

Doc # 2004155385
Page 1 of 14
Date: 11/29/2004 01:51P
Filed by: PUD NO 1 OF SKAMANIA COUNTY
Filed & Recorded in Official Records
of SKAMANIA COUNTY
J. MICHAEL GARVISON
AUDITOR
Fee: \$32.00

REAL ESTATE EXCISE TAX

24462

NOV 29 2004

When recorded return to:
Southeast Region
713 Bowers Road
Ellensburg WA 98926

PAID exempt
Vickie Chelland Dept.
SKAMANIA COUNTY TREASURER

**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
DOUG SUTHERLAND, Commissioner of Public Lands**

UTILITY EASEMENT

Grantor(s): Dept of Natural Resources
Grantee(s): Skamania County PUD #1

Legal Description: N½N½NW¼NE¼ S16, T3N, R10E

Assessor's Property Tax Parcel or Account Number: 03-10-16-0-0-0200-00
DNR Easement No. 50-075737

Gary H. Martin, Skamania County Assessor

Date 11-29-04 Parcel # 03-10-16-0-0-0200-00

This Easement is between SKAMANIA COUNTY PUBLIC UTILITY DISTRICT NO.1, herein called "Grantee" and the STATE OF WASHINGTON, acting by and through the Department of Natural Resources, herein called "State" dated as of 8/10/2004 "Effective Date."

Conveyance.

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

Construction and Access. State grants to Grantee a nonexclusive easement, for construction purposes only, 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. This construction Easement shall terminate upon completion of construction by Grantee.

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

Two Thousand Three Hundred Twenty and 00/100 Dollars (\$2,320.00).

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 a buried waterline ("Line"). Authorized use shall include the right to travel, maintain, repair, construct or reconstruct the Easement Area subject to the restrictions set forth hereafter. The purpose of this Easement shall not be changed or modified without the consent of the State, which shall be at its sole discretion. Any unauthorized use of this Easement Area shall be considered a material breach of this Easement.

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 the State, which shall be at the 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 the State's discretionary authority under this subsection.

Reservations. State reserves all ownership of the Easement Area and profits thereon (including timber unless conveyed under this Easement) 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 re-cross 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 the 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.

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 Permittees acting under

Grantee shall comply with the terms and conditions set forth in Exhibit C 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 the 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, subcontractors, 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 the 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.

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 the 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. 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.*), or the Washington Model Toxic Control Act (MTCA RCW 70.105D.010.).

Grantee shall immediately notify State if Grantee becomes aware of any release or threatened release of hazardous substance on the Easement Area or adjoining Easement Area. If a release of hazardous substance occurs in, on, under, or above the Easement Area arising out of any action of Grantee, its contractors, subcontractors, invitees, agents, employees, licensees, or permittees, Grantee shall, at Grantee's sole expense, promptly take all actions necessary or advisable to clean-up, contain, and remove the hazardous substance in accordance with applicable laws. Any cleanup shall be performed in a manner approved in advance in writing by State, except in emergency situations Grantee may take reasonable and appropriate actions without advance approval.

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 the 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 Exhibit D. Non-compliance with these requirements shall constitute a breach of contract and may result in the 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 the 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.

Improvements. Grantee shall construct no 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.

For forest lands, including R/W's on forest land use: Grantee shall submit a completed Forest Practices Application for the chemical application and a copy of any required environmental review conducted under the State Environmental Policy, with the request for approval. **For lands in the HCP:** Approval to apply aerial pesticides may be conditioned upon the HCP.

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

To: Grantee:
Skamania County PUD #1
P O Box 500
Carson WA 98610

Recording. Grantee shall record this Easement in the county in which the easement property is located, 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.

Forfeiture. In the event that any portion of the Easement Area is not used by the Grantee, or its assigns, for the purpose for which it was granted, within a period of five (5) years from the day and year first above written, the rights of the Grantee within said portion(s) of the Easement Area shall revert to the 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 entered into; 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 the State. Such terms and conditions shall include, but not be limited to the right to modify the consideration due the 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, buildings, fixtures and other property erected or permanently affixed upon State lands by the Grantee during the term of said Easement, which remain upon said land sixty (60) days from the termination or abandonment of said Easement, shall become the property of the 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, the Grantee shall be entitled to remove such of said improvements as can be removed without damage to said lands; or, the State may require the Grantee to remove all improvements, buildings, fixtures and other structures fixed upon State lands by the Grantee, at the Grantee's cost. All tools, equipment and other property not permanently affixed upon the land by the Grantee during the term of said Easement shall remain the property of the Grantee, but shall be removed within sixty (60) days after the expiration of this Easement.

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.

SKAMANIA COUNTY PUBLIC UTILITY
DISTRICT NO. 1

Dated: July 13th, 2004.

By: Robert W. Stenberg

Title: Manager for the District

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: 8/10/4, 20 .

Doug Sutherland
DOUG SUTHERLAND
Commissioner of Public Lands

Affix the Seal of the Commissioner
of Public Lands

Approved as to form
October 18, 2002
by Mike Rollinger
Assistant Attorney General
for the State of Washington



REPRESENTATIVE ACKNOWLEDGEMENT

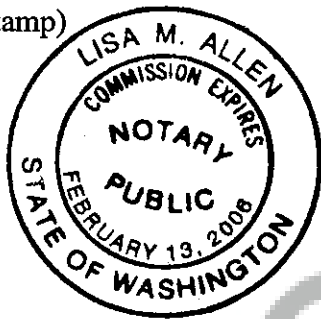
State of Washington

County of Skamania

I certify that I know or have satisfactory evidence that Robert Wittenberg is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____ of SKAMANIA COUNTY PUBLIC UTILITY DISTRICT NO. 1 to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: July 13, 2004

(Seal or stamp)



Lisa M. Allen
(Signature)
Lisa M. Allen
(Print Name)

Notary Public in and for the State of
Washington, residing at Carson, WA
My appointment expires February 13, 2006

STATE ACKNOWLEDGEMENT

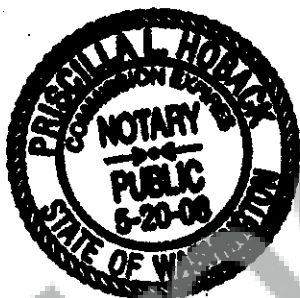
State of Washington

County of Thurston

I certify that I know or have satisfactory evidence that DOUG SUTHERLAND 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 Commissioner of Public Lands, and administrator 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: 8/10/2004

(Seal or stamp)



Priscilla L. Hoback
(Signature)

Priscilla L. Hoback
(Print Name)

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

My appointment expires 5/20/2008

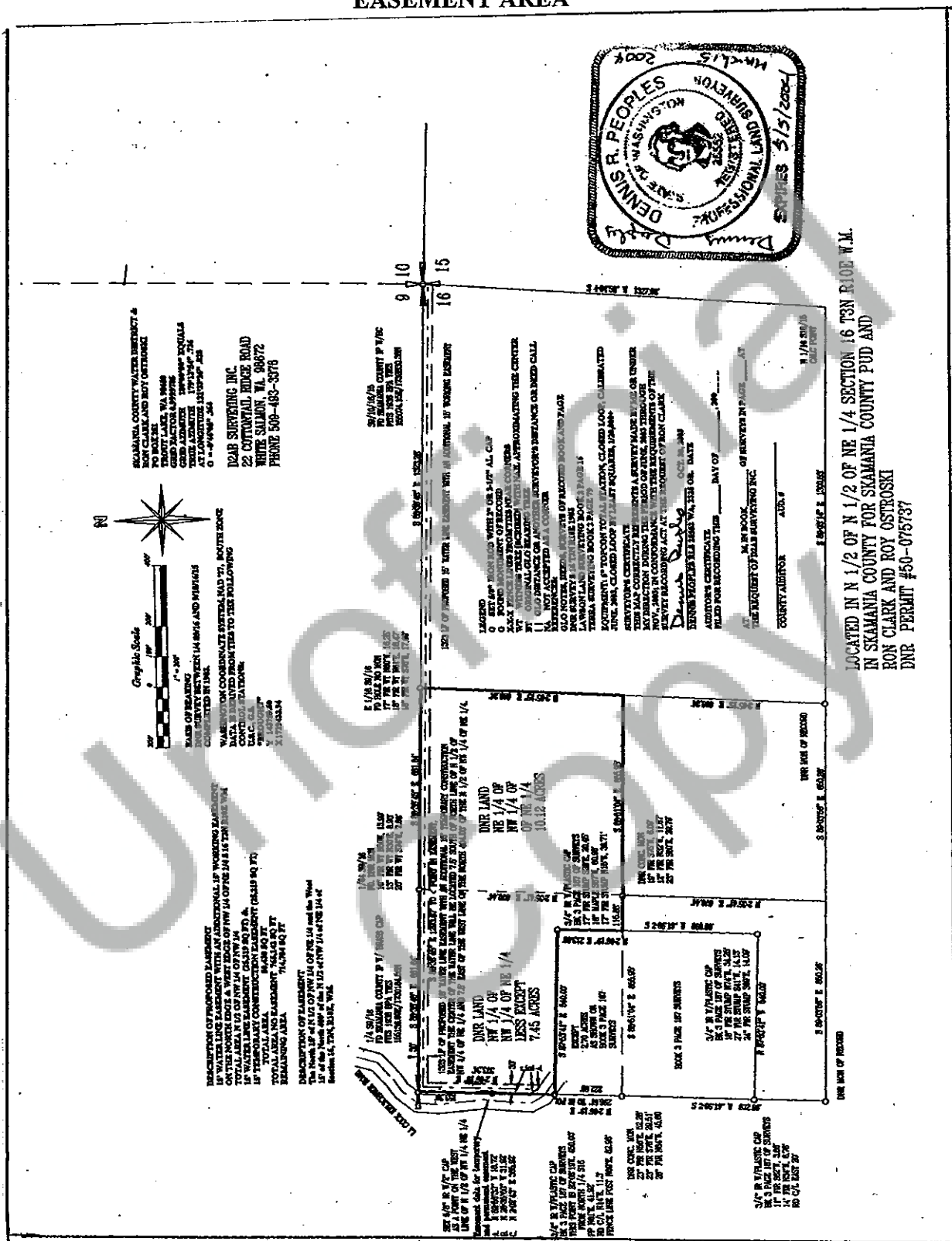
**EXHIBIT A
BURDENED PARCEL**

Parts of the N $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 16, Township 3 North, Range 10 East, W.M., Skamania County.

Gary H. Martin, Skamania County Assessor

Date 11-29-04 Parcel # 03-10-16-0-0-0260.2

Unofficial
Copy



LOCATED IN N 1/2 OF N 1/2 OF NE 1/4 SECTION 16 T3N R10E W1M.
IN SKAMANIA COUNTY FOR SKAMANIA COUNTY PUD AND
IRON CLARK AND ROY OSTROSKI
DNR PERMIT #50-075737

EXHIBIT C
HCP REQUIREMENTS

1. The Grantee shall immediately notify the State of new locations of permit species covered in the Incidental Take permit (ITP) that are discovered within the Easement Area covered by the Habitat Conservation Plan (HCP), including, but not limited to: locations of occupied murrelet habitat; spotted owl nest sites; wolves; grizzly bears; nests, communal roosts, or feeding concentrations of bald eagles; peregrine falcon nests; Columbian white-tailed deer; Aleutian Canada geese; and Oregon silverspot butterflies. In all circumstances notification must occur within a 24 hour time period.
2. Upon locating any live, dead, injured, or sick specimens of any listed species covered by the ITP within the Easement Area the Grantee shall immediately notify the State. In all circumstances notification must occur within a 24 hour time period. Grantee may be required to take certain actions to help the State safeguard the well-being of any live, injured or sick specimens of any listed species discovered, until the proper disposition of such specimens can be determined by the State.
3. Any Forest Practices Permit submitted for activities on the Easement Area must identify that the Easement Area is covered by the State of Washington, Department of Natural Resources Habitat Conservation Plan and part of the Incidental Take Permit No. PRT-812521, as supplemented by Permit #1168.

EXHIBIT D OPERATIONAL REQUIREMENTS

All soil surfaces on the right of way, temporary roads and skid trails, which are devoid of natural cover as a result of the operations hereunder, shall be re-seeded to a grass mixture approved by the Contract Administrator.

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

Should Grantee not place, or bury the "Line" according to the specifications designated by the State and the approved plat shown on Exhibit B, Grantee shall be responsible for and hold the State harmless from any and all damage to the "Line".

The "Line" shall be buried at a minimum depth of 48 inches below the surface of said Easement Area.

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

The Grantee shall mark the location of the buried "Line" with painted metal posts placed approximately 100 feet apart so they are clearly visible. The Grantee shall also install signs at approximately 100 foot intervals; said signs shall identify the installation as a buried water line and shall designate ownership of the installation.

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

Grantee agrees that no construction will commence until all documents have been signed by all parties and that neither construction nor reconstruction will commence until the written Plan of Operation has been approved by the State.

In addition to compliance with those laws of the State of Washington pertaining to forest protection, the Grantee shall have firefighting equipment on site during construction.

Grantee shall reserve three hook-ups to the waterline for sites to be developed in the future on State land.

R/W debris shall be piled in tight, burnable piles and covered with plastic for future burning.