

IDAPA RULE                       IDAPA FEE                       BOARD ACTION REQUIRED  
 BOARD POLICY                       INFO ONLY, NO ACTION REQUIRED

**AGENDA**  
**Idaho Park and Recreation Board Meeting**  
**December 1-2, 2021**  
**IDPR Headquarters**  
**5657 Warm Springs Ave.**  
**Boise, ID 83716**

**AGENDA ITEM:**                      **Trail of the Coeur d’Alenes  
Easement for Access Road**

**ACTION REQUIRED:**                      **Board Action**

**PRESENTER:**                      **David White, North Region Manager**

**PRESENTATION**

**BACKGROUND INFORMATION:**

There are four property owners adjacent to the Trail of the Coeur d’Alenes in the Enaville area that use an access road in the Trail right-of-way (“ROW”) as the sole means of access to their properties. The properties are owned by the Central Shoshone Water District, Woods Crushing, Inc., Jerry White, and Pentaco LLC. The Water District has a non-exclusive license to use the access road, granted to them by Union Pacific Railroad in 2003, and assigned to IDPR at the time the Railroad quitclaimed the ROW to IDPR in 2008. The predecessors in interest to Woods, White and Pentaco also had agreements with the Railroad to use the road, but such agreements have expired.

The access road is located on a portion of the ROW formerly used as a siding by a private company for a log-loading facility. The ROW at this location is 200 feet wide. Because the access road is the sole means of access to their properties, Woods and White have requested that they be granted easements, in order to have the legal access necessary for any future use or sale of their properties. IDPR policy is to not grant easements over and across the Trail ROW, because such easements may interfere with IDPR’s obligation, under the Rails to Trails Act, to maintain the ROW in a manner that allows for future resumption of railway service. After consultation with legal counsel, however, staff determined that an easement in this particular location, in a portion of the ROW formerly used as a private siding, would not interfere with current use of the Trail and would not interfere with future resumption of rail service. In order to ensure non-interference with IDPR’s obligations under the Rails to Trails Act, the easements provide that if a court determines that the easement unlawfully interferes with the re-assumption of rail service upon the Trail ROW, Woods and White must take all actions necessary to resolve the interference.

Granting the easements also resolves IDPR’s potential liability for the current condition of the access road, which includes a wooden bridge over Bear Creek that is in poor condition and in need of repair. Under the terms of the easement, Woods and White will be responsible for all maintenance and repair of the access road and the bridge.

The combined price for the two easements is \$44,000.

The remaining party using the access road, Pentaco LLC, has not responded to requests to negotiate an agreement governing its use of the access road. Additionally, a building owned by Pentaco is

encroaching on the Trail ROW, and Pentaco is using portions of the ROW to store vehicles and other materials. Once easements with Woods and White are in place, legal counsel for IDPR is prepared to file an action in the local district court to resolve the trespass claims against Pentaco, if so directed by the Board.

**STAFF RECOMMENDATIONS:**

IDPR staff recommends that the Board:

- (1) Authorize Chairman Beckley, on behalf of the Board, to execute and issue easements to Woods Crushing, Inc. and Jerry White, and
- (2) Direct legal counsel to proceed with a legal action to resolve the trespass claims against Pentaco, LLC.

**ATTACHMENTS**

1. Draft Easements.
2. Overlays showing Pentaco encroachments.

Exhibit 1: ROW Parcel 1

Parcel 1: A parcel of land approximately 80 feet by 270 feet within the Trail of the Coeur d'Alenes Right of Way in Township 49 North, Range 2 East, Section 30, adjacent to Tax Parcel RP49N02E309500A.



Exhibit 2: ROW Parcel 2

Parcel 2: A parcel of land approximately 40 feet by 500 feet within the Trail of the Coeur d'Alenes Right of Way in Township 49 North, Range 2 East, Section 31, adjacent to Tax Parcel RP49N02E310350A.



## GRANT OF ACCESS ROADWAY EASEMENT

THIS INDENTURE, made this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the STATE OF IDAHO, Department of Parks and Recreation, 5657 Warm Springs Ave, P.O. Box 83720, Boise, Idaho, 83720-0065, (Grantor), and Gerald White and Michael White, 2020 APA Road, Point Roberts, WA 98281 (Grantee);

WITNESSETH: That for and in consideration of the consideration stated herein, the Grantor does hereby grant to the Grantee, its successors and assigns, forever, an appurtenant, non-exclusive easement for the purpose of using and maintaining an Access Roadway for the purposes herein stated over, upon, and across the following described lands situated in SHOSHONE COUNTY, State of Idaho, to-wit:

A strip of land twenty-four (24) feet wide within the rail-banked right-of-way designated in Idaho Code § 67-4212 as Trail of the Coeur d'Alenes Recreational Trailway, beginning at the eastern boundary of the Coeur d'Alene River Road right-of-way, SW $\frac{1}{4}$ SE $\frac{1}{4}$  Sec. 30, T49NR02E, and ending at the point where the Access Roadway leaves the Trail ROW and crosses the western boundary of Tax Parcel 49N02E309500, as further designated on the Record of Survey, which is attached to this Easement as Attachment A, and by this reference incorporated herein. This Easement only authorizes use of the Access Roadway within the Trail ROW, and does not authorize any use of those portions of the Access Roadway outside the Trail ROW.

Such grant is subject to the following terms and conditions:

### 1. Definitions.

- 1.1. **Access Roadway.** The real property designated herein for ingress and egress and utilities to the Grantee's Premises.
- 1.2. **Department.** The Idaho Department of Parks and Recreation.
- 1.3. **Easement.** This Grant of Access Roadway Easement.
- 1.4. **Grantee.** For the sake of convenience, the grantee of the rights conferred herein is designated as the "Grantee." The use of the term "Grantee," however is not intended to confer any rights beyond those conferred by the express terms of this Easement.
- 1.5. **Grantee's Premises.** Those lands designated in the records of Shoshone County, Idaho, as tax parcels nos. 49N02E322500 and 49N02E310300, as more specifically identified by legal description in Attachment B, along with any additional lands leased by Grantee.
- 1.6. **Trail ROW.** The former right of way of the Wallace Branch of the Union Pacific Railroad, acquired by the Department for use as a recreational Trail pursuant to the *Decision and*

*Certificate of Interim Trail Use or Abandonment*, Surface Transportation Board, Docket No. AB-33 (Sub-No 70) (June 22, 2000).

**1.7 Trail of the Coeur d’Alenes.** The paved recreational trail located within the Trail ROW.

**2. Grantee.** The following person or entity is designated as the Grantee:

Gerald White & Michael White  
2020 APA Road  
Point Roberts, WA 98281

**3. Grant.** The Department hereby grants to the Grantee a non-exclusive right of ingress and egress and utilities over and/or along the Trail Right-Of-Way (ROW) within the designated Access Roadway by means of motorized vehicles for the purpose of accessing Grantee’s premises. Such grant is subject to the terms and conditions set forth in this Easement.

**3.1 No Use Outside Access Roadway.** Use of motorized vehicles on any portion of the Trail ROW other than the designated Access Roadway or property leased to Grantee is prohibited.

**3.2 No Parking.** Parking and/or storage of vehicles or any other personal property of Grantee within or upon the Access Roadway, or in any part of the Trail ROW, other than property leased to Grantee, is prohibited.

**3.3 As Is.** This Agreement grants a right of access and utilities only: the Department makes no warranties regarding the safety or suitability of the Access Roadway and any associated structures, including the bridge over Bear Creek. Grantee accepts this Easement subject to all faults or hazards, whether patent or latent, and without warranties or covenants, express or implied, and acknowledges that the Department shall have no duty to maintain, repair, or improve the Access Roadway or otherwise make it suitable for Grantee’s use. Grantee assumes full responsibility for ensuring that the Access Roadway is safe for use by Grantee and others. Grantee shall be responsible for maintenance, repair, and/r replacement of the bridge over Bear Creek.

**3.4 Shared Use.** This Easement is non-exclusive, and the Department reserves the right to grant easements and licenses for use of the Access Roadway to other land owners and to lessees of the Department. Any such grant shall require the Grantee to participate in the maintenance of the Access Roadway, as described in section 5 of this Easement.

**3.5 Speed Limit.** Use of motor vehicles within the Access Roadway shall be limited to no more than twenty miles per hour (20 mph).

**3.6 No Interference of Trail Use.** Grantee shall utilize the Access Roadway in a manner that avoids interference with, or injury to, any users of the Trail of the Coeur d’Alenes.

**3.7. Damage to Trail ROW.** Grantee is responsible for any costs incurred by Department to repair damage arising from Grantee’s use of the Access Roadway.

**3.8 Non-Delegable.** The rights granted in this Easement are exclusive to Grantee, its employees, and invitees, for ingress and egress to Grantee’s Premises. Grantee is specifically prohibited from authorizing use of the Easement for ingress and egress to and from any property other than Grantee’s Premises or any additional lands leased by Grantee.

#### 4. Compliance with Rails-to-Trails Act.

This Agreement is made subject to the terms and conditions contained in the Decision and Certificate of Interim Trail Use or Abandonment issued by the Surface Transportation Board on or around June 22 2000, in Docket No. AB-33(Sub-No. 70), as extended, including but not limited to the rail-bank interim trail use conditions imposed in said Decision pursuant to the National Trails System Act 16 U.S.C. 1247(d), 49 CFR 1152.29, and the Consent Decree entered by the United States District Court for the District of Idaho on August 25, 2000 (United States of America and State of Idaho v Union Pacific Railroad Company Case No CV 99-0606-N-EJL; Coeur d'Alene Tribe v Union Pacific Railroad Company Case No. CV 01-0342-N-EJL). In the event the Surface Transportation Board or a court of competent jurisdiction determines that this Grant of Easement unlawfully interferes with the re-assumption of rail service upon the Trail ROW or is otherwise in violation of the Certificate of Trail Use and Abandonment, Grantee shall take all actions necessary to resolve the interference and comply with applicable orders of the Surface Transportation Board or the court.

5. **Responsibility for Construction and Maintenance.** Grantee, and any other person authorized by IDPR to use the Access Roadway, are jointly and severally responsible for all construction and maintenance costs associated with use of the Access Roadway, including all measures necessary to ensure the safe use of the Access Roadway and to prevent the release of hazardous substances and prevent public contact with contaminants. It is the sole responsibility of the Grantee and any other Department-authorized users (hereinafter collectively "Joint Users") to reach agreement among themselves regarding allocation of construction and maintenance costs among the Joint Users. It is the sole responsibility of the Joint Users to acquire all necessary permits, including permits for any construction and maintenance of the bridge over Bear Creek. In addition, Joint Users shall comply with the following requirements:

- 5.1 **Safety Concerns.** Construction and maintenance of the Access Roadway must be performed in a manner that ensures the safety of any person using the Roadway and any person using the Trail of the Coeur d'Alenes. Expansion of the existing roadway is allowed up to, but not exceeding a width of 24 feet, and must be constructed at a location and in a manner that maintains a minimum distance of fourteen (14) feet from the edge of the roadway to the center of the Trail of the Coeur d'Alenes. The existing fence separating the roadway from the Trail will not be disturbed.
- 5.2 **Allocation of Responsibilities Among Joint Users.** Any and all disputes among the Joint Users arising from use of the roadway, including the allocation of costs incurred by Joint Users for maintenance of the roadway, and financial responsibility for any damages or injuries arising from use of the roadway, shall be determined solely by the Joint Users. The Department shall not participate in the resolution of such disputes.
- 5.3 **Hazardous Materials.** Grantee acknowledges that the Trail ROW is managed to prevent the release of hazardous substances that may be present along the former railroad right-of-way. Construction and maintenance activities by the Joint Users shall not disturb, remove or in any way interfere with any protective barriers, institutional controls, or other measures taken to contain, control or remediate hazardous substances along the former railroad right-of-way without the written consent of the Department and compliance with all requirements of the Response Action Maintenance Plan ("RAMP"), applicable to the Trail ROW pursuant to agreement of the State of Idaho, the Coeur d'Alene Tribe, the United States Environmental Protection Agency and the Union Pacific Railroad, and compliance with the Institutional Control Program, a description of which is attached to this Easement as Attachment C.

- 5.4 Fiber Optic Cable.** Fiber optic cable systems, natural gas pipelines, or other utilities, including a water pipeline maintained by the Central Shoshone County Water District, may be buried under the Crossing Premises. Joint Users shall employ an underground utility locator service to arrange for a cable locator and make arrangements to avoid or relocate fiber optic cable or other utility lines, with the permission of the owner thereof, before undertaking any earth removal or other action that may disturb such cable or utilities. Joint Users shall indemnify and hold harmless Department from all costs, liability and expense arising from any action or omission that results in damage to buried fiber optic cables or other buried utility lines.
- 5.5 Trash and Weeds.** Joint Users shall keep the Access Roadway clean of trash, debris or rubbish, and shall cooperate with the Department or any other agency authorized to undertake programs for control or eradication of noxious weeds. Joint Users shall take measures to control noxious weeds on the Access Roadway in accordance with Title 22, Chapter 24, Idaho Code.
- 5.6 Paving.** If one or more Joint Users desire to pave the Access Roadway, such Joint Users shall submit a formal proposal to IDPR for review and written approval before any construction occurs. Approval is at the sole discretion of IDPR. The paving proposal shall include plans for removal of the pavement upon the end of its useful life or in the event of the termination of this Easement. Pavement of the road shall not give the Joint Users any additional rights beyond those expressly granted by this Easement, and pavement for the benefit of one Joint User shall not interfere with the rights granted by IDPR to other Joint Users.
- 5.6.1 Pavement by Third Party.** If a third party undertakes to pave the access road in conjunction with remediation efforts, Joint Users, as the beneficiaries of such efforts, shall be jointly and severally responsible for repair or maintenance of the pavement unless such responsibility is assumed by the third party.
- 5.7 Grantee Responsibility if No other Authorized Users.** If there are no authorized users other than Grantee, the responsibilities and obligation identified herein as being borne by the Joint Users shall be borne solely by the Grantee.
- 6. Running With the Land:** This Easement runs with the land
- 7. Consideration.** In consideration of the rights granted herein, Grantee shall pay to the Idaho Endowment Fund Investment Board the sum of TWENTY-TWO THOUSAND dollars (\$22,000), for deposit into the Trail of the Coeur d'Alene Endowment Fund.
- 8. Responsibility for Damages.** The Grantee assumes the risk of, and is solely responsible for, damages to property or injuries to persons that may arise from or be incident to the use of the roadway by Grantee and Grantee's employees, agents, contractors and invitees.
- 9. Insurance.** Grantee shall obtain and maintain either general liability or homeowner's insurance, as applicable, and, if necessary, umbrella liability insurance with a combined limit of not less than one million dollars (\$1,000,000.00) to cover liability for bodily injury, property damage and personal injury, arising from Grantee's use of the Access Roadway. In addition Grantee shall maintain automobile liability insurance (including non-owned and hired vehicles) of not less than \$1,000,000 each occurrence, and \$1,000,000 aggregate. A commercial umbrella or excess policy may be used to meet the before-stated automobile liability requirements. In the event Grantee's property is leased, either Grantee or Lessee shall meet and provide the required insurance as stated herein.



- 9.1 Evidence of Insurance.** All insurance required under this Easement shall be with companies licensed and admitted in Idaho. Within 15 days of signing this Easement, Grantee shall furnish the Department with a certificate of insurance executed by a duly authorized representative of each insurer showing compliance with the insurance requirements set forth above and verifying that such insurance covers use of the Access Roadway.
- 9.2** Failure of the Department to demand such certificate or other evidence of full compliance with these insurance requirements shall not be construed as a waiver of Grantee's obligation to maintain such insurance.
- 9.3** Failure to maintain the required insurance may result in termination of this Agreement if it is found that the required insurance has not been met and Grantee is given written notice of said failure and the required insurance is not reinstated within 45 days of said insurance failure notice.
- 10. Complete Statement of Terms.** No other understanding, whether oral or written, whether made prior to or contemporaneously with this Easement, shall be deemed to enlarge, limit or otherwise affect the operation of this Easement. All rights of Grantee and the legal relations of the Department and Grantee are defined herein and no rights not specifically identified herein are intended.
- 11. Written Modification.** No modification, release, discharge, change, or waiver of any provision hereof shall be of any force, effect, or value unless it is in writing and signed by both parties to this Easement. Any such modification shall be attached hereto as an addendum and incorporated herein by this reference.
- 12. Authority to Sign.** Grantee and the Department each warrant and represent to the other that the persons signing this Easement have full authority and right to bind their respective parties to the terms of this Easement and that such person is acting within the scope of such person's authority and agency.
- 13. Acceptances.** By signing below, the Grantee and the Department accept the Terms and Conditions in this Easement.

**GRANTOR, State of Idaho, Park Board of the State of Idaho**

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
 Brian Beckley  
 Chair, Idaho Park and Recreation Board

Countersigned:

\_\_\_\_\_ Date: \_\_\_\_\_  
 Susan E. Buxton  
 Director, Idaho Department of Parks and Recreation  
 Secretary to Idaho Park and Recreation Board

STATE OF IDAHO            )  
  ss  
COUNTY OF \_\_\_\_\_)

This record was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, by Brian Beckley, as Chair of the Idaho Park and Recreation Board.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC for Idaho  
Residing at \_\_\_\_\_, Idaho  
My Commission expires: \_\_\_\_\_

STATE OF IDAHO            )  
  ss  
COUNTY OF \_\_\_\_\_)

This record was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, by Susan E. Buxton, as Director of the Idaho Department of Parks and Recreation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC for Idaho  
Residing at \_\_\_\_\_, Idaho  
My Commission expires: \_\_\_\_\_

**GRANTEES, Gerald White & Michael White**

\_\_\_\_\_  
Gerald White

Date: \_\_\_\_\_

\_\_\_\_\_  
Michael White

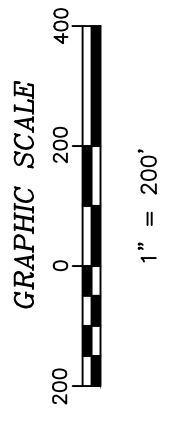
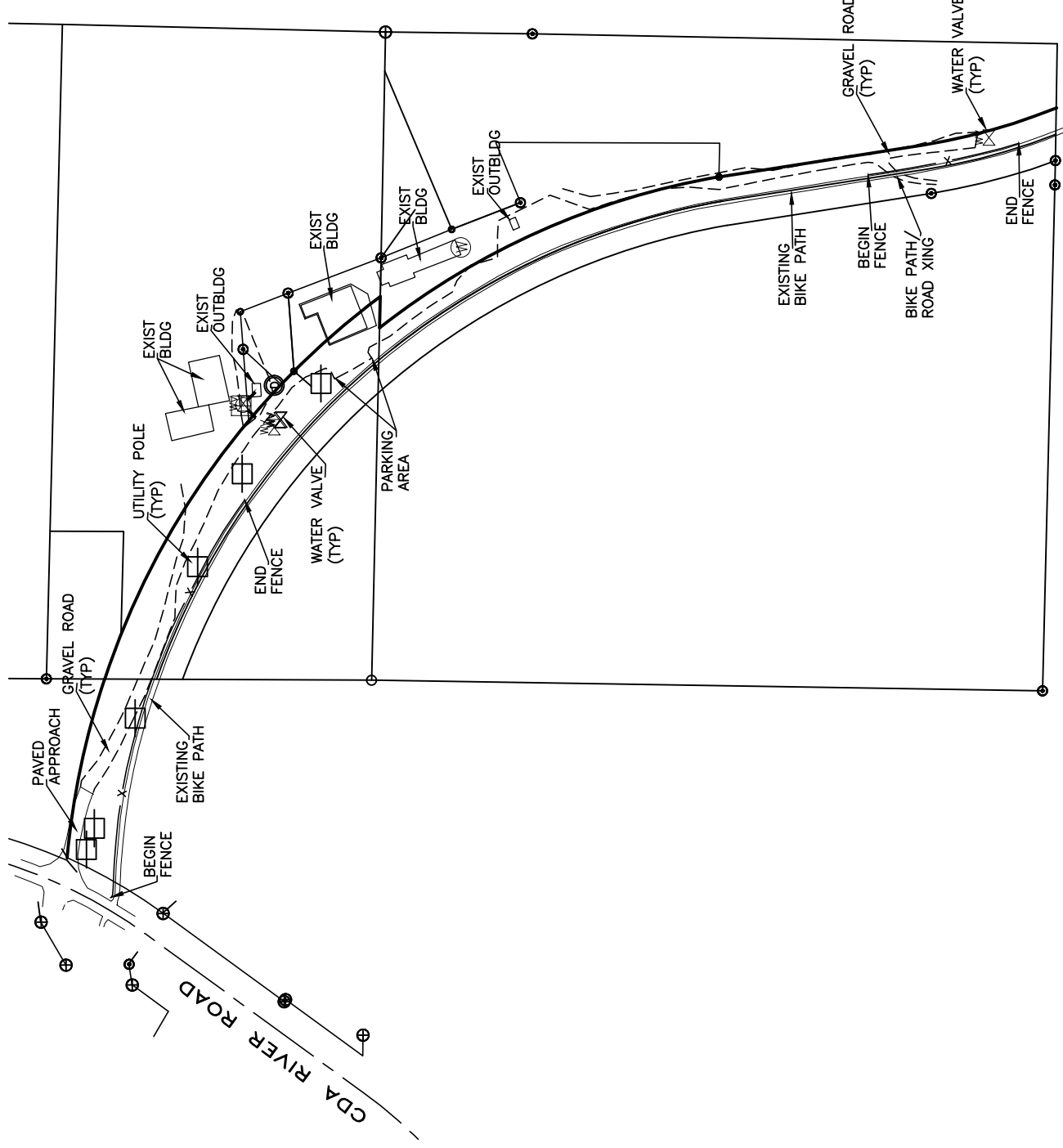
Date: \_\_\_\_\_



Attachment A to Access Roadway Easement  
Record of Survey  
(see following page)

**RECORD OF SURVEY—OVERLAY EXHIBIT**  
**IDAHO DEPARTMENT OF PARKS AND RECREATION**  
**LOCATED IN THE NORTHEAST 1/4 OF SECTION 1/4 OF SECTION 31, AND THE SOUTH 1/2 OF**  
**THE SOUTHEAST 1/4 OF SECTION 30. TOWNSHIP 49 NORTH, RANGE 2 EAST, BOISE MERIDIAN,**  
**SHOSHONE COUNTY, IDAHO**

INST. NO. \_\_\_\_\_  
 STATE OF IDAHO  
 COUNTY OF SHOSHONE  
 FILED FOR RECORD AT THE REQUEST OF:  
**TATE ENGINEERING, INC.**  
 At \_\_\_\_\_ minutes past \_\_\_\_\_ o'clock \_\_\_\_\_ M  
 Date: \_\_\_\_\_  
 TAMEE J. EBERHARD, RECORDER  
 By: \_\_\_\_\_ Deputy  
 FEE \_\_\_\_\_



- LEGEND**
- SET 5/8" BY 24" IRON ROD W/PLASTIC CAP MKD PLS 4565
  - FD. 1/2" IRON ROD — NO CAP
  - FD. IRON PIPE — SIZE AS NOTED
  - ⊙ FD. 5/8" IRON ROD W/CAP AS NOTED
  - ⊙ CALCULATED POINT

**SURVEY METHODS**  
 GPS — TRIMBLE R10 W/GNSS USING RTK WITH  
 2 MEASUREMENTS AT EACH POSITION  
 CONVENTIONAL—TRAVERSES WITH TOPCON GTS 235  
 INST.

**SURVEYORS CERTIFICATE**  
 I, ERNEST M. WARNER, PROFESSIONAL LAND  
 SURVEYOR No. 4565 IN THE STATE OF IDAHO, DO  
 HEREBY CERTIFY THAT THIS SURVEY WAS MADE BY ME  
 OR UNDER MY SUPERVISION.

**NOTES**  
 1) ALL DISTANCES ARE IN U.S. FEET

**RECORD DRAWINGS**

NUMBER	TYPE	INST. NO.	DATE	BY
(R1)	RECORD OF SURVEY	478500	2014	ZIMMERMAN
(R2)	RECORD OF SURVEY	462468	2011	PFAHL
(R3)	RECORD OF SURVEY	452474	2009	RENALDO
(R4)	RECORD OF SURVEY	444525	2008	PFAHL
(R5)	RECORD OF SURVEY	444214	2008	DAVIS
(R6)	SHORT PLAT	413618	2003	PFAHL
(R7)	RECORD OF SURVEY	387093	1998	PFAHL
(R8)	SHORT PLAT	380058	1997	PFAHL
(R9)	SHORT PLAT	379476	1997	PFAHL

**BASIS OF BEARING**  
 THE BASIS OF BEARING IS THE IDAHO WEST ZONE STATE PLANE — NAD 1983  
 BASED ON GPS OBSERVATION AT N 2205309.9930, E 2378137.5670 (GRID COORD)  
 GRID CONVERGENCE ANGLE -0°44'27", CAF 0.99988882.

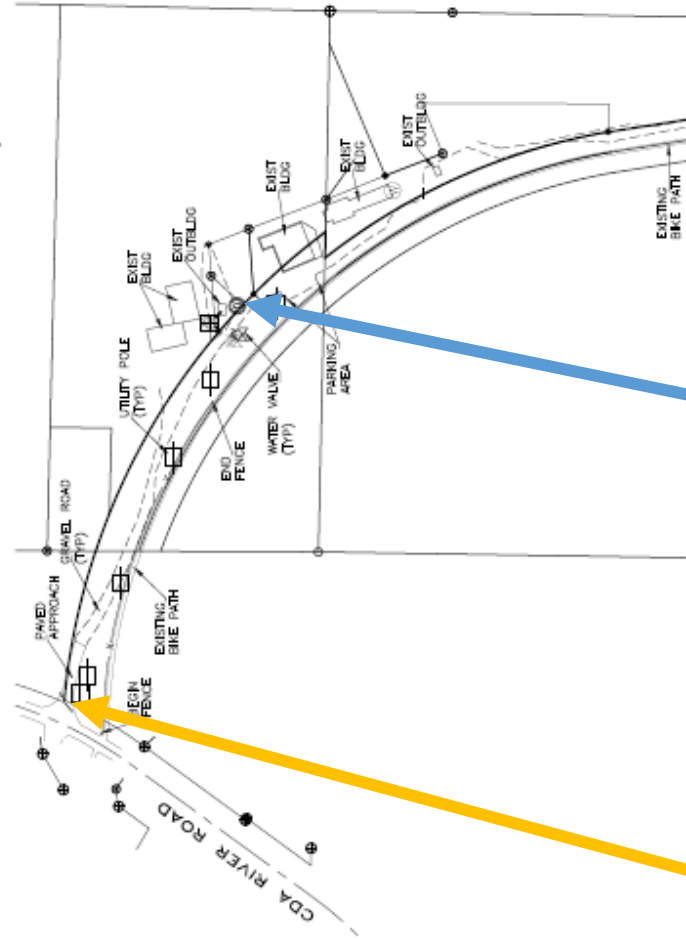
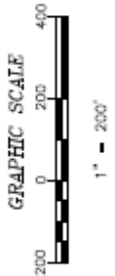
ERNEST M. WARNER, PLS 4565

<b>AE</b>	Tate Engineering, Inc. 417 E. Indiana Avenue Coeur d'Alene, Idaho, 83814 (208) 676-8708 e-mail: info@tate-eng.com	
	PROJECT #: 18.295	DATE: May, 2019
DRAWING: 19.295R05	CHECKED: EMW	SCALE: 1"= 100'
		DRAWN BY: emw

# EXHIBIT A

**RECORD OF SURVEY—OVERLAY EXHIBIT**  
IDAHO DEPARTMENT OF PARKS AND RECREATION  
LOCATED IN THE NORTHEAST 1/4 OF SECTION 31, AND THE SOUTH 1/2 OF  
THE SOUTHEAST 1/4 OF SECTION 30. TOWNSHIP 49 NORTH, RANGE 2 EAST, BOISE MERIDIAN,  
SHOSHONE COUNTY, IDAHO

FILE NO. \_\_\_\_\_  
STATE OF IDAHO  
COUNTY OF SHOSHONE  
FILED FOR RECORD AT THE REQUEST OF  
THE ENGINEERS, INC.  
As \_\_\_\_\_ ENGINEERS, INC. \_\_\_\_\_  
DATE \_\_\_\_\_  
TAKE A. ENGINEERS, INCORPORATED  
BY \_\_\_\_\_  
REC \_\_\_\_\_



### LEGEND

- SET 5/8" BY 24" IRON ROD W/PLASTIC CAP MND PLS 4565
- FD. 1/2" IRON ROD -- NO CAP
- ⊙ FD. IRON PIPE -- SIZE AS NOTED
- ⊛ FD. 5/8" IRON ROD W/CAP AS NOTED
- ◊ CALCULATED POINT

Beginning Point

Ending Point

Attachment B to Access Roadway Easement  
Legal Descriptions of Grantee's Premises

Attachment C to Access Roadway Easement  
Institutional Control Program  
(see following page)



## RAMP ICP

### **500. Trail of the Coeur d'Alenes Institutional Control Program Requirements for Non –Maintenance and Repair Construction Activities**

**01. Legal Authority.** The Implementing Entity shall adopt and implement, in substantial conformance as determined by the State and the Tribe, these Requirements through contractual, regulatory or other appropriate authority.

**02. Purpose.** The purpose of these Requirements is to ensure that activities associated with excavation and grading such as infrastructure development and maintenance; building construction and renovation; and land development, redevelopment and/or modification within the boundaries of the Trail provide for the construction and maintenance of Contaminant Barriers and implementation of other Contaminant management Requirements to preclude the release and migration of and human exposure to Contaminants as necessary to protect the public health and the environment. It is imperative that current and future development and construction activities proceed in a manner which minimizes the release of Contaminants into the environment to minimize exposure to residents, communities, and to workers involved in project work.

**03. Implementation Policy and Standards.** Implementation policy and standards which pertain to the interpretation and enforcement of these Requirements or to the documentation of compliance with these Requirements will be developed by the Implementing Entity.

**04. (Reserved)**

**05. Definitions.** The following terms shall be construed throughout these Requirements in a manner consistent with these definitions:

**a.** Agricultural Land - Land used for pasturing animals or for cultivation and production of agricultural crops including conservation reserve activities.

**b.** Applicant - Any person, contractor, public utility, government or other entity that is required to apply for an Institutional Controls Program (ICP) Permit.

**c.** Access Restrictions - Physical barriers and features such as fences , barricades, curbs, barrier rocks, trenches, signs, etc. that restrict access by vehicles, pedestrians, and animals to contaminated areas.

**d.** Barrier - Any physical structure, material or mechanism installed pursuant to these Requirements or the Consent Decree which acts to break the pathway between Contaminants and human receptors, including but not limited to soil, asphalt and Portland cement concrete, fences, access restrictions, or other structure or covering which separates Contaminants from contact with people or keeps Contaminants in place.

**e.** B.O.P - Barrier Option Plan, a plan which will be provided by an

Applicant, when required, that sets forth the location and type of Barrier which the Applicant intends to construct as part of the permitted work.

**f.** Building Construction - Construction activity to be performed for any new structure involving disturbance of soil in excess of one cubic yard.

**g.** Building Renovation - Construction activity to be performed on any existing structure involving ceiling or insulation removal, work in dirt crawl spaces or basements, or disturbance of soil in excess of one cubic yard.

**h.** CERCLA - Comprehensive Environmental Response, Compensation, and Liability Act.

**i.** Commercial Property - Retail, wholesale and secondhand businesses, public use areas and common use areas, and public buildings.

**1.** Type I - Commercial Property predominantly used by Sensitive Populations (e.g. daycare facilities, municipal parks, playgrounds, etc.)

**2.** Type II - All other Commercial Property.

**j.** Consent Decree – The Consent Decree entered August 25, 2000 by the United States District Court for the District of Idaho (Case Nos. 91-0342 and 99-606).

**k.** Contaminants - Soil or other material containing, or likely to contain, concentrations of lead equal to or greater than 1000 ppm (700 ppm within a Developed Recreation Area) or concentrations of arsenic equal to or greater than 100 ppm.

**l.** Developed Recreation Area - Commercial and public recreation areas containing constructed features such as boat ramps, picnic areas, and campgrounds within the Trail. The Developed Recreation Areas of the Trail includes all constructed trail surfaces, stop and views, oases (rest stops) and trailheads but does not include other undeveloped areas within the right of way.

**m.** Disposal - The placement of Contaminants into an authorized permanent repository.

**n.** Excavation - Any digging, breaching or disruption of soil not including cultivation of Agricultural Lands or gardens which may release or expose Contaminants to the environment.

**o.** ICP - The Institutional Controls Program requirements for non-maintenance and repair construction activities for the Trail.

**p.** ICP Permit - The Contaminant management authorization for projects subject to these Requirements.

**q.** Implementing Entity -The State and the Tribe for the respective portions of the Trail owned and managed by each or, as designated by the State and the Tribe, other appropriate governmental entity or contractor.

**r.** Large Project - A project where one cubic yard or more of soil containing Contaminants is disturbed or removed. Large Projects include, but are not limited to, infrastructure construction and maintenance, building construction, renovation, and demolition, land development or any change in the use of land that may result in the release or migration of Contaminants.

**s.** Record of Compliance - The record maintained by the Implementing Entity pursuant to Section 523 of these Requirements for Small Projects.

**t.** Release - Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of Contaminants into the environment.

**u.** Residential Property - Property used by private individuals or families as a residence.

**v.** Sensitive Populations - Pregnant women and children up to 12 years old.

**w.** Small Project - A project where less than one cubic yard of soil containing Contaminants is disturbed or interior work that is not Building Renovation.

**x.** State – The State of Idaho and its appropriate departments or sub-agencies

**y.** Trail of the Coeur d’Alenes or Trail or Trail Area – All Developed Recreation Areas and other undeveloped areas within the former Union Pacific Railroad Mullan and Wallace Branch rights of way.

**z.** Tribe – The Coeur d’Alene Tribe and its appropriate departments or sub-agencies.

**aa.** Working day - Monday through Friday, but shall not include any legal holiday recognized as such by the State of Idaho or Coeur d’Alene Tribe, as applicable

**06. Statement of Intent.** These Requirements establish standards for Barrier construction and maintenance, and other Contaminant management practices. These Requirements govern management of Contaminants by:

**a.** Requiring ICP Permits and requiring Barriers for certain construction and excavation activities;

**b.** Licensing contractors, utilities, and governmental entities which may disrupt or construct Barriers, or otherwise disturb Contaminants;

- c. Adopting performance standards;
- d. Inspecting for project compliance as required;
- e. Regulating the movement and disposal of Contaminants;
- f. Making it unlawful to knowingly disrupt a Barrier in a fashion likely to expose persons to Contaminants;
- g. Maintaining records of ICP activities.

**07. Additional Provisions by Implementing Entity.** In conjunction with these Requirements the Implementing Entity may, depending on project size and complexity, provide, as needed:

- a. Technical assistance and soil testing;
- b. Health screening and intervention;
- c. Readily available repositories for disposal of Contaminants;
- d. Clean material to restore Barriers for Small Projects;
- e. Disposal containers for Small Projects to assist in removal, transportation and disposal of contaminated soil;
- f. Health and safety information and education to licensees, permit applicants and the public;
- g. Sheet plastic, crushed aggregate and gravel, or other items as appropriate;
- h. A database tracking system.
- i. Guidelines for managing Contaminants.

**501. – 509. (RESERVED)**

**510. APPLICATION OF REQUIREMENTS**

These Requirements shall apply to the Trail Area. These Requirements shall not apply to the Union Pacific Railroad or its contractors when conducting activities within the Trail Area.

**01. Standards Adopted.**

- a. Except as otherwise provided in this Section, Contaminant management is

required on all areas within the Trail including areas that have been remediated; areas not yet tested; and areas testing below action levels in the top 18 inches where Large or Small Projects may disturb Contaminants below 18 inches in excess of one thousand (1000) ppm lead or one hundred (100) ppm arsenic. Contaminant management may include testing of untested areas by the Applicant; testing of deep soils (below 18 inches) by the Applicant where a project may result in deep excavations; and replacement and repair of Barriers in accordance with Section 510, subsection 02; or other management activities. Applicant performed soil testing will be conducted consistent with sampling and analytic procedures developed by the Implementing Entity.

**b.** Developed Recreation Areas with surface soil containing lead concentrations greater than 700 ppm lead and 100 ppm arsenic shall be capped pursuant to Section 510, subsection 02c.

**c.** Agricultural and undeveloped land within the Trail is exempt from these Requirements unless soil disturbing activities on these lands are likely to result in the release or migration of Contaminants from these lands.

**d.** All Barriers existing or hereinafter constructed shall be maintained and protected to original construction specifications.

**e.** No person shall conduct, except in accordance with these Requirements, any activity within the Trail which breaches a Barrier, may breach a Barrier, or disturbs a Barrier, or otherwise results in a threat to public health or the environment from the migration of Contaminants through tracking on tires or vehicles, visible airborne dust, excavation, transport, disposal, renovation, demolition, run-on or run-off from stormwater or in any other manner on areas remediated within the Trail and/or on areas not yet tested within the Trail.

## **02. Barriers; Construction and Maintenance Required.**

**a.** The minimum Barrier construction Requirements for Residential and Type I Commercial Properties are as follows:

i. All soil which contains lead equal to or in excess of one thousand (1000) ppm or arsenic equal to or in excess of one hundred (100) ppm and lies within twelve (12) inches of the final grade shall be removed and replaced with replacement material meeting the Requirements of Section 510, subsection 02d.

ii. Any such property with unrestricted access to an adjacent property not meeting the Requirements of Section 510, subsection 01a shall restrict access to such adjacent property.

**b.** The minimum Barrier construction Requirements for Type II Commercial Properties is a six (6) inch soil with vegetative cover barrier or six (6) inch crushed rock/gravel barrier or asphalt/Portland cement concrete cap. Excavation may be necessary for the installation of barriers to maintain grade or drainage Requirements.

c. The minimum Barrier construction Requirements for Developed Recreation Areas is a six (6) inch soil with vegetative cover barrier or six (6) inch crushed rock/gravel barrier or asphalt/Portland cement concrete cap. Excavation may be necessary for the installation of barriers to maintain grade or drainage Requirements.

d. All twelve (12) inch deep Barriers of soil or crushed rock/gravel required pursuant to the ICP which overlay soils having concentrations of lead equal to or greater than one thousand (1000) ppm or arsenic concentrations equal to or greater than one hundred (100) ppm shall have an underlying visual delineator at the twelve (12) inch depth. Visual delineators are not required if the soil underlying the Barrier has tested under one thousand (1000) ppm lead and one hundred (100) ppm arsenic. Cap Barriers such as Portland cement and asphalt concrete do not require delineators.

e. Soil and crushed aggregate/gravel imported for Barrier material shall contain less than one hundred (100) ppm lead, thirty five (35) ppm arsenic and five (5) ppm cadmium based on average of backfill sampling results. No single sample of replacement materials shall exceed one hundred fifty (150) ppm lead or forty five (45) ppm arsenic.

f. Barriers shall be maintained and repaired in accordance with original construction specifications.

g. Contaminated waste material generated in the construction, maintenance and repair of Barriers shall be disposed of in designated repositories as directed by Implementing Entity.

### **03. ICP Permits Required.**

a. Permits shall be required for Large Projects and Building Renovations.

b. A permit is required for a project which changes the use of a property containing Contaminants. A new Barrier or additional or more substantial Barrier may be required unless waived by the Implementing Entity.

c. A single annual permit covering a specific list of projects may be obtained from the Implementing Entity by entities eligible under Section 531 at the beginning of each year's construction season.

### **511. – 519. (RESERVED)**

### **520. PERMIT APPLICATION AND ADMINISTRATION.**

**01. Applications for ICP Permit.** Application for an ICP Permit shall be made in writing at the office of the Implementing Entity. Application shall be on forms provided by the Implementing Entity.

**02. Required Applicant Information.** All Applicants shall provide the following information when applying for an ICP Permit with the Implementing Entity:

- a. Name, address and telephone number of the Applicant.
- b. Location of the work and whether the work is being done on private or public property, or both.
- c. The description of work must include methods of handling or storing, and transporting contaminated materials. A site plan may be required by the Implementing Entity if one has not been provided pursuant to the permit process.
- d. Dates work will be started and completed.
- e. Such other information as the Implementing Entity shall require.
- f. A copy of the authorizing document from the government (State or Tribe) having primary authority for the area of the Trail where the work is to occur.

**03. Implementing Entity Requirements for Projects.** The Implementing Entity may require, as appropriate for a particular project, the following:

- a. Large Projects:
  - i. Name, signature, license number, seal and address of engineer, land surveyor, architect, professional planner, landscape architect, or contractor as applicable, involved in preparation of the application or any materials or documents pertaining thereto;
  - ii. Copies of other government permits, authorizations or permit applications and the supporting documents and materials pertaining thereto;
  - iii. A key map showing location of project with reference to surrounding properties including owners, streets and city boundaries;
  - iv. Existing and/or proposed zoning;
  - v. North arrow and scale;
  - vi. Site plan showing dimensions, boundaries, existing and/or proposed structures;
  - vii. Date of most recent property survey and copy of that survey;
  - viii. Standardized sheet size;
  - ix. Copies of existing and/or proposed restrictions or covenants;

- x. List of ordinance variances required or requested;
- xi. Requested or obtained design waivers or exceptions;
- xii. Identification of surrounding water courses, flood plains (floodway and 100 year floodplain), wetlands, and environmentally sensitive areas on-site and within 200 feet;
- xiii. Soil information as required to determine levels of contamination;
- xiv. Location and description of all existing Barriers onsite and bordering the site;
- xv. Barrier Option Plan, as required;
- xvi. Existing rights-of-way and/or easements on and adjacent to the tract (i.e. streets, utilities);
- xvii. Existing and proposed contour intervals based on U.S.G.S. datum, contours to extend 50 feet beyond the project site borders (additional distance may be required in the case of subdivisions and special use permit situations), contour intervals shall be as follows: for sites with slopes of less than 3% - 1 foot intervals; for sites with slopes of 3% to 10% - 2 foot intervals; for sites with slopes over 10% - 5 foot intervals;
- xviii. Existing system of site drainage and of any larger tract or basin of which the site is a part;
- xix. Drainage calculations;
- xx. Existing and proposed utility infrastructure locations;
- xxi. Locations of existing and/or proposed activities onsite (i.e. lawn, garden, landscaping areas, pathways, driveways, storage areas, structure locations, etc.);
- xxii. Soil erosion and sedimentation control plan if surface is to be disturbed;
- xxiii. Dust control plan if surface is to be disturbed;
- xxiv. Plan for transporting Contaminants, including but not limited to means for transportation, proposed disposal site and proposed route;
- xxv. Access control plan for construction period;
- xxvi. Construction schedule;
- xxvii. Contractor bonding information;



xxviii. Health and safety plan;

xxix. Reimbursement of professional fees paid by the Implementing Entity to evaluate a project proposal including but not limited to independent architectural and engineering fees.

**b. Building Renovations:**

i. Name, signature, license number, seal and address of engineer, land surveyor, architect, professional planner, landscape architect, or contractor as applicable, involved in preparation of the application or any materials or documents pertaining thereto;

ii. Type of contaminated material to be handled (i.e. soil, insulation etc.);

iii. Dust control plan;

iv. Access control plan;

v. Worker precautions (health and safety plan);

vi. Transportation information, including means, method of containment of materials, and proposed disposal site;

vii. Contractor bonding information;

viii. Construction schedule.

**04. Use of Discretion on Requirements by Implementing Entity.** The Implementing Entity may, at its discretion, waive certain application Requirements or information, or require additional or alternative actions or information, depending upon the type and extent of the project and conditions encountered. In no case shall the waiver violate the intent of these Requirements and/or the Consent Decree.

**05. Site Inspection or Waiver When ICP Permit Required.** Work which requires an ICP Permit shall not commence until a site inspection has been made or waived by the Implementing Entity and an ICP Permit has been issued.

**06. Time Specifications.** The ICP Permit shall provide that all work shall be completed within a specific period of time and the ICP Permit shall be void if work is not commenced and completed within the times specified. An extension of time may be granted by the Implementing Entity upon a showing of good cause.

**07. Other Inspections and Requirements.** All ICP Permits granted pursuant to these Requirements remain subject to such other inspections and requirements prescribed by state, tribe or local governments.

**521. INSPECTION.**

The Applicant shall notify the Implementing Entity by telephone when work is completed. Applicants shall call for inspection in accordance with the terms of the ICP Permit; 48 hours notice (excluding weekends and holidays) to Implementing Entity shall be provided. The inspector shall note approval of the work in writing and shall enter same in the database tracking system, or shall note reasons for disapproval and steps which must be taken to complete the work. Upon completion of the work to the Implementing Entity's satisfaction, the Implementing Entity's final approval shall be noted in the database tracking system. Such entry shall constitute the Record of Compliance for such project. All work governed by these Requirements shall be subject to inspection by the Implementing Entity or its designated agents. The Implementing Entity reserves the right to waive the inspection requirements.

**522. PERMIT REVOCATION OR STOP WORK ORDER.**

Any ICP Permit may be revoked or a stop Work Order may be issued, without notice by the Implementing Entity, for non-compliance with or violation of any of the provisions of these Requirements or any requirements or limitation of the ICP Permit. If an ICP Permit is revoked, the Implementing Entity may take such steps as are necessary to eliminate any danger from Contamination, including completion of work by the Implementing Entity. The Applicant or contractor may be required to pay all costs and expenses for abatement of any danger and/or completion of the project, including legal fees incurred by the Implementing Entity to obtain compliance. The Implementing Entity will endeavor to provide written notice, but shall reserve any right to act summarily to protect public health and the environment.

**523. RECORD OF COMPLIANCE FOR SMALL PROJECTS.**

A Record of Compliance for Small Projects which documents compliance with the performance standards established by these Requirements will be entered into the database tracking system based upon an inspection by the Implementing Entity. The Record signifies the person performing the project was notified of any applicable performance standards and guidelines and materially complied with the same.

**524. – 529. (RESERVED)**

**530. CONTRACTOR LICENSING**

**01. License Required.** Any contractor performing Large Projects or transportation or disposal of Contaminants which is likely to expose the contractor, workers or others to Contaminants, must be licensed by the Implementing Entity. There will be no charge for a contractor's license. A contractor shall be prohibited from working on a project requiring an ICP Permit without a current contractor's license issued by the Implementing Entity.

**02. Training.** In order to obtain a contractor's license from the Implementing Entity, the Contractor must have those supervisors involved in activities dealing with Contaminants participate in training approved by the Implementing Entity and pass an annual examination focusing on the reasons for, and methods of, controlling Contaminants. The purpose of the examination is to assure that all of the Contractor's employees are aware of and observe the

procedures and standards that will protect them and the public from the Contaminants. The Implementing Entity will create and administer the test. The trained Contractor's supervisor must pass information on to employees as is necessary to protect their health and safety and assure compliance with these Requirements. The Implementing Entity will provide or arrange for appropriate training.

**03. Bonding.** Any Contractor whose license has been revoked by the Implementing Entity within the past three years must, as a condition of reinstatement and maintaining the status of a licensed Contractor, be bonded in the minimum amount of Two Thousand Dollars (\$2000.00) or at least five percent (5%) of the cost of any contract the Contractor is engaged in, whichever is greater. Said bond shall be in a form approved by the Implementing Entity and must be suitable to insure payment for completion of Barrier work not completed by the Contractor. A cash deposit or other security acceptable to the Implementing Entity may be utilized in lieu of a bond. The Implementing Entity may establish a bonding program for all Contractors, if deemed necessary to carry out these Requirements.

**04. Suspension or Revocation of License.**

**a.** Upon a showing that a licensee has violated any provision of these Requirements, or has violated any other health or building code within the boundaries of the Trail, suspension or revocation of the license may be imposed. Suspension or revocation may be made by Implementing Entity. Notification of suspension or revocation shall be in writing.

**b.** Suspension or revocation may be appealed by the licensee to the Implementing Entity pursuant to procedures provided by the Implementing Entity.

**c.** If a license is revoked, the Contractor may, upon payment of any cleanup or remediation costs related to past work, reapply for reinstatement of license after one year, however, a contractor whose license has been revoked may not obtain a new license under a different corporate or partnership status until this provision is satisfied.

**531. LICENSE FOR PUBLIC UTILITIES AND GOVERNMENT ENTITIES.**

Upon a demonstration that supervisory employees of a public utility or government entity have participated in an education program approved by, or provided by, the Implementing Entity, a utility company or government entity may receive an annual license which will allow their employees to perform excavation and grading operations without obtaining individual ICP permits. This license may be granted by the Implementing Entity and will require that the entity comply with performance standards and all other requirements contained herein. All supervisory employees involved in and responsible for excavation and grading operations shall have participated in an Implementing Entity approved education program. The trained supervisor must pass information on to employees as is necessary to protect their health and safety and assure compliance with these Requirements. The Implementing Entity shall provide or arrange for training. Entities licensed under this section shall maintain a log of excavation and grading operations on a form approved by the Implementing Entity. Such logs shall be submitted to the Implementing Entity on a regular basis as determined by the Implementing Entity. All licensees shall telephone the appropriate one-call locating service prior to any excavation or grading

operation. Licenses shall be renewed annually upon a showing that the utility or government entity has operated in compliance with these Requirements. This license may also be revoked as provided in Section 530, subsection 04.

**532. – 539. (RESERVED)**

**540. PERFORMANCE OF WORK.**

**01. Completion of work.** All work done pursuant to an ICP Permit shall be completed in a neat and workmanlike manner and so scheduled as to cause the minimum interference with traffic or public use (if applicable) and a minimum dispersal of Contaminants.

**02. Work Delayed by Applicant.** If the work is unduly delayed by the Applicant, and if the public interest reasonably so demands, the Implementing Entity shall have the authority, upon 24 hours' written notice to the Applicant, to complete the work to the extent that the Barrier is restored and any Contaminants covered or removed. The actual cost of such work by the Implementing Entity (including legal fees), plus an overhead charge, shall be charged to and paid by the Applicant.

**541-598 (Reserved)**

**599. IMPLEMENTATION, ENFORCEMENT AND ADMINISTRATIVE PROCEDURES.**

The Implementing Entity may develop and adopt performance standards and may adopt administrative enforcement and remedy procedures to ensure proper implementation of these Requirements. These standards and procedures shall be consistent with Sections 500.01 and .02 of these Requirements.

## GRANT OF ACCESS ROADWAY EASEMENT

THIS INDENTURE, made this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the STATE OF IDAHO, Department of Parks and Recreation, 5657 Warm Springs Ave, P.O. Box 83720, Boise, Idaho, 83720-0065, (Grantor), and Wood's Crushing and Hauling, Inc., 933 Woodside Rd. Sandpoint, ID 83864-756 (Grantee);

WITNESSETH: That for and in consideration of the consideration stated herein, the Grantor does hereby grant to the Grantee, its successors and assigns, forever, an appurtenant, non-exclusive easement for the purpose of using and maintaining an Access Roadway for the purposes herein stated over, upon, and across the following described lands situated in SHOSHONE COUNTY, State of Idaho, to-wit:

A strip of land twenty-four (24) feet wide within the rail-banked right-of-way designated in Idaho Code § 67-4212 as Trail of the Coeur d'Alenes Recreational Trailway, beginning at the eastern boundary of the Coeur d'Alene River Road right-of-way, SW $\frac{1}{4}$ SE $\frac{1}{4}$  Sec. 30, T49NR02E, and ending at the point where the Access Roadway leaves the Trail ROW and crosses the western boundary of Tax Parcel 49N02E309500, as further designated on the Record of Survey, which is attached to this Easement as Attachment A, and by this reference incorporated herein. This Easement only authorizes use of the Access Roadway within the Trail ROW, and does not authorize any use of those portions of the Access Roadway outside the Trail ROW.

Such grant is subject to the following terms and conditions:

### 1. Definitions.

- 1.1. **Access Roadway.** The real property designated herein for ingress and egress and utilities to the Grantee's Premises.
- 1.2. **Department.** The Idaho Department of Parks and Recreation.
- 1.3. **Easement.** This Grant of Access Roadway Easement.
- 1.4. **Grantee.** For the sake of convenience, the grantee of the rights conferred herein is designated as the "Grantee." The use of the term "Grantee," however is not intended to confer any rights beyond those conferred by the express terms of this Easement.
- 1.5. **Grantee's Premises.** Those lands designated in the records of Shoshone County, Idaho, as tax parcels nos. 49N02E310200, 49N02E310210 and 49N02E309400, as more specifically identified by legal description in Attachment B, along with any additional lands leased by Grantee.
- 1.6. **Trail ROW.** The former right of way of the Wallace Branch of the Union Pacific Railroad, acquired by the Department for use as a recreational Trail pursuant to the *Decision and*

*Certificate of Interim Trail Use or Abandonment*, Surface Transportation Board, Docket No. AB-33 (Sub-No 70) (June 22, 2000).

**1.7 Trail of the Coeur d'Alenes.** The paved recreational trail located within the Trail ROW.

**2. Grantee.** The following person or entity is designated as the Grantee:

Wood's Crushing and Hauling, Inc.  
and/or Brian & Penny Wood  
933 Woodside Rd.  
Sandpoint, ID 83864-7562

**3. Grant.** The Department hereby grants to the Grantee a non-exclusive right of ingress and egress and utilities over and/or along the Trail Right-Of-Way (ROW) within the designated Access Roadway by means of motorized vehicles for the purpose of accessing Grantee's premises. Such grant is subject to the terms and conditions set forth in this Easement.

**3.1 No Use Outside Access Roadway.** Use of motorized vehicles on any portion of the Trail ROW other than the designated Access Roadway or property leased to Grantee is prohibited.

**3.2 No Parking.** Parking and/or storage of vehicles or any other personal property of Grantee within or upon the Access Roadway, or in any part of the Trail ROW, other than property leased to Grantee, is prohibited.

**3.3 As Is.** This Agreement grants a right of access and utilities only: the Department makes no warranties regarding the safety or suitability of the Access Roadway and any associated structures, including the bridge over Bear Creek. Grantee accepts this Easement subject to all faults or hazards, whether patent or latent, and without warranties or covenants, express or implied, and acknowledges that the Department shall have no duty to maintain, repair, or improve the Access Roadway or otherwise make it suitable for Grantee's use. Grantee assumes full responsibility for ensuring that the Access Roadway is safe for use by Grantee and others. Grantee shall be responsible for maintenance, repair, and/r replacement of the bridge over Bear Creek.

**3.4 Shared Use.** This Easement is non-exclusive, and the Department reserves the right to grant easements and licenses for use of the Access Roadway to other land owners and to lessees of the Department. Any such grant shall require the Grantee to participate in the maintenance of the Access Roadway, as described in section 5 of this Easement.

**3.5 Speed Limit.** Use of motor vehicles within the Access Roadway shall be limited to no more than twenty miles per hour (20 mph).

**3.6 No Interference of Trail Use.** Grantee shall utilize the Access Roadway in a manner that avoids interference with, or injury to, any users of the Trail of the Coeur d'Alenes.

**3.7. Damage to Trail ROW.** Grantee is responsible for any costs incurred by Department to repair damage arising from Grantee's use of the Access Roadway.

**3.8 Non-Delegable.** The rights granted in this Easement are exclusive to Grantee, its employees, and invitees, for ingress and egress to Grantee's Premises. Grantee is specifically prohibited from authorizing use of the Easement for ingress and egress to and from any property other than Grantee's Premises or any additional lands leased by Grantee.

#### 4. Compliance with Rails-to-Trails Act.

This Agreement is made subject to the terms and conditions contained in the Decision and Certificate of Interim Trail Use or Abandonment issued by the Surface Transportation Board on or around June 22 2000, in Docket No. AB-33(Sub-No. 70), as extended, including but not limited to the rail-bank interim trail use conditions imposed in said Decision pursuant to the National Trails System Act 16 U.S.C. 1247(d), 49 CFR 1152.29, and the Consent Decree entered by the United States District Court for the District of Idaho on August 25, 2000 (United States of America and State of Idaho v Union Pacific Railroad Company Case No CV 99-0606-N-EJL; Coeur d'Alene Tribe v Union Pacific Railroad Company Case No. CV 01-0342-N-EJL). In the event the Surface Transportation Board or a court of competent jurisdiction determines that this Grant of Easement unlawfully interferes with the re-assumption of rail service upon the Trail ROW or is otherwise in violation of the Certificate of Trail Use and Abandonment, Grantee shall take all actions necessary to resolve the interference and comply with applicable orders of the Surface Transportation Board or the court.

5. **Responsibility for Construction and Maintenance.** Grantee, and any other person authorized by IDPR to use the Access Roadway, are jointly and severally responsible for all construction and maintenance costs associated with use of the Access Roadway, including all measures necessary to ensure the safe use of the Access Roadway and to prevent the release of hazardous substances and prevent public contact with contaminants. It is the sole responsibility of the Grantee and any other Department-authorized users (hereinafter collectively "Joint Users") to reach agreement among themselves regarding allocation of construction and maintenance costs among the Joint Users. It is the sole responsibility of the Joint Users to acquire all necessary permits, including permits for any construction and maintenance of the bridge over Bear Creek. In addition, Joint Users shall comply with the following requirements:

- 5.1 **Safety Concerns.** Construction and maintenance of the Access Roadway must be performed in a manner that ensures the safety of any person using the Roadway and any person using the Trail of the Coeur d'Alenes. Expansion of the existing roadway within the ROW is allowed up to, but not exceeding a width of 24 feet, and must be constructed at a location and in a manner that maintains a minimum distance of fourteen (14) feet from the edge of the roadway to the center of the Trail of the Coeur d'Alenes. The existing fence separating the roadway from the Trail will not be disturbed.
- 5.2 **Allocation of Responsibilities Among Joint Users.** Any and all disputes among the Joint Users arising from use of the roadway, including the allocation of costs incurred by Joint Users for maintenance of the roadway, and financial responsibility for any damages or injuries arising from use of the roadway, shall be determined solely by the Joint Users. The Department shall not participate in the resolution of such disputes.
- 5.3 **Hazardous Materials.** Grantee acknowledges that the Trail ROW is managed to prevent the release of hazardous substances that may be present along the former railroad right-of-way. Construction and maintenance activities by the Joint Users shall not disturb, remove or in any way interfere with any protective barriers, institutional controls, or other measures taken to contain, control or remediate hazardous substances along the former railroad right-of-way without the written consent of the Department and compliance with all requirements of the Response Action Maintenance Plan ("RAMP"), applicable to the Trail ROW pursuant to agreement of the State of Idaho, the Coeur d'Alene Tribe, the United States Environmental Protection Agency and the Union Pacific Railroad, and compliance with the Institutional Control Program, a description of which is attached to this Easement as Attachment C.

- 5.4 Fiber Optic Cable.** Fiber optic cable systems, natural gas pipelines, or other utilities, including a water pipeline maintained by the Central Shoshone County Water District, may be buried under the Crossing Premises. Joint Users shall employ an underground utility locator service to arrange for a cable locator and make arrangements to avoid or relocate fiber optic cable or other utility lines, with the permission of the owner thereof, before undertaking any earth removal or other action that may disturb such cable or utilities. Joint Users shall indemnify and hold harmless Department from all costs, liability and expense arising from any action or omission that results in damage to buried fiber optic cables or other buried utility lines.
- 5.5 Trash and Weeds.** Joint Users shall keep the Access Roadway clean of trash, debris or rubbish, and shall cooperate with the Department or any other agency authorized to undertake programs for control or eradication of noxious weeds. Joint Users shall take measures to control noxious weeds on the Access Roadway in accordance with Title 22, Chapter 24, Idaho Code.
- 5.6 Paving.** If one or more Joint Users desire to pave the Access Roadway, such Joint Users shall submit a formal proposal to IDPR for review and written approval before any construction occurs. Approval is at the sole discretion of IDPR. The paving proposal shall include plans for removal of the pavement upon the end of its useful life or in the event of the termination of this Easement. Pavement of the road shall not give the Joint Users any additional rights beyond those expressly granted by this Easement, and pavement for the benefit of one Joint User shall not interfere with the rights granted by IDPR to other Joint Users.
- 5.6.1 Pavement by Third Party.** If a third party undertakes to pave the access road in conjunction with remediation efforts, Joint Users, as the beneficiaries of such efforts, shall be jointly and severally responsible for repair or maintenance of the pavement unless such responsibility is assumed by the third party.
- 5.7 Grantee Responsibility if No other Authorized Users.** If there are no authorized users other than Grantee, the responsibilities and obligation identified herein as being borne by the Joint Users shall be borne solely by the Grantee.
- 6. Running With the Land:** This Easement runs with the land.
- 7. Consideration.** In consideration of the rights granted herein, Grantee shall pay to the Idaho Endowment Fund Investment Board the sum of TWENTY-TWO THOUSAND dollars (\$22,000), for deposit into the Trail of the Coeur d'Alene Endowment Fund.
- 8. Responsibility for Damages.** The Grantee assumes the risk of, and is solely responsible for, damages to property or injuries to persons that may arise from or be incident to the use of the roadway by Grantee and Grantee's employees, agents, contractors and invitees.
- 9. Insurance.** Grantee shall obtain and maintain either general liability or homeowner's insurance, as applicable, and, if necessary, umbrella liability insurance with a combined limit of not less than one million dollars (\$1,000,000.00) to cover liability for bodily injury, property damage and personal injury, arising from Grantee's use of the Access Roadway. In addition Grantee shall maintain automobile liability insurance (including non-owned and hired vehicles) of not less than \$1,000,000 each occurrence, and \$1,000,000 aggregate. A commercial umbrella or excess policy may be used to meet the before-stated automobile liability requirements. In the event Grantee's property is leased, either Grantee or Lessee shall meet and provide the required insurance as stated herein.



- 9.1 Evidence of Insurance.** All insurance required under this Easement shall be with companies licensed and admitted in Idaho. Within 15 days of signing this Easement, Grantee shall furnish the Department with a certificate of insurance executed by a duly authorized representative of each insurer showing compliance with the insurance requirements set forth above and verifying that such insurance covers use of the Access Roadway.
- 9.2** Failure of the Department to demand such certificate or other evidence of full compliance with these insurance requirements shall not be construed as a waiver of Grantee's obligation to maintain such insurance.
- 9.3** Failure to maintain the required insurance may result in termination of this Agreement if it is found that the required insurance has not been met and Grantee is given written notice of said failure and the required insurance is not reinstated within 45 days of said insurance failure notice.
- 10. Complete Statement of Terms.** No other understanding, whether oral or written, whether made prior to or contemporaneously with this Easement, shall be deemed to enlarge, limit or otherwise affect the operation of this Easement. All rights of Grantee and the legal relations of the Department and Grantee are defined herein and no rights not specifically identified herein are intended.
- 11. Written Modification.** No modification, release, discharge, change, or waiver of any provision hereof shall be of any force, effect, or value unless it is in writing and signed by both parties to this Easement. Any such modification shall be attached hereto as an addendum and incorporated herein by this reference.
- 12. Authority to Sign.** Grantee and the Department each warrant and represent to the other that the persons signing this Easement have full authority and right to bind their respective parties to the terms of this Easement and that such person is acting within the scope of such person's authority and agency.
- 13. Acceptances.** By signing below, the Grantee and the Department accept the Terms and Conditions in this Easement.

**GRANTOR, State of Idaho, Park Board of the State of Idaho**

BY: \_\_\_\_\_  
 Brian Beckley  
 Chair, Idaho Park and Recreation Board

Date: \_\_\_\_\_

Countersigned:

\_\_\_\_\_  
 Susan E. Buxton  
 Director, Idaho Department of Parks and Recreation  
 Secretary to Idaho Park and Recreation Board

Date: \_\_\_\_\_

STATE OF IDAHO            )  
  ss  
COUNTY OF \_\_\_\_\_)

This record was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, by Brian Beckley, as Chair of the Idaho Park and Recreation Board.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC for Idaho  
Residing at \_\_\_\_\_, Idaho  
My Commission expires: \_\_\_\_\_

STATE OF IDAHO            )  
  ss  
COUNTY OF \_\_\_\_\_)

This record was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, by Susan E. Buxton, as Director of the Idaho Department of Parks and Recreation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC for Idaho  
Residing at \_\_\_\_\_, Idaho  
My Commission expires: \_\_\_\_\_

**Woods Crushing and Hauling, Inc.**

\_\_\_\_\_  
for Wood's Crushing and Hauling, Inc.

Date: \_\_\_\_\_

STATE OF IDAHO            )  
  ss  
COUNTY OF \_\_\_\_\_)

This record was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, the \_\_\_\_\_ of Woods Crushing, and Hauling, Inc.

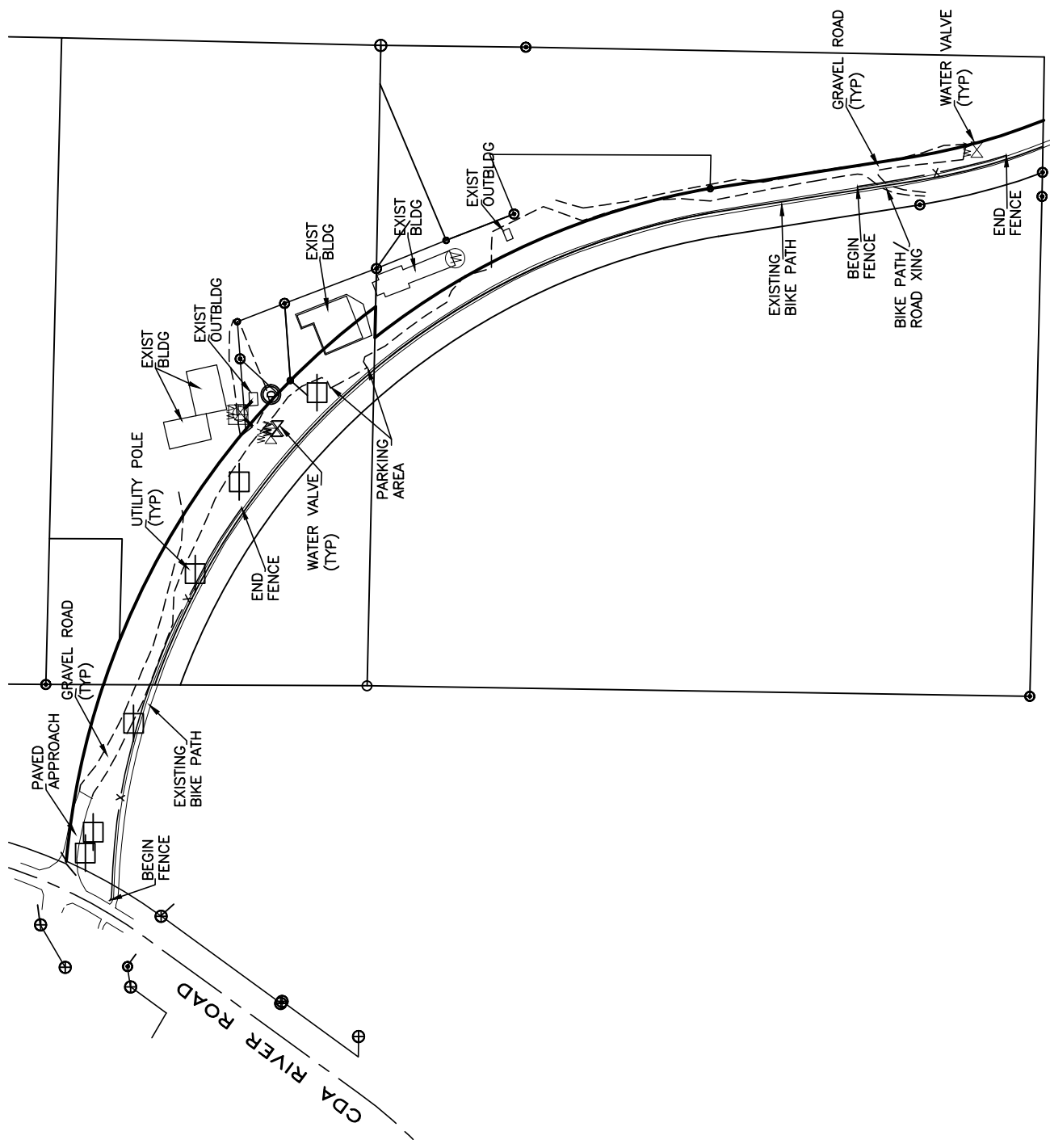
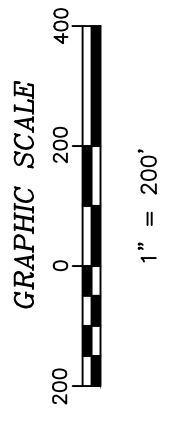
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC for Idaho  
Residing at \_\_\_\_\_, Idaho  
My Commission expires: \_\_\_\_\_

Attachment A to Access Roadway Easement  
Record of Survey  
(see following page)

**RECORD OF SURVEY—OVERLAY EXHIBIT**  
**IDAHO DEPARTMENT OF PARKS AND RECREATION**  
 LOCATED IN THE NORTHEAST 1/4 OF SECTION 1/4 OF SECTION 31, AND THE SOUTH 1/2 OF  
 THE SOUTHEAST 1/4 OF SECTION 30. TOWNSHIP 49 NORTH, RANGE 2 EAST, BOISE MERIDIAN,  
 SHOSHONE COUNTY, IDAHO

INST. NO. \_\_\_\_\_  
 STATE OF IDAHO  
 COUNTY OF SHOSHONE  
 FILED FOR RECORD AT THE REQUEST OF:  
**TATE ENGINEERING, INC.**  
 At \_\_\_\_\_ minutes past \_\_\_\_\_ o'clock \_\_\_\_\_ M  
 Date: \_\_\_\_\_  
 TAMEE J. EBERHARD, RECORDER  
 By: \_\_\_\_\_ Deputy  
 FEE \_\_\_\_\_



- LEGEND**
- SET 5/8" BY 24" IRON ROD W/PLASTIC CAP MKD PLS 4565
  - FD. 1/2" IRON ROD — NO CAP
  - FD. IRON PIPE — SIZE AS NOTED
  - ⊙ FD. 5/8" IRON ROD W/CAP AS NOTED
  - CALCULATED POINT

**SURVEY METHODS**  
 GPS — TRIMBLE R10 W/GNSS USING RTK WITH  
 2 MEASUREMENTS AT EACH POSITION  
 CONVENTIONAL—TRAVERSES WITH TOPCON GTS 235  
 INST.

**SURVEYORS CERTIFICATE**  
 I, ERNEST M. WARNER, PROFESSIONAL LAND  
 SURVEYOR No. 4565 IN THE STATE OF IDAHO, DO  
 HEREBY CERTIFY THAT THIS SURVEY WAS MADE BY ME  
 OR UNDER MY SUPERVISION.

**NOTES**  
 1) ALL DISTANCES ARE IN U.S. FEET

**RECORD DRAWINGS**

NUMBER	TYPE	INST. NO.	DATE	BY
(R1)	RECORD OF SURVEY	478500	2014	ZIMMERMAN
(R2)	RECORD OF SURVEY	462468	2011	PFAHL
(R3)	RECORD OF SURVEY	452474	2009	RENALDO
(R4)	RECORD OF SURVEY	444525	2008	PFAHL
(R5)	RECORD OF SURVEY	444214	2008	DAVIS
(R6)	SHORT PLAT	413618	2003	PFAHL
(R7)	RECORD OF SURVEY	387093	1998	PFAHL
(R8)	SHORT PLAT	380058	1997	PFAHL
(R9)	SHORT PLAT	379476	1997	PFAHL

**BASIS OF BEARING**  
 THE BASIS OF BEARING IS THE IDAHO WEST ZONE STATE PLANE — NAD 1983  
 BASED ON GPS OBSERVATION AT N 2205309.9930, E 2378137.5670 (GRID COORD)  
 GRID CONVERGENCE ANGLE -0°44'27", CAF 0.99988882.

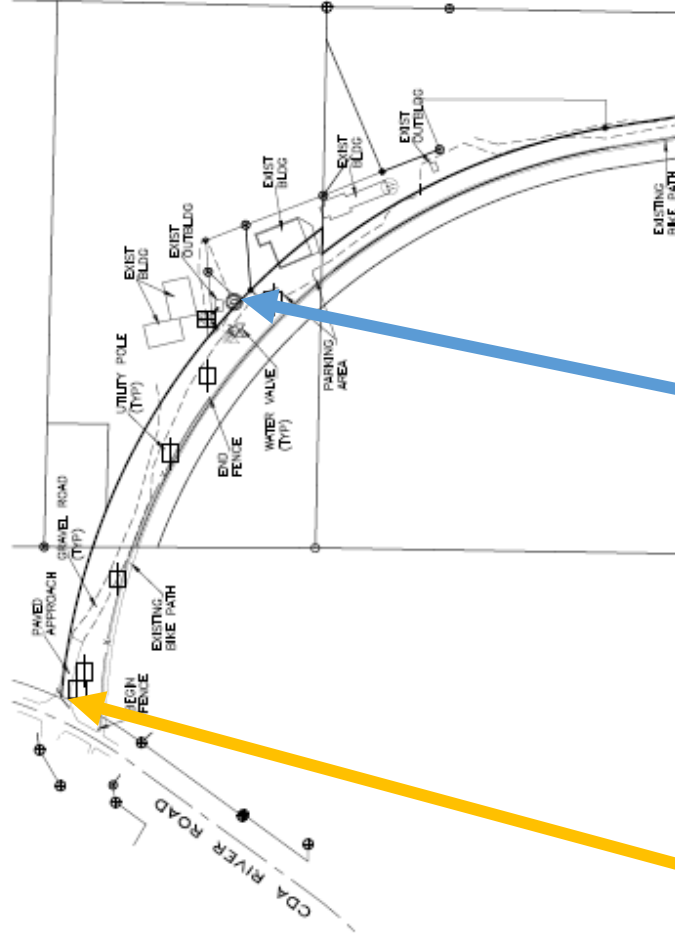
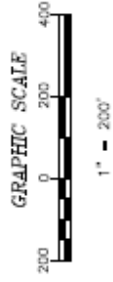
ERNEST M. WARNER, PLS 4565

<b>AE</b>	Tate Engineering, Inc. 417 E. Indiana Avenue Coeur d'Alene, Idaho, 83814 (208) 676-8708 e-mail: info@tate-eng.com	
	PROJECT #: 18.295	DATE: May, 2019
DRAWING: 19.295R05	CHECKED: EMW	SCALE: 1" = 100'
		DRAWN BY: emw

# EXHIBIT A

## RECORD OF SURVEY—OVERLAY EXHIBIT IDAHO DEPARTMENT OF PARKS AND RECREATION LOCATED IN THE NORTHEAST 1/4 OF SECTION 31, AND THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF SECTION 30, TOWNSHIP 49 NORTH, RANGE 2 EAST, BOISE MERIDIAN, SHOSHONE COUNTY, IDAHO

FILE NO. \_\_\_\_\_  
 STATE OF IDAHO  
 COUNTY OF SHOSHONE  
 FILED FOR RECORD AT THE REQUEST OF  
 THE ENGINEERS, INC.  
 As \_\_\_\_\_ minutes past \_\_\_\_\_ o'clock \_\_\_\_\_  
 Date \_\_\_\_\_  
 TAINE J. EDEWARDS, REGISTERED  
 By \_\_\_\_\_  
 Title \_\_\_\_\_



### LEGEND

- SET 5/8" BY 24" IRON ROD W/PLASTIC CAP MND PLS 4565
- FD. 1/2" IRON ROD — NO CAP
- ⊙ FD. IRON PIPE — SIZE AS NOTED
- ⊗ FD. 5/8" IRON ROD W/CAP AS NOTED
- ◊ CALCULATED POINT

Ending Point

Beginning Point

Attachment B to Access Roadway Easement  
Legal Descriptions of Grantee's Premises  
(to be inserted here)

Attachment C to Access Roadway Easement  
Institutional Control Program  
(see following page)



## RAMP ICP

### **500. Trail of the Coeur d'Alenes Institutional Control Program Requirements for Non –Maintenance and Repair Construction Activities**

**01. Legal Authority.** The Implementing Entity shall adopt and implement, in substantial conformance as determined by the State and the Tribe, these Requirements through contractual, regulatory or other appropriate authority.

**02. Purpose.** The purpose of these Requirements is to ensure that activities associated with excavation and grading such as infrastructure development and maintenance; building construction and renovation; and land development, redevelopment and/or modification within the boundaries of the Trail provide for the construction and maintenance of Contaminant Barriers and implementation of other Contaminant management Requirements to preclude the release and migration of and human exposure to Contaminants as necessary to protect the public health and the environment. It is imperative that current and future development and construction activities proceed in a manner which minimizes the release of Contaminants into the environment to minimize exposure to residents, communities, and to workers involved in project work.

**03. Implementation Policy and Standards.** Implementation policy and standards which pertain to the interpretation and enforcement of these Requirements or to the documentation of compliance with these Requirements will be developed by the Implementing Entity.

**04. (Reserved)**

**05. Definitions.** The following terms shall be construed throughout these Requirements in a manner consistent with these definitions:

**a.** Agricultural Land - Land used for pasturing animals or for cultivation and production of agricultural crops including conservation reserve activities.

**b.** Applicant - Any person, contractor, public utility, government or other entity that is required to apply for an Institutional Controls Program (ICP) Permit.

**c.** Access Restrictions - Physical barriers and features such as fences , barricades, curbs, barrier rocks, trenches, signs, etc. that restrict access by vehicles, pedestrians, and animals to contaminated areas.

**d.** Barrier - Any physical structure, material or mechanism installed pursuant to these Requirements or the Consent Decree which acts to break the pathway between Contaminants and human receptors, including but not limited to soil, asphalt and Portland cement concrete, fences, access restrictions, or other structure or covering which separates Contaminants from contact with people or keeps Contaminants in place.

**e.** B.O.P - Barrier Option Plan, a plan which will be provided by an

Applicant, when required, that sets forth the location and type of Barrier which the Applicant intends to construct as part of the permitted work.

**f.** Building Construction - Construction activity to be performed for any new structure involving disturbance of soil in excess of one cubic yard.

**g.** Building Renovation - Construction activity to be performed on any existing structure involving ceiling or insulation removal, work in dirt crawl spaces or basements, or disturbance of soil in excess of one cubic yard.

**h.** CERCLA - Comprehensive Environmental Response, Compensation, and Liability Act.

**i.** Commercial Property - Retail, wholesale and secondhand businesses, public use areas and common use areas, and public buildings.

**1.** Type I - Commercial Property predominantly used by Sensitive Populations (e.g. daycare facilities, municipal parks, playgrounds, etc.)

**2.** Type II - All other Commercial Property.

**j.** Consent Decree – The Consent Decree entered August 25, 2000 by the United States District Court for the District of Idaho (Case Nos. 91-0342 and 99-606).

**k.** Contaminants - Soil or other material containing, or likely to contain, concentrations of lead equal to or greater than 1000 ppm (700 ppm within a Developed Recreation Area) or concentrations of arsenic equal to or greater than 100 ppm.

**l.** Developed Recreation Area - Commercial and public recreation areas containing constructed features such as boat ramps, picnic areas, and campgrounds within the Trail. The Developed Recreation Areas of the Trail includes all constructed trail surfaces, stop and views, oases (rest stops) and trailheads but does not include other undeveloped areas within the right of way.

**m.** Disposal - The placement of Contaminants into an authorized permanent repository.

**n.** Excavation - Any digging, breaching or disruption of soil not including cultivation of Agricultural Lands or gardens which may release or expose Contaminants to the environment.

**o.** ICP - The Institutional Controls Program requirements for non-maintenance and repair construction activities for the Trail.

**p.** ICP Permit - The Contaminant management authorization for projects subject to these Requirements.

**q.** Implementing Entity -The State and the Tribe for the respective portions of the Trail owned and managed by each or, as designated by the State and the Tribe, other appropriate governmental entity or contractor.

**r.** Large Project - A project where one cubic yard or more of soil containing Contaminants is disturbed or removed. Large Projects include, but are not limited to, infrastructure construction and maintenance, building construction, renovation, and demolition, land development or any change in the use of land that may result in the release or migration of Contaminants.

**s.** Record of Compliance - The record maintained by the Implementing Entity pursuant to Section 523 of these Requirements for Small Projects.

**t.** Release - Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of Contaminants into the environment.

**u.** Residential Property - Property used by private individuals or families as a residence.

**v.** Sensitive Populations - Pregnant women and children up to 12 years old.

**w.** Small Project - A project where less than one cubic yard of soil containing Contaminants is disturbed or interior work that is not Building Renovation.

**x.** State – The State of Idaho and its appropriate departments or sub-agencies

**y.** Trail of the Coeur d’Alenes or Trail or Trail Area – All Developed Recreation Areas and other undeveloped areas within the former Union Pacific Railroad Mullan and Wallace Branch rights of way.

**z.** Tribe – The Coeur d’Alene Tribe and its appropriate departments or sub-agencies.

**aa.** Working day - Monday through Friday, but shall not include any legal holiday recognized as such by the State of Idaho or Coeur d’Alene Tribe, as applicable

**06. Statement of Intent.** These Requirements establish standards for Barrier construction and maintenance, and other Contaminant management practices. These Requirements govern management of Contaminants by:

**a.** Requiring ICP Permits and requiring Barriers for certain construction and excavation activities;

**b.** Licensing contractors, utilities, and governmental entities which may disrupt or construct Barriers, or otherwise disturb Contaminants;

- c. Adopting performance standards;
- d. Inspecting for project compliance as required;
- e. Regulating the movement and disposal of Contaminants;
- f. Making it unlawful to knowingly disrupt a Barrier in a fashion likely to expose persons to Contaminants;
- g. Maintaining records of ICP activities.

**07. Additional Provisions by Implementing Entity.** In conjunction with these Requirements the Implementing Entity may, depending on project size and complexity, provide, as needed:

- a. Technical assistance and soil testing;
- b. Health screening and intervention;
- c. Readily available repositories for disposal of Contaminants;
- d. Clean material to restore Barriers for Small Projects;
- e. Disposal containers for Small Projects to assist in removal, transportation and disposal of contaminated soil;
- f. Health and safety information and education to licensees, permit applicants and the public;
- g. Sheet plastic, crushed aggregate and gravel, or other items as appropriate;
- h. A database tracking system.
- i. Guidelines for managing Contaminants.

**501. – 509. (RESERVED)**

**510. APPLICATION OF REQUIREMENTS**

These Requirements shall apply to the Trail Area. These Requirements shall not apply to the Union Pacific Railroad or its contractors when conducting activities within the Trail Area.

**01. Standards Adopted.**

- a. Except as otherwise provided in this Section, Contaminant management is

required on all areas within the Trail including areas that have been remediated; areas not yet tested; and areas testing below action levels in the top 18 inches where Large or Small Projects may disturb Contaminants below 18 inches in excess of one thousand (1000) ppm lead or one hundred (100) ppm arsenic. Contaminant management may include testing of untested areas by the Applicant; testing of deep soils (below 18 inches) by the Applicant where a project may result in deep excavations; and replacement and repair of Barriers in accordance with Section 510, subsection 02; or other management activities. Applicant performed soil testing will be conducted consistent with sampling and analytic procedures developed by the Implementing Entity.

**b.** Developed Recreation Areas with surface soil containing lead concentrations greater than 700 ppm lead and 100 ppm arsenic shall be capped pursuant to Section 510, subsection 02c.

**c.** Agricultural and undeveloped land within the Trail is exempt from these Requirements unless soil disturbing activities on these lands are likely to result in the release or migration of Contaminants from these lands.

**d.** All Barriers existing or hereinafter constructed shall be maintained and protected to original construction specifications.

**e.** No person shall conduct, except in accordance with these Requirements, any activity within the Trail which breaches a Barrier, may breach a Barrier, or disturbs a Barrier, or otherwise results in a threat to public health or the environment from the migration of Contaminants through tracking on tires or vehicles, visible airborne dust, excavation, transport, disposal, renovation, demolition, run-on or run-off from stormwater or in any other manner on areas remediated within the Trail and/or on areas not yet tested within the Trail.

## **02. Barriers; Construction and Maintenance Required.**

**a.** The minimum Barrier construction Requirements for Residential and Type I Commercial Properties are as follows:

**i.** All soil which contains lead equal to or in excess of one thousand (1000) ppm or arsenic equal to or in excess of one hundred (100) ppm and lies within twelve (12) inches of the final grade shall be removed and replaced with replacement material meeting the Requirements of Section 510, subsection 02d.

**ii.** Any such property with unrestricted access to an adjacent property not meeting the Requirements of Section 510, subsection 01a shall restrict access to such adjacent property.

**b.** The minimum Barrier construction Requirements for Type II Commercial Properties is a six (6) inch soil with vegetative cover barrier or six (6) inch crushed rock/gravel barrier or asphalt/Portland cement concrete cap. Excavation may be necessary for the installation of barriers to maintain grade or drainage Requirements.

c. The minimum Barrier construction Requirements for Developed Recreation Areas is a six (6) inch soil with vegetative cover barrier or six (6) inch crushed rock/gravel barrier or asphalt/Portland cement concrete cap. Excavation may be necessary for the installation of barriers to maintain grade or drainage Requirements.

d. All twelve (12) inch deep Barriers of soil or crushed rock/gravel required pursuant to the ICP which overlay soils having concentrations of lead equal to or greater than one thousand (1000) ppm or arsenic concentrations equal to or greater than one hundred (100) ppm shall have an underlying visual delineator at the twelve (12) inch depth. Visual delineators are not required if the soil underlying the Barrier has tested under one thousand (1000) ppm lead and one hundred (100) ppm arsenic. Cap Barriers such as Portland cement and asphalt concrete do not require delineators.

e. Soil and crushed aggregate/gravel imported for Barrier material shall contain less than one hundred (100) ppm lead, thirty five (35) ppm arsenic and five (5) ppm cadmium based on average of backfill sampling results. No single sample of replacement materials shall exceed one hundred fifty (150) ppm lead or forty five (45) ppm arsenic.

f. Barriers shall be maintained and repaired in accordance with original construction specifications.

g. Contaminated waste material generated in the construction, maintenance and repair of Barriers shall be disposed of in designated repositories as directed by Implementing Entity.

### **03. ICP Permits Required.**

a. Permits shall be required for Large Projects and Building Renovations.

b. A permit is required for a project which changes the use of a property containing Contaminants. A new Barrier or additional or more substantial Barrier may be required unless waived by the Implementing Entity.

c. A single annual permit covering a specific list of projects may be obtained from the Implementing Entity by entities eligible under Section 531 at the beginning of each year's construction season.

### **511. – 519. (RESERVED)**

### **520. PERMIT APPLICATION AND ADMINISTRATION.**

**01. Applications for ICP Permit.** Application for an ICP Permit shall be made in writing at the office of the Implementing Entity. Application shall be on forms provided by the Implementing Entity.

**02. Required Applicant Information.** All Applicants shall provide the following information when applying for an ICP Permit with the Implementing Entity:

- a. Name, address and telephone number of the Applicant.
- b. Location of the work and whether the work is being done on private or public property, or both.
- c. The description of work must include methods of handling or storing, and transporting contaminated materials. A site plan may be required by the Implementing Entity if one has not been provided pursuant to the permit process.
- d. Dates work will be started and completed.
- e. Such other information as the Implementing Entity shall require.
- f. A copy of the authorizing document from the government (State or Tribe) having primary authority for the area of the Trail where the work is to occur.

**03. Implementing Entity Requirements for Projects.** The Implementing Entity may require, as appropriate for a particular project, the following:

- a. Large Projects:
  - i. Name, signature, license number, seal and address of engineer, land surveyor, architect, professional planner, landscape architect, or contractor as applicable, involved in preparation of the application or any materials or documents pertaining thereto;
  - ii. Copies of other government permits, authorizations or permit applications and the supporting documents and materials pertaining thereto;
  - iii. A key map showing location of project with reference to surrounding properties including owners, streets and city boundaries;
  - iv. Existing and/or proposed zoning;
  - v. North arrow and scale;
  - vi. Site plan showing dimensions, boundaries, existing and/or proposed structures;
  - vii. Date of most recent property survey and copy of that survey;
  - viii. Standardized sheet size;
  - ix. Copies of existing and/or proposed restrictions or covenants;

- x. List of ordinance variances required or requested;
- xi. Requested or obtained design waivers or exceptions;
- xii. Identification of surrounding water courses, flood plains (floodway and 100 year floodplain), wetlands, and environmentally sensitive areas on-site and within 200 feet;
- xiii. Soil information as required to determine levels of contamination;
- xiv. Location and description of all existing Barriers onsite and bordering the site;
- xv. Barrier Option Plan, as required;
- xvi. Existing rights-of-way and/or easements on and adjacent to the tract (i.e. streets, utilities);
- xvii. Existing and proposed contour intervals based on U.S.G.S. datum, contours to extend 50 feet beyond the project site borders (additional distance may be required in the case of subdivisions and special use permit situations), contour intervals shall be as follows: for sites with slopes of less than 3% - 1 foot intervals; for sites with slopes of 3% to 10% - 2 foot intervals; for sites with slopes over 10% - 5 foot intervals;
- xviii. Existing system of site drainage and of any larger tract or basin of which the site is a part;
- xix. Drainage calculations;
- xx. Existing and proposed utility infrastructure locations;
- xxi. Locations of existing and/or proposed activities onsite (i.e. lawn, garden, landscaping areas, pathways, driveways, storage areas, structure locations, etc.);
- xxii. Soil erosion and sedimentation control plan if surface is to be disturbed;
- xxiii. Dust control plan if surface is to be disturbed;
- xxiv. Plan for transporting Contaminants, including but not limited to means for transportation, proposed disposal site and proposed route;
- xxv. Access control plan for construction period;
- xxvi. Construction schedule;
- xxvii. Contractor bonding information;



xxviii. Health and safety plan;

xxix. Reimbursement of professional fees paid by the Implementing Entity to evaluate a project proposal including but not limited to independent architectural and engineering fees.

**b. Building Renovations:**

i. Name, signature, license number, seal and address of engineer, land surveyor, architect, professional planner, landscape architect, or contractor as applicable, involved in preparation of the application or any materials or documents pertaining thereto;

ii. Type of contaminated material to be handled (i.e. soil, insulation etc.);

iii. Dust control plan;

iv. Access control plan;

v. Worker precautions (health and safety plan);

vi. Transportation information, including means, method of containment of materials, and proposed disposal site;

vii. Contractor bonding information;

viii. Construction schedule.

**04. Use of Discretion on Requirements by Implementing Entity.** The Implementing Entity may, at its discretion, waive certain application Requirements or information, or require additional or alternative actions or information, depending upon the type and extent of the project and conditions encountered. In no case shall the waiver violate the intent of these Requirements and/or the Consent Decree.

**05. Site Inspection or Waiver When ICP Permit Required.** Work which requires an ICP Permit shall not commence until a site inspection has been made or waived by the Implementing Entity and an ICP Permit has been issued.

**06. Time Specifications.** The ICP Permit shall provide that all work shall be completed within a specific period of time and the ICP Permit shall be void if work is not commenced and completed within the times specified. An extension of time may be granted by the Implementing Entity upon a showing of good cause.

**07. Other Inspections and Requirements.** All ICP Permits granted pursuant to these Requirements remain subject to such other inspections and requirements prescribed by state, tribe or local governments.

**521. INSPECTION.**

The Applicant shall notify the Implementing Entity by telephone when work is completed. Applicants shall call for inspection in accordance with the terms of the ICP Permit; 48 hours notice (excluding weekends and holidays) to Implementing Entity shall be provided. The inspector shall note approval of the work in writing and shall enter same in the database tracking system, or shall note reasons for disapproval and steps which must be taken to complete the work. Upon completion of the work to the Implementing Entity's satisfaction, the Implementing Entity's final approval shall be noted in the database tracking system. Such entry shall constitute the Record of Compliance for such project. All work governed by these Requirements shall be subject to inspection by the Implementing Entity or its designated agents. The Implementing Entity reserves the right to waive the inspection requirements.

**522. PERMIT REVOCATION OR STOP WORK ORDER.**

Any ICP Permit may be revoked or a stop Work Order may be issued, without notice by the Implementing Entity, for non-compliance with or violation of any of the provisions of these Requirements or any requirements or limitation of the ICP Permit. If an ICP Permit is revoked, the Implementing Entity may take such steps as are necessary to eliminate any danger from Contamination, including completion of work by the Implementing Entity. The Applicant or contractor may be required to pay all costs and expenses for abatement of any danger and/or completion of the project, including legal fees incurred by the Implementing Entity to obtain compliance. The Implementing Entity will endeavor to provide written notice, but shall reserve any right to act summarily to protect public health and the environment.

**523. RECORD OF COMPLIANCE FOR SMALL PROJECTS.**

A Record of Compliance for Small Projects which documents compliance with the performance standards established by these Requirements will be entered into the database tracking system based upon an inspection by the Implementing Entity. The Record signifies the person performing the project was notified of any applicable performance standards and guidelines and materially complied with the same.

**524. – 529. (RESERVED)**

**530. CONTRACTOR LICENSING**

**01. License Required.** Any contractor performing Large Projects or transportation or disposal of Contaminants which is likely to expose the contractor, workers or others to Contaminants, must be licensed by the Implementing Entity. There will be no charge for a contractor's license. A contractor shall be prohibited from working on a project requiring an ICP Permit without a current contractor's license issued by the Implementing Entity.

**02. Training.** In order to obtain a contractor's license from the Implementing Entity, the Contractor must have those supervisors involved in activities dealing with Contaminants participate in training approved by the Implementing Entity and pass an annual examination focusing on the reasons for, and methods of, controlling Contaminants. The purpose of the examination is to assure that all of the Contractor's employees are aware of and observe the

procedures and standards that will protect them and the public from the Contaminants. The Implementing Entity will create and administer the test. The trained Contractor's supervisor must pass information on to employees as is necessary to protect their health and safety and assure compliance with these Requirements. The Implementing Entity will provide or arrange for appropriate training.

**03. Bonding.** Any Contractor whose license has been revoked by the Implementing Entity within the past three years must, as a condition of reinstatement and maintaining the status of a licensed Contractor, be bonded in the minimum amount of Two Thousand Dollars (\$2000.00) or at least five percent (5%) of the cost of any contract the Contractor is engaged in, whichever is greater. Said bond shall be in a form approved by the Implementing Entity and must be suitable to insure payment for completion of Barrier work not completed by the Contractor. A cash deposit or other security acceptable to the Implementing Entity may be utilized in lieu of a bond. The Implementing Entity may establish a bonding program for all Contractors, if deemed necessary to carry out these Requirements.

**04. Suspension or Revocation of License.**

**a.** Upon a showing that a licensee has violated any provision of these Requirements, or has violated any other health or building code within the boundaries of the Trail, suspension or revocation of the license may be imposed. Suspension or revocation may be made by Implementing Entity. Notification of suspension or revocation shall be in writing.

**b.** Suspension or revocation may be appealed by the licensee to the Implementing Entity pursuant to procedures provided by the Implementing Entity.

**c.** If a license is revoked, the Contractor may, upon payment of any cleanup or remediation costs related to past work, reapply for reinstatement of license after one year, however, a contractor whose license has been revoked may not obtain a new license under a different corporate or partnership status until this provision is satisfied.

**531. LICENSE FOR PUBLIC UTILITIES AND GOVERNMENT ENTITIES.**

Upon a demonstration that supervisory employees of a public utility or government entity have participated in an education program approved by, or provided by, the Implementing Entity, a utility company or government entity may receive an annual license which will allow their employees to perform excavation and grading operations without obtaining individual ICP permits. This license may be granted by the Implementing Entity and will require that the entity comply with performance standards and all other requirements contained herein. All supervisory employees involved in and responsible for excavation and grading operations shall have participated in an Implementing Entity approved education program. The trained supervisor must pass information on to employees as is necessary to protect their health and safety and assure compliance with these Requirements. The Implementing Entity shall provide or arrange for training. Entities licensed under this section shall maintain a log of excavation and grading operations on a form approved by the Implementing Entity. Such logs shall be submitted to the Implementing Entity on a regular basis as determined by the Implementing Entity. All licensees shall telephone the appropriate one-call locating service prior to any excavation or grading

operation. Licenses shall be renewed annually upon a showing that the utility or government entity has operated in compliance with these Requirements. This license may also be revoked as provided in Section 530, subsection 04.

**532. – 539. (RESERVED)**

**540. PERFORMANCE OF WORK.**

**01. Completion of work.** All work done pursuant to an ICP Permit shall be completed in a neat and workmanlike manner and so scheduled as to cause the minimum interference with traffic or public use (if applicable) and a minimum dispersal of Contaminants.

**02. Work Delayed by Applicant.** If the work is unduly delayed by the Applicant, and if the public interest reasonably so demands, the Implementing Entity shall have the authority, upon 24 hours' written notice to the Applicant, to complete the work to the extent that the Barrier is restored and any Contaminants covered or removed. The actual cost of such work by the Implementing Entity (including legal fees), plus an overhead charge, shall be charged to and paid by the Applicant.

**541-598 (Reserved)**

**599. IMPLEMENTATION, ENFORCEMENT AND ADMINISTRATIVE PROCEDURES.**

The Implementing Entity may develop and adopt performance standards and may adopt administrative enforcement and remedy procedures to ensure proper implementation of these Requirements. These standards and procedures shall be consistent with Sections 500.01 and .02 of these Requirements.