

Jefferson County
Board of Commissioners
Agenda Request

To: Board of Commissioners
Philip Morley, County Administrator

From: Frank Gifford, Public Works Director *FG*

Agenda Date: December 12, 2011

Subject: Land Use License with Washington State Department of Natural Resources, for Alder Creek Tributary Culvert Replacement, Upper Hoh Rd. MP 2.15, XO1736, Federal Aid Project No. ER-0801(025)

Statement of Issue: The attached Land Use License with the Washington State Department of Natural Resources (DNR) is needed in order to construct the Alder Creek Tributary Culvert Replacement project at Upper Hoh Road MP 2.15.

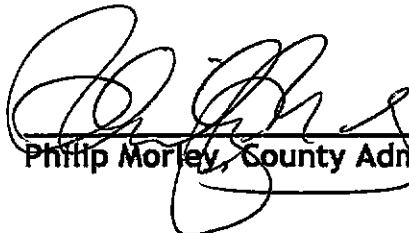
Analysis/Strategic Goals/Pro's & Con's: Public Works plans to replace the culvert at Alder Creek Tributary, Upper Hoh Road MP 2.15, with a WDFW-approved, fish passable structure. The culvert replacement will require a temporary bypass road around the site on DNR land. A Land Use License from DNR is necessary in order to temporarily access these State lands during construction.

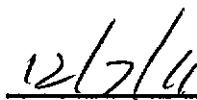
Fiscal Impact/Cost Benefit Analysis: The cost for the Land Use License is estimated at \$2,500 and is funded by the County Road Fund.

Recommendation: The Board is requested to sign all three originals of the Land Use License, and return to Public Works.

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

Reviewed By:


Philip Morley, County Administrator


Date



WASHINGTON STATE DEPARTMENT OF
Natural Resources
Peter Goldmark - Commissioner of Public Lands

**LAND USE LICENSE ("License")
FACE SHEET**

License No. 50-OL1114

DNR Olympic Region

Jefferson County

License authorization period: FROM December 1, 2011 THROUGH December 31, 2013

Specify other times as applicable: N/A

License Area (legal description/other identifying descriptors): SW1/4 Section 23 and the SE1/4 Section 22 all in Township 27 North, Range 12 West, W.M., Jefferson County. (See map attached)

Name of Licensee: Jefferson County -- Public Works Dept.

Business: Jefferson County -- Public Works Dept.

Address: 623 Sheridan Street
Port Townsend, WA 98368

Phone: (360) 385-9160

FAX: (360) 385-9350

hereafter referred to as "Licensee," is hereby authorized by the Department of Natural Resources, hereafter referred to as "State," during the specified time period to use land in the above described location; and/or the facilities (improvements) listed below:

1. N/A

Permitted Use(s):

1. Replacement of an existing non fish passable culvert along the Alder Creek tributary located at MP 2.146 Upper Hoh County Road.
2. Construct a temporary bypass route to maintain traffic flow during culvert replacement.
3. Perform Vegetation restoration activities per the attached "Vegetation restoration Plan".

Performance Security: Not Required Amount \$0.00

Liability Insurance Required: Yes
(see Addendum A, Insurance Requirements, for specifics)

ISSUANCE of this License is subject to the terms and conditions on appended pages (listed below and by this reference made a part of this License):

- Addendum A - Terms and Conditions of Land Use License**
- Exhibit A - Maps of authorized assessment location for Licensees**
- Exhibit B - HCP Requirements (use only if License is in the HCP Permit Areas)**
- Vegetation Restoration Plan**

and payment to the State of Washington in the sum of **\$2,000.00**
(\$1,000.00 – Timber removed & \$1,000.00 – Standard LUL cost)

The undersigned hereby accepts this License subject to the terms and conditions expressed or implied herein.

Licensee:

Signature

Date

UBI No. (if applicable) 161001169

Authorizing Official:

H _____
Susan K. Trettevik

Date

Olympic Region Manager

Approved for HCP Clause, February 8, 1999.
by James Schwartz
Assistant Attorney General
State of Washington

- Note: 1) License must be available on site for inspection during licensed activity.**
2) This license does not reserve campground or trails.

Approved as to form only:

David Alving 12/5/2011

Jefferson Co. Prosecutor's Office

ADDENDUM "A" - TERMS AND CONDITIONS FOR LAND USE LICENSE

TERMS:

1. Purpose. By issuance of this License, State is conferring the privilege of use of the land and/or improvements herein described, and expressly retain exclusive possession of same.
2. License Authorization Period. This License is limited to the license authorization period(s) specified on *face sheet* and is not subject to renewal.
3. Revocation. This License may be revoked at will, including under the following circumstances:
 - a. immediately upon material breach of any of the conditions herein or, for reasonable cause, by the State's authorized representative without compensation to the Licensee or liability to State;
 - b. upon sixty (60) days' written notice in the event the State includes the License area in a plan for higher and better use, land exchange or sale;
 - c. up to 24 hours in advance of the licensed activity due to adverse and extraordinary weather conditions (e.g., high fire danger) which could adversely affect public resources. Any fees paid will be kept on account to be applied if and when the activity is rescheduled.
4. Non-Transferrable. This License is personal to the Licensee and may not be transferred.
5. Encumbrances. This License is subject to any rights and valid claims previously conveyed by State, and to any rights and valid claims pending on or encumbering License area.
6. Compliance. State retains possession of and the right to access License area at any and all times to ensure compliance or carry out any management activities.
7. Access. Provisions for the use of rights of way across State land, including the License area and adjacent land are as follows:
 - a. A nonexclusive right to use existing State road(s) over and across State land to access the locations shown on the map(s) attached as Exhibit A.
8. Condition of Premises. Licensee has inspected the License area and accepts it in its present condition. The State has no obligation to make any repairs, additions, or improvements thereto and expressly disclaims any warranty that the License area is suitable for intended use.

9. Performance Security. As guarantee of the faithful performance of the conditions of this License, the State may require performance security by Licensee prior to commencement of activity; such security may be in the form of cash, savings account assignment, bank letter of credit, or performance bond, in such amount as determined by State.
10. Notice to Licensee: This License does not interfere with State's management activities and possible sale or exchange of the land.

CONDITIONS:

1. Compliance with Laws. Licensee shall comply with all applicable laws, including all Department of Natural Resources regulations, county and municipal laws, ordinances, or regulations in effect.
2. Required Permits/Licenses. Licensee shall obtain and be in possession of all permits and licenses required for the permitted use, and shall provide proof of such permits/licenses upon request by State's representative.
3. Responsibility. Licensee assumes responsibility for all activities conducted, including but not limited to supervision and control to prevent injury or damage; maintenance of the premises during the use; clean-up of litter and debris; and provision of surveillance and security to preserve order.
4. Insurance Requirements:
 - a. Evidence of Insurance. Licensee must furnish evidence of insurance in the form of a Certificate of Insurance satisfactory to the State, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements set forth below. The Certificate of Insurance must reference the Department of Natural Resources and the Land Use License number. Before implementing this License, Licensee must provide proof of coverage.
 - b. Cancellation. The Certificate(s) of Insurance must provide 45 days written notice to State before the cancellation, non-renewal, or material change of any insurance coverage included therein. Notices must be sent to State's «Region_City» office via certified mail.
 - c. Additional Requirements.
 - (1) All policies must name State of Washington Department of Natural Resources, as an additional insured.
 - (2) All insurance provided in compliance with this License shall be primary as to any other insurance or self-insurance programs afforded to or maintained by State.

(3) All insurance policies must provide liability coverage on an **occurrence** basis unless otherwise specified in this License.

(4) Policies must be issued by an insurer admitted and licensed by the Insurance Commissioner to do business in the State of Washington. Excess or "surplus lines" carriers must be approved in advance by the Risk Manager (or other authorized representative) of DNR. All insurers must have a Best's rating of B-plus or better.

d. Minimum Coverage Requirements. The Minimum Coverage Requirements set forth the *minimum* limits of insurance the Licensee must purchase to secure a license with State. These limits may not be sufficient to cover all liability losses and related claim settlement expenses. Purchase of these minimum limits of coverage does not relieve the Licensee from liability for losses and settlement expenses greater than these amounts.

During the term of the License, Licensee must purchase and maintain, and shall require all independent contractors to maintain while performing work on License area under this License, the minimum insurance coverages and limits specified below, which may be increased by State at its sole discretion:

(1) Commercial General Liability (CGL) Insurance. Licensee must purchase and maintain CGL on an Insurance Services Office (ISO) form CG 00 01 or equivalent form, covering liability arising from premises, operations, independent contractors, personal injury, and liability assumed under an insured contract. Such insurance must be provided on an occurrence basis. Insurance must include liability coverage with limits not less than those specified below:

Description

General Aggregate Limit	\$2,000,000
Each Occurrence Limit	\$1,000,000

(2) Business Auto Policy (BAP) Insurance (Required for all licenses). The Licensee shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover 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 editions of CA 00 01.

The Licensee waives all rights against the State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

(3) Worker's Compensation and Employer's Liability Insurance. The Licensee must purchase and maintain insurance covering obligations imposed by Federal and State statutes having jurisdiction of its employees in the performance of work, including Employer's Liability Insurance. Evidence of "Qualified Self-Insurance Status" will suffice to meet the requirements of this section.

Description	Each Employee		Policy Limit
	By Accident	By Disease	By Disease
Bodily Injury	\$1,000,000	\$1,000,000	\$1,000,000

e. Self-Insurance. In lieu of the coverages required under this section entitled "Insurance Requirements," the State at its sole discretion, may accept evidence of self-insurance by the Licensee.

Aside from any "self-insurance" guaranteed by the Licensee, it is the responsibility of the Licensee to ensure that its contractors, concessionaires, agents, employees, guests, invitees, or affiliates in, on, under, or above the License area, any adjoining License Area, or any other License Area subject to use by Licensee in conjunction with its use of the License area, meet minimum insurance requirements described above.

5. Indemnification. Licensee shall indemnify, defend (with counsel acceptable to State) and hold harmless State, its employees, officers and agents from any and all liability, damages (including, but not limited to, personal injury and damages to land and other natural resources), expenses, causes of action, suits, claims, costs, fees (including, but not limited to, attorneys' fees), penalties, or judgments, of any nature whatsoever, arising out of the use or occupation of the License Area by Licensee, its contractors, concessionaires, agents, employees, guests, invitees, customers or affiliates, except as may arise solely out of the willful act of State or State's elected officials, employees, or agents. To the extent that RCW 4.24.115 applies, Licensee shall not be required to indemnify, defend, and hold State harmless from State's sole or concurrent negligence. This section shall not in any way limit Licensee's liability under section entitled *Environmental Liability/Risk Allocation*.

6. Protection of Natural Resources and Improvements. Licensee shall take all reasonable precautions to prevent or minimize damage to natural resources (e.g., vegetation, wildlife, soil, water) and improvements (crops, buildings, roads, etc.) within the License area. Licensee shall cut no State timber, remove no State-owned valuable material (as defined in RCW 79.02.010(12) plus coal, minerals, oil or gas), disturb or remove any cultural, historical or paleontological (fossils) resources, without written prior consent of the State. Upon revocation or expiration of this License, Licensee shall reclaim any disturbed areas to the specifications of the State within a reasonable amount of time as agreed to by State's authorized representative. Damage to timber, crops and improvements not identified and paid for under the terms and conditions of this License shall be appraised by the State. The Licensee shall be liable for said damages at the appraised rate.

7. Cleanup. All garbage shall be packed out, or disposed of as required by the State's authorized representative, within the license authorization period of this License.
8. Improvements/Personal License Area. No building or other structures will be erected under this License within the License area. Any unauthorized improvements shall either be removed immediately by the Licensee, removed by State at the cost of the Licensee, or become the License Area of State, at State's option. All personal Property must be removed from the premises upon revocation or expiration of this License. Any property remaining after 24 hours will become the property of the State, unless a longer time allowance is specifically authorized by the State under the "Additional Terms and Conditions" section below.
9. Advertising. Licensee shall file with the State's authorized representative copies of all advertising brochures or other handouts describing the activity/event for which this License is issued. Licensee shall ensure advertising does not imply the endorsement of the Washington State Department of Natural Resources.
10. Noxious Weeds. Licensee shall take all reasonable precautions, which may be directed by State's representative, to control the spread of noxious weeds as a result of their activity. Licensee shall be responsible for, or shall immediately reimburse State, for any weed control cost incurred as a result of Licensee's failure to comply with precautions directed by State. All methods of chemical weed control shall be approved in writing by State prior to beginning such activities.
11. Discrimination. Licensee shall not conduct or suffer any business upon the License area which unlawfully discriminates against any person on the basis of race, color, creed, religion, sex, age, or physical or mental handicap.
12. Environmental Liability/Risk Allocation
 - a. Definition. "Hazardous Substance" means any substance which now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. '9601 *et seq.*, and Washington's Model Toxics Control Act ("MTCA"), RCW 70.105D.010 *et seq.*
 - b. Use of Hazardous Substances. Licensee covenants and agrees that Hazardous Substances will not be used, stored, generated, processed, transported, handled, released, or disposed of in, on, under or above the License area, except in accordance with all applicable laws. Licensee agrees to use hazardous substances only to the extent necessary to the permitted use under this License.

c. Deleterious Material. Licensee shall not make, or suffer to be made, any filling in of the License area or any deposit or rock earth, ballast, refuse, garbage, waste matter, chemical, biological or other wastes, hydrocarbons, any other pollutants, or other matter within or upon the premises, except as approved in writing by the State. If the Licensee fails to remove all non-approved fill material, refuse, garbage, wastes or any other of the above materials from the License area, the Licensee agrees that the State may, but is not obligated to, remove such materials and charge the Licensee for the cost of removal and disposal.

d. Notification and Reporting. Licensee shall immediately notify State if Licensee becomes aware of any of the following:

(1) a release or threatened release of Hazardous Substances in, on, under or above the License area, any adjoining property, or any other property subject to use by Licensee in conjunction with its use of the License area;

(2) any problem or liability related to or derived from the presence of any Hazardous Substance in, on, under or above the License area, any adjoining property, or any other property subject to use by Licensee in conjunction with its use of the License area;

(3) any actual or alleged violation of any federal, state or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances with respect to the License area, any adjoining property, or any other property subject to use by Licensee in conjunction with its use of the License area;

e. Indemnification and Burden of Proof. Licensee shall fully indemnify, defend (with counsel acceptable to State), and hold State harmless from and against any and all claims, demands, damages, natural resource damages, response costs, remedial costs, cleanup costs, losses, liens, liabilities, penalties, fines, lawsuits, other proceedings, costs, and expenses (including attorneys' fees and disbursements), that arise out of or are in any way related to:

(1) the use, storage, generation, processing, transportation, handling, release or disposal of any Hazardous Substance by Licensee, its contractors, concessionaires, agents, employees, guests, invitees, or affiliates in, on, under, or above the License area, any adjoining property, or any other property subject to use by Licensee in conjunction with its use of the License area, during the license authorization period of the License or during any time when Licensee occupies or occupied the License area or any such other property;

(2) the release or threatened release of any Hazardous Substance in, on, under, or above the License area, any adjoining property, or any other property subject to use by Licensee in conjunction with its use of the License area, which release or threatened release occurs or occurred during the license authorization period of the License or during any time when Licensee occupies or occupied the License area and as a result of:

a. Any act or omission of Licensee, its contractors, concessionaires, agents, employees, guests, invitees, or affiliates; or,

b. Any act or omission of a third party unless Licensee exercised the utmost care with respect to the foreseeable acts or omissions of the third party and the foreseeable consequences of those acts or omissions.

13. Stream course Protection. Yarding equipment shall be set back from the stream bank so the act of yarding or storing of yarded logs will not damage or encroach on the flowing stream. No timber shall be felled across or into and no yarding shall be permitted in or through such stream courses, lakes and ponds as designated by the State unless permission to do so is granted in writing by the State's authorized representative.
14. Erosion and Damage to Soil. During operations under this License, including the construction of roads and landings, the Licensee shall take such precautions as necessary to minimize insofar as possible soil erosion and damage to the soil. Equipment will not be operated when ground conditions are such that excessive damage will result.
15. Preservation of Surveys. All legal land subdivisions survey corners and witness objects are to be preserved. If such are destroyed or disturbed, the Licensee shall re-establish them by a registered professional engineer or licensed land surveyor in accordance with U.S. General Land Office standards at its own expense. Corners and/or witness objects that must necessarily be disturbed or destroyed in process of construction must be adequately referenced and/or replaced in accordance with all applicable laws of the State of Washington in force at the time of construction, reconstruction, or development of the right of way including but not limited to RCW 58.24, and all Department of Natural Resources rules and regulations pertaining to preservation of such corners and/or witness objects. Such references must be approved by the State prior to removal of said corners and/or witness objects.
16. Road Maintenance. During periods when a road, or portion thereof, is being used by the Licensee, that portion of the road so used shall be maintained by said party at its own expense and, at the termination of each period of such use, shall be left in a condition equal to or better than the condition of the road immediately prior to said use.
17. Obstruction. Licensee shall not obstruct said roads or take any action to restrict the flow of traffic on said roads without the State's written permission.

18. Debris Disposal. Licensee shall dispose of forest debris as defined by law, concurrent with cutting and land clearing, by piling and burning on the right of way (or site). Alternate methods of disposal may be permitted provided a written supplement to this document shall first be obtained from the State's authorized representative. The supplement shall include but not be limited to the following minimum requirements:
- a. Dates and places of disposal;
 - b. Methods and means of disposal;
 - c. A map showing the areas affected by the supplement.
19. Compliance with the Habitat Conservation Plan (HCP). The License Area is located within an area that is subject to State's Habitat Conservation Plan adopted in connection with Incidental Take Permit No. PRT-812521 (ITP) as supplemented by Permit No. 1168 (Collectively "TTP"). As long as the Habitat Conservation Plan remains in effect, Licensee and all persons acting under Licensee shall comply with the terms and conditions set forth in Exhibit B while operating on License Area. State shall have the right to modify these terms and conditions from time to time to comply with the Habitat Conservation Plan, the ITP, the Endangered Species Act, the implementing regulations, and amendments thereto, or the requirements of the federal agencies administering these laws.

Additional terms and conditions:

Site Restoration Requirements – See Vegetation Plan attached on page 13.

EXHIBIT A
Map of authorized access use

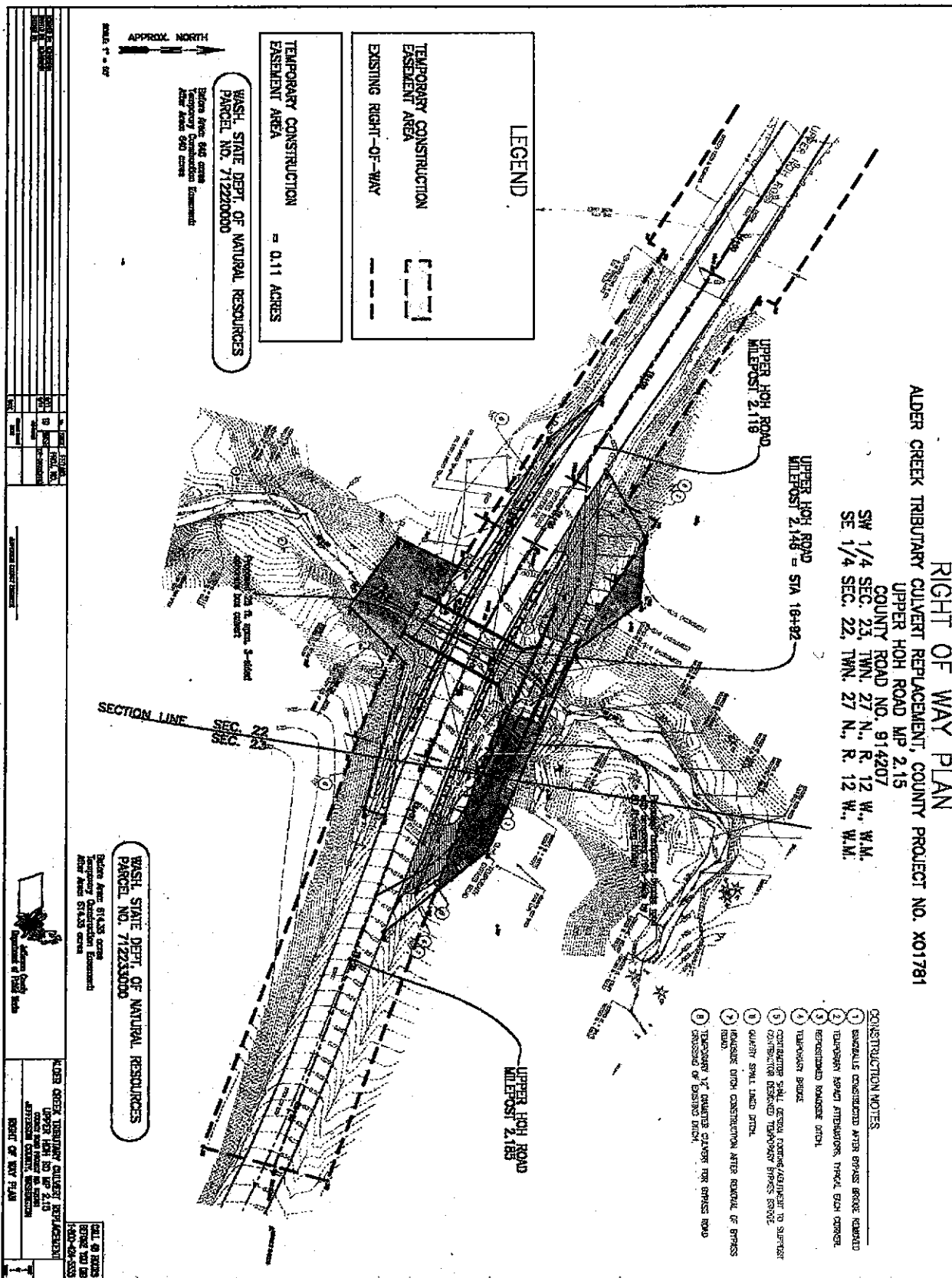


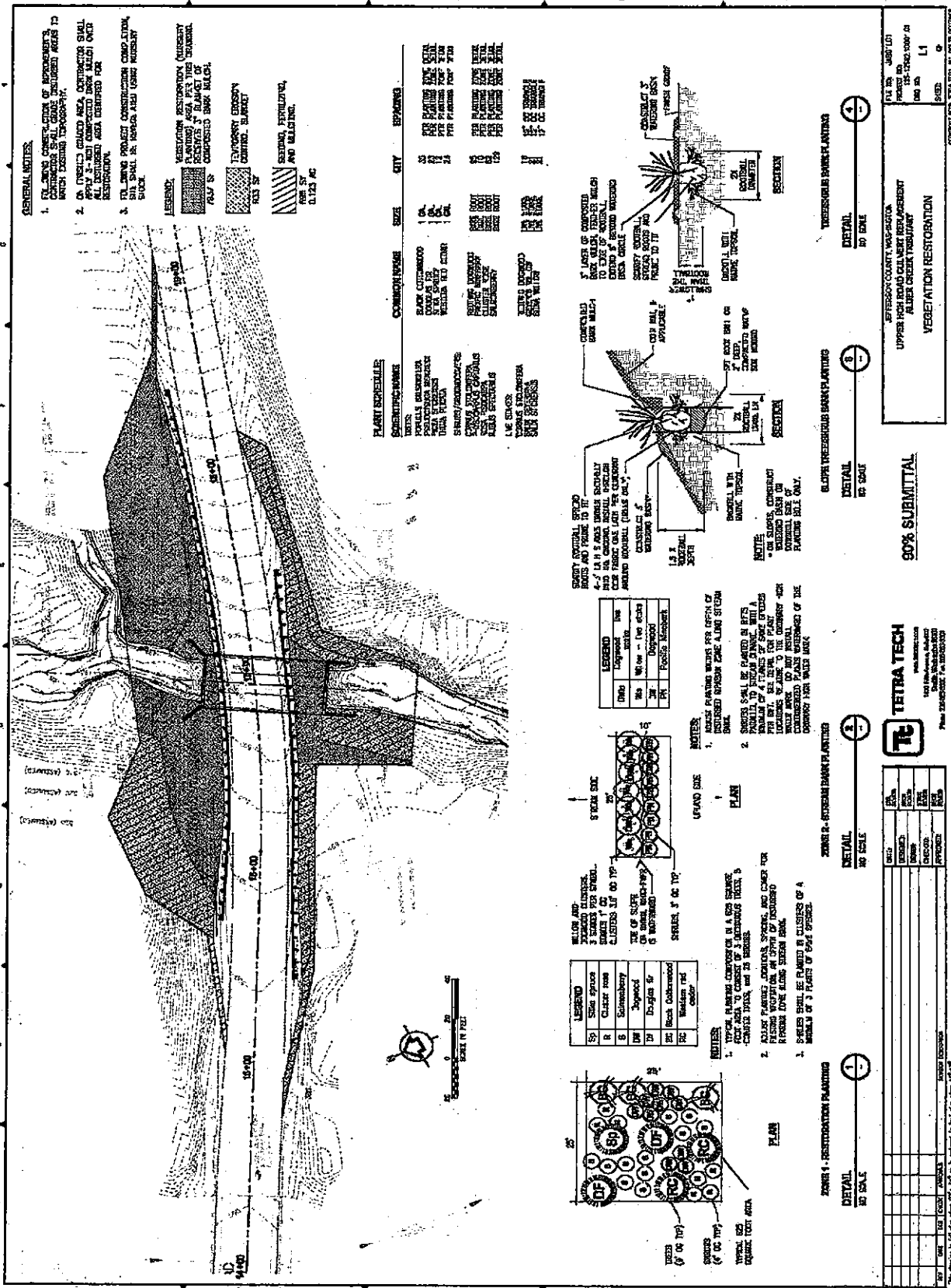
EXHIBIT B
HCP REQUIREMENTS

1. The Licensee shall immediately notify the State of new locations of permit species covered in the Incidental Take Permit (ITP) that are discovered within the License 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 License Area the Licensee shall immediately notify the State. In all circumstances notification must occur within a 24 hour time period. Licensee 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 License Area must comply with the ITP and HCP and identify that the License Area is 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.

SITE RESTORATION/VEGETATION PLAN

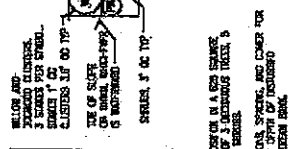
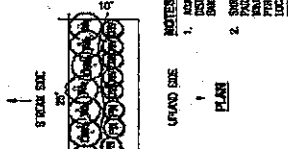
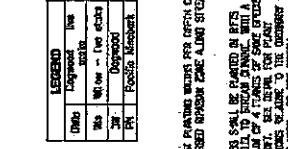
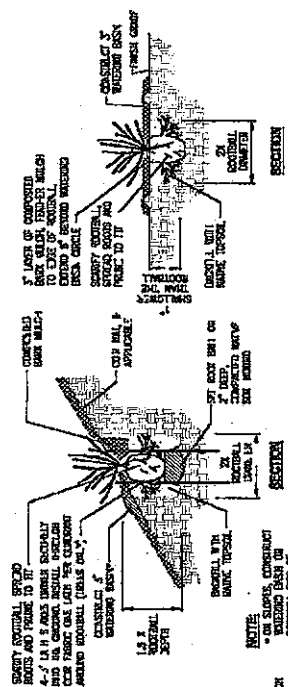


- GENERAL NOTES:**
1. ALL WORK SHALL BE IN ACCORDANCE WITH THE CITY OF ALBUQUERQUE, NEW MEXICO, ORDINANCE 12-1-2008, WHICH IS INCORPORATED BY REFERENCE INTO THIS CONTRACT. CONTRACTOR SHALL OBTAIN ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF ALBUQUERQUE, NEW MEXICO, AND THE STATE OF NEW MEXICO.
 2. ON FINISHED GRADED AREA, RESTORATION SHALL BE INSTALLED IMMEDIATELY AFTER CONSTRUCTION OF THE UNDERLYING STRUCTURE IS COMPLETED FOR THE RESTORATION AREA.
 3. ALL WORK SHALL BE IN ACCORDANCE WITH THE CITY OF ALBUQUERQUE, NEW MEXICO, ORDINANCE 12-1-2008, WHICH IS INCORPORATED BY REFERENCE INTO THIS CONTRACT.

LEGEND:

[Hatched Pattern]	VEGETATION RESTORATION (MURPHY PLANTING) AREA FOR THE "TRANSITION" PHASE 3' PLANTING DISTANCE FROM EXISTING BANK.
[Hatched Pattern]	TRANSITION ZONE (MURPHY PLANTING) AREA FOR THE "TRANSITION" PHASE 3' PLANTING DISTANCE FROM EXISTING BANK.
[Hatched Pattern]	EXISTING VEGETATION AND BOUNDARY.

PLANT SPECIES	COMMON NAME	SIZE	CITY	SPACING
...



90% SUBMITTAL

UPPER HIGH ROAD COLONY REPAIRMENT
 ALBUQUERQUE, NEW MEXICO

VEGETATION RESTORATION

DATE: 08/11/11
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 SCALE: AS SHOWN

NO.	DATE	BY	REVISION

TETRA TECH
 10100 1st Avenue, Suite 100
 Albuquerque, NM 87112
 Phone: 505.263.1000