

Jefferson County
Board of Commissioners
Agenda Request

To: Board of Commissioners
Philip Morley, County Administrator

From: Frank Gifford, Public Works Director *LG*

Agenda Date: June 14, 2010

Subject: Easement Supplement with Washington State Department of Natural Resources, for Willoughby Creek Bridge Emergency Repair, Upper Hoh Rd. MP 3.50, X01825, Federal Aid Project No. ER-0902(318)

Statement of Issue: The attached Easement Supplement with the Washington State Department of Natural Resources (DNR) is needed in order to construct stream bank protection features as part of an emergency bridge repair project at Willoughby Creek Bridge, Upper Hoh Road MP 3.50.

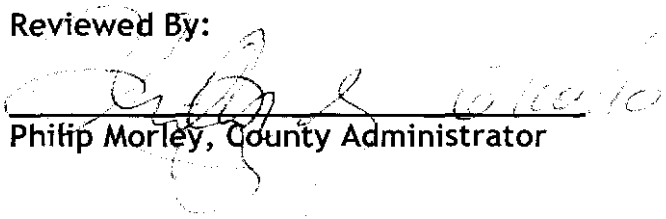
Analysis/Strategic Goals/Pro's & Con's: High flows in Willoughby Creek, beginning on January 6, 2009 scoured the west bridge approach, causing damage to the riprap abutment protection and threatening the approach roadway. Existing bank armoring upstream of the bridge was also damaged. Public Works has completed the plans and specifications for a permanent repair to stabilize the approach roadway and reconstruct the damaged bank armoring. An easement supplement from DNR is needed to construct stream bank protection features that are located off of the existing county right of way.

Fiscal Impact/Cost Benefit Analysis: The total cost for this easement is \$1,500.00 and is funded by the County Road Fund.

Recommendation: The Board is requested to sign the Easement Supplement, and return to Public Works.

Department Contact: Monte Reinders, County Engineer, 385-9242.

Reviewed By:


Philip Morley, County Administrator

Date

After Recording Return to:
Department of Natural Resources
Olympic Region
Attn: Angela M. Stanton
PO Box 47014
Olympia, WA 98504-7014

**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
PETER GOLDMARK, Commissioner of Public Lands
Olympia, Washington 98504**

Grantor: State of Washington, Dept of Natural Resources
Grantee: Jefferson County
Legal Description: NW¼NW¼, S25, T27N, R12W, W.M.
Assessor's Property Tax Parcel or Account Number: 712253000
Cross Reference:
DNR Easement No. 50-CR1458

EASEMENT SUPPLEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2010, by and between JEFFERSON COUNTY, a political subdivision of the State of Washington, herein called the "Grantee" and STATE OF WASHINGTON, acting by and through the Department of Natural Resources, herein called "State", WITNESSETH:

RECITALS

- A. Whereas, on the 16th day of April 1956, State and Grantee entered into an easement, hereinafter called "Original Easement", which was filed in the Office of the Commissioner of Public Lands in Olympia, Washington under DNR Agreement No. 50-CR1458, and
- B. Whereas, Grantee desires to have additional easement area added to the Original Easement;
- C. Whereas, State desires to add certain terms to the Original Easement;

Now, therefore, said Original Easement is hereby supplemented as follows:

AGREEMENT

Conveyance and Consideration: The State, for and in consideration of ONE THOUSAND FIVE HUNDRED and no/100 Dollars (\$1,500.00), hereby grants and conveys to Grantee additional easement area over and across NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 25, Township 27 North, Range 12 West, W.M., Jefferson County, Washington, as shown on Supplemental Plat No. CR1458 said Easement is set forth on that Record of Survey filed for record on April 29, 2010, under Jefferson County Auditor's File No. 551505, Book 35 of Surveys, Pages 191-193, filed in the office of the Commissioner of Public Lands in Olympia Washington.

Purpose. This additional easement area is granted for the sole purpose of construction, operation, use, and maintenance of a public road.

Operational Requirements. Site-specific operational requirements are listed in Exhibit A. Non-compliance with these requirements shall constitute a breach of the Easement and may result in the State suspending operations until the breach is remedied.

Terms. The following terms are added to the Original Easement and are applicable to the Original Easement and such additional easement area granted herein:

1. **Reservations.** State reserves the right to use, for any purpose, any portion of the Easement Area so long as it does not unreasonably interfere with the rights granted to the Grantee herein.
2. **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 B while operating on the Easement Area.
3. **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.

4. **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 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 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.

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 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 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.

5. **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 public road in the Easement Area, may be removed subject to the following:

1. The Grantee shall mark the trees.
2. The Grantee shall timber cruise the trees.
3. The Grantee shall notify the 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. The State will determine the fair market value of the trees it authorizes to be removed.

5. The 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. 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.

6. **Abandonment.** In the event any portion of the road is abandoned, 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 the State. In restoring the land, all asphalt shall be removed from the vacated portion; the asphalt shall not be deposited on the adjacent State land. In addition, the land surface shall be scarified to blend with the adjoining landscape.

7. **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 (3) days after being mailed, whichever is applicable.

To State:
DEPARTMENT OF NATURAL RESOURCES
Olympic Region
411 Tillicum Road
Forks, WA 98331-9797

To Grantee:
Jefferson County
Dept of Public Works
623 Sheridan Street
Port Townsend, WA 98368

Except as herein supplemented, all of the terms, conditions, and reservations of the Original Easement shall remain in full force and effect.

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

JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS

Dated: _____, 20__.

By: _____
Chairman

Dated: _____, 20__.

By: _____
Commissioner

Dated: _____, 20__.

By: _____
Commissioner

Approved as to form only:

David Alvarez 6/11/10
Jefferson Co. Prosecutor's Office

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____, 20__.

By: _____
PETER GOLDMARK
Commissioner of Public Lands

REPRESENTATIVE ACKNOWLEDGMENT

State of Washington

County of _____

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 Commissioners of Jefferson 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 ACKNOWLEDGMENT

State of Washington

County of Thurston

I certify that I know or have satisfactory evidence that PETER GOLDMARK 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: _____

(Seal or stamp)

(Signature)

(Print Name)

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

My appointment expires _____

EXHIBIT A
OPERATIONAL REQUIREMENTS

- A Hydraulics Project Approval (HPA) is required for the stream bank protection work.
- Jefferson County will notify the State, at the Olympic Region Office, three (3) days prior to commencing work at Willoughby Creek. Notification shall include a copy of the HPA for in stream work.
- Subsequent to initial construction notification is also required, as specified above, for maintenance and repair of in stream improvements.

EXHIBIT B
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. Grantees 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 application submitted for activities on the Easement Area must comply with the ITP and HCP and identify that the Premises are within an area covered by a Habitat Conservation Plan and part of the Incidental Take Permit No. PRT-812521 as supplemented by Permit No. 1168.

DEPARTMENT OF PUBLIC LANDS
Office of Commissioner

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In re Application No. 1458
for Right of Way for County
Road in Jefferson County
.....

ORDER
April 16, 1956

It appearing to the Commissioner at this time that Application No. 1458 has been filed in this office by the Board of County Commissioners of Jefferson County for an easement for a right of way for county road over the $S\frac{1}{2}$ of $SE\frac{1}{4}$ of section 24 and lots 1, 2 and 3, section 25, township 27 north, range 12 west, W.M., in Jefferson County; that said application was filed in accordance with the provisions of the Law of 1927 relating to the granting of rights of way over State lands; and

It further appearing that there is merchantable timber on the area included within the right of way, which is of the value of \$376.00; that the Board of County Commissioners of Jefferson County has paid into this office the sum of \$376.00 to cover the value of this timber, and there is no good reason why the right of way should not be granted; it is therefore

ORDERED and DETERMINED that the timber located upon the area included within the right of way sought, be and the same is hereby appraised at \$376.00, and that the plat showing the survey of said right of way as filed with said application be and the same is hereby approved as the official plat of said road and that an easement be and the same is hereby granted to Jefferson County for a county road over the following described lands:

These portions of the $S\frac{1}{2}$ of $SE\frac{1}{4}$ of section 24, and lots 1, 2 and 3, section 25, township 27 north, range 12 west, W.M., included in a strip of land 60 feet in width having 30 feet of such width on each side of the following described centerline:

Beginning at a point on the west line of said lot 3, 288 feet south of the northwest corner of said lot, and running thence $S 86^{\circ} 18' E 830.$ feet; thence on a 5° curve to the left, turning through an angle of $6^{\circ} 12'$ a distance of 124 feet; thence $N 87^{\circ} 30' E 286.3$ feet; thence on a 10° curve to the left, turning through an angle of 15° , a distance of 150 feet; thence $N 72^{\circ} 30' E 305.4$ feet; thence on an 8° curve to the

Just

right, turning through an angle of 13° , a distance of 162.5 feet; thence N $85^{\circ} 30'$ E 707.3 feet; thence on an 8° curve to the right, turning through an angle of $25^{\circ} 09'$, a distance of 314.4 feet; thence S $69^{\circ} 21'$ E 652.2 feet; thence on an 8° curve to the right, turning through an angle of $3^{\circ} 21'$, a distance of 41.9 feet; thence S 66° E 231.7 feet; thence on a 15° curve to the left, turning through an angle of $7^{\circ} 50'$, a distance of 52.2 feet; thence S $73^{\circ} 50'$ E 32.6 feet; thence on a 20° curve to the right, turning through an angle of $18^{\circ} 49'$, a distance of 94.1 feet; thence S $55^{\circ} 01'$ E 62 feet to a point on the east line of said section 25 which is 417 feet south of the northeast corner of said section;

The right of way hereinabove described has an area of 5.57 acres according to the plat thereof on file in the office of the Commissioner of Public Lands at Olympia, Washington;

and it is further

ORDERED and DIRECTED that the sum of \$376.00, paid for the timber and land upon the right of way, be turned over to the State Treasurer and placed to the credit of the Capitol Building Fund.

Dated this 16th day of April, A. D., 1956.


OTTO A. CASE, Commissioner