responsible for all permits, amendments, renewals, and associated expenses.

During the course of construction or maintenance, Grantee shall minimize soil erosion and damage to soil. Grantee shall not operate equipment when the ground conditions are such that excessive soil damage will occur.

During the course of plowing snow, Grantee shall avoid blading aggregate off the road surface, by leaving a 2" layer of snow on the road surface when plowing snow.

All soil surfaces on the Easement Area, which are devoid of natural cover as a result of the operations hereunder, shall be covered with erosion control measures such as fiber, weed-free straw or mats. State does not permit seeding with grass as an erosion control measure.

Upon completion of construction of facilities authorized herein, Grantee shall restore all lands and infrastructure of the State impacted by Grantee's activities thereon to prior or better condition in a workmanlike manner.

No equipment shall be permitted within 30 feet of any natural water (as defined by WAC 222-16-030) or wetland (as defined by WAC 222-16-035) unless such work is specifically allowed within a permit issued by DNR.

No equipment shall be permitted on slopes exceeding 25% without written authorization.

No timber shall be cut, felled or yarded across or into any stream, lake, wetland or pond.

When trimming trees within or adjacent to the Easement Area, the Grantee shall:

- a) cut all limbs to within 1 inch of the branch collar when more than 50% of the live branch is removed; pruning outside the trees branch bark ridge or branch collar;
- b) avoid scaring or damaging the cambium layer of all live trees;
- c) remove no more than 33% of the trees live crown;
- d) avoid removing the trees terminal leader. Should the Grantee desire to remove the terminal leader, the tree will be felled and removed according to the terms of the Danger Tree Removal Clause.
- e) remove from the Easement Area all cut and harvested materials including tree limbs, tree boles, tree tops, and to the extent possible, leaves and needles.

When trimming trees within or adjacent to the Easement Area, the Grantee may:

- a) chip all cut and harvested materials with written authorization from the State;
- b) spread chipped materials outside the Easement Area and outside of the road prism, with the final disbursement being approved by the State;
- c) not leave chipped materials in piles;
- d) not spread or pile chipped materials in any natural water (as defined by WAC 222-16-030) or wetland (as defined by WAC 222-16-035).

The Grantee shall abide by all industrial precaution level regulations listed in WAC 332-24-301 unless a written waiver has been obtained.

Online resources for Grantee to check industrial fire precaution levels:

[dnr.wa.gov/ifpl](http://dnr.wa.gov/ifpl)

<https://gacc.nifc.gov/nwcc/districts/CWICC/>

Local Wildfire Contacts:

Central Washington Interagency Communication Center (CWICC):1-800-826-3383

DNR Southeast Region Dispatch: 509-884-3473

Waste Area Requirements:

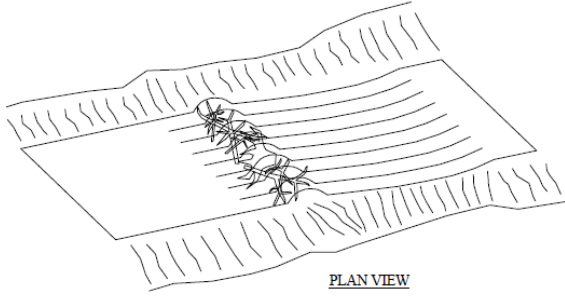
- a) Waste material shall be placed at designated locations approved by State.
- b) Waste material shall not be placed or deposited in the following areas:
  - i) Within 50 feet of a cross drain culvert.
  - ii) Within 100 feet of a live stream or wetland.
  - iii) On side slopes steeper than 40%.
  - iv) In locations that interfere with the maintenance of roads.
  - v) In locations that impede drainage.
  - vi) Against standing timber.
- c) Slopes of placed waste material shall not exceed 1.5:1 (Horizontal to vertical ratio).
- d) Height of placed waste material shall not exceed 10 feet vertically above natural ground level, unless approved by State.
- e) Waste material shall be mechanically compacted with in vertical lifts not to exceed 1 foot. Mechanical compaction to be accomplished with excavation equipment.
- f) Waste material shall be covered with a 1 inch minimum layer of certified weed free straw.
- g) Blocking of access to waste location to prevent public access and use. Blocking shall be accomplished with installation of earthen barricade as depicted in Attachment 1 to this Exhibit E.
- h) Waste material shall not exceed 1,000 cubic yards at site 1 and 500 cubic yards at site 2.
  - i) At Waste Area Site 1 as depicted in Attachment 2 to this Exhibit E:
    - i) Install drivable water bar at toe of deposited material to drain away from draw to the south as depicted in Attachment 3 to this Exhibit E.
  - j) At Waste Area Site 2 as depicted in Attachment 2 to this Exhibit E:
    - i) Install drivable water bar at toe of deposited material to drain away from draw to the north as depicted in Attachment 3 to this Exhibit E.
    - ii) Reinstall existing earthen barricade at site 2 according to Attachments 1 to this Exhibit E.

**Attachment 1 to Exhibit E  
Earthen Barricade Detail**

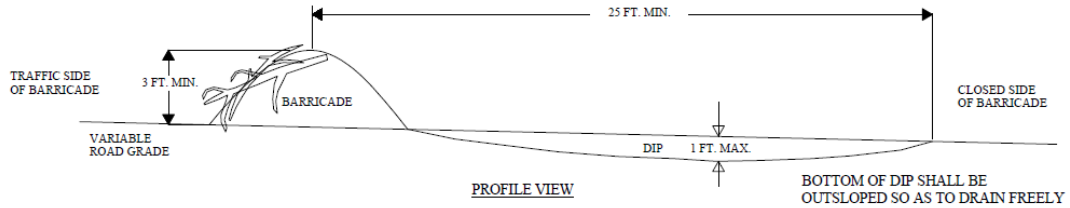
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**EARTHEN BARRICADE DETAIL**

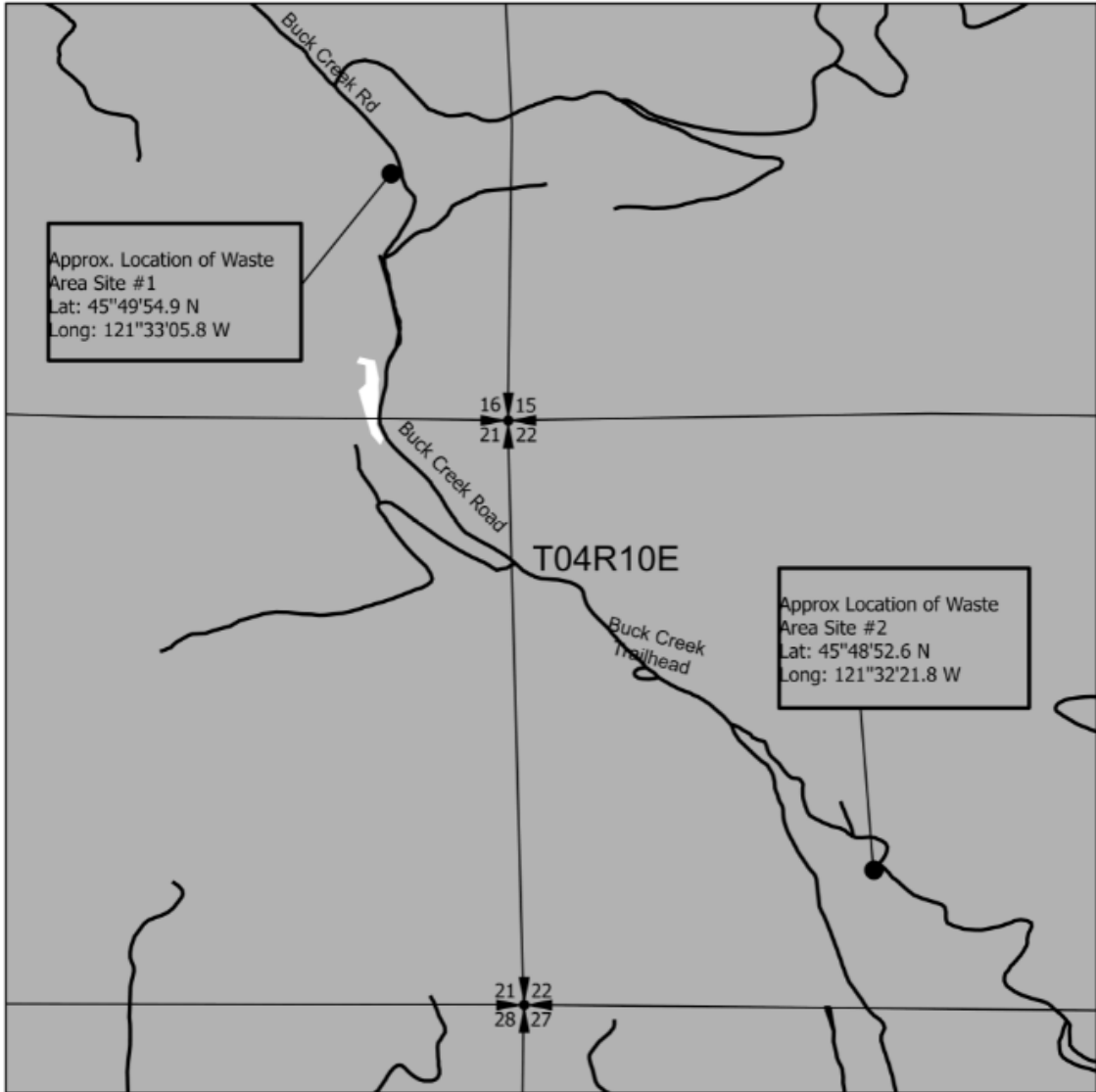
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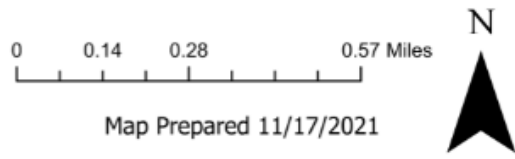
SLASH AND ROOT WADS SHALL BE INCORPORATED INTO THE TRAFFIC SIDE OF THE BARRICADE.



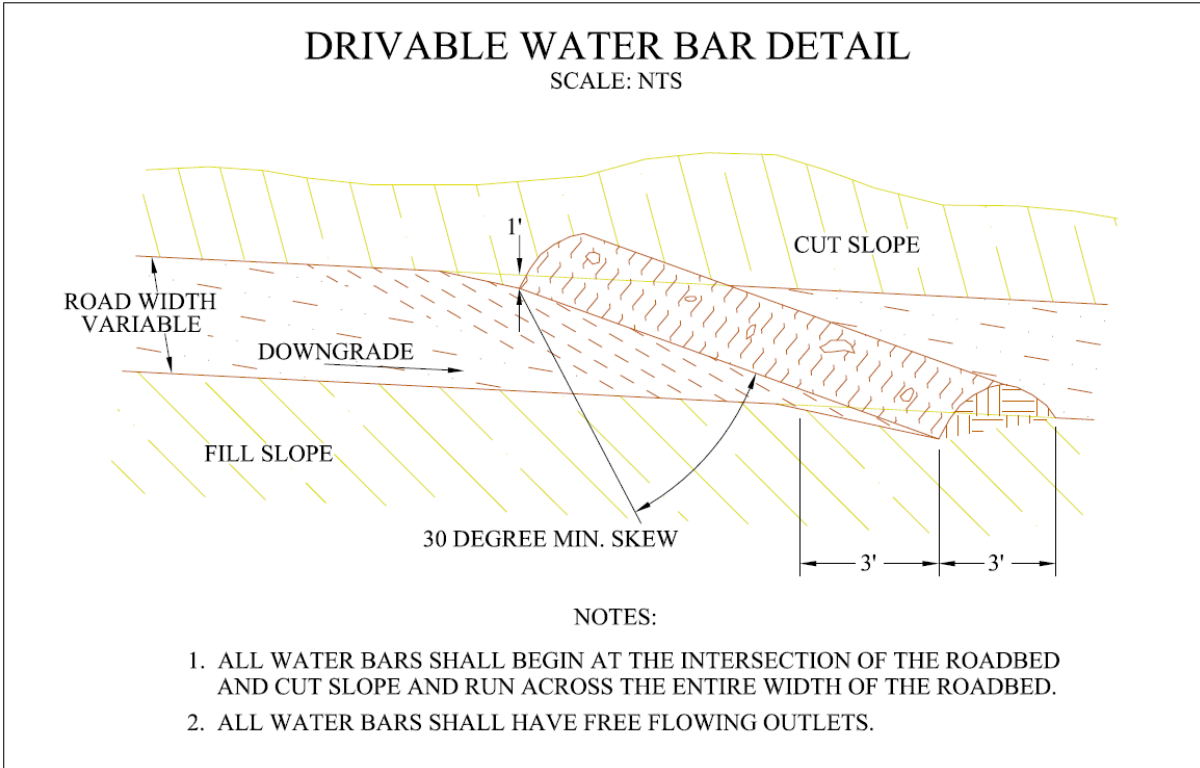
**Attachment 2 to Exhibit E  
Waste Area Locations**



- Waste Area Locations
- State Land
- Roads
- ⊕ Section Corners



**Attachment 3 to Exhibit E  
Drivable Waterbar Detail**



**EXHIBIT F**  
**City of White Salmon, Transmission Main Replacement Project Phase 1 2022**

**(Attached to the executed version of this Easement.)**  
**(Intentionally excluded from the recorded version of this Easement.)**