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07/20/2020 03:26 PM Pages: 1 of 17 Fees: \$119.50
Skagit County Auditor

When recorded return to:
Department of Natural Resources
Northwest Region
Attn: Annette Mesman
919 North Township Street
Sedro-Woolley, WA 98284



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

COMMERCIAL EASEMENT

Grantor(s): Department of Natural Resources
Grantee(s): Bear Creek Tree Farm, LLC
Legal Description: NE 1/4 SE 1/4 S10, T36N, R08E, W.M.
Assessor's Property Tax Parcel or Account Number: P51442
DNR Easement No. 50-097826

REVIEWED BY
SKAGIT COUNTY TREASURER
DEPUTY MENNING
DATE 7-20-2020

This Easement is between BEAR CREEK TREE FARM, LLC, a Washington limited liability company, herein called "Grantee" and the STATE OF WASHINGTON, acting by and through the Department of Natural Resources, herein called "State" dated as of June 7, 2020 "Effective Date".

Conveyance. State, for consideration of mutual benefits, hereby grants and conveys to Grantee a permanent non-exclusive Easement over parcels of land in Skagit County legally described as set forth in Exhibit "A" (hereafter Burdened Parcel), said Easement to be sixty (60) feet in width running thirty (30) feet on each side of a center line of road located approximately as shown on Exhibit "B" (hereafter Easement Area).

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

Purpose. The Easement is conveyed to provide ingress and egress to and from lands owned by Grantee for the sole and limited purpose of hauling timber or other forest products and /or profits, including but not limited to sand, gravel, stone, or farm products, and leasing communication sites, performing management activities associated with timber production, agriculture, extraction of profits or leasing communication sites, and for non-commercial recreational access.

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

Appurtenant. This Easement shall be deemed appurtenant to the real property now owned by Grantee located in Skagit County, legally described as set forth in Exhibit "C" attached hereto and such real property hereafter acquired by the Grantee (hereafter Benefited Parcels).

The rights attaching to the Benefited Parcel are indivisible. Should the Benefited Parcel be subsequently subdivided or parcelized, owners of additional parcels shall not be entitled to exercise the rights granted herein. Such owners must apply separately for an easement to the newly created parcels, which may or may not be granted by Grantor at Grantor's sole discretion.

Reservations. State reserves all ownership of the Easement Area and other profits thereon (including timber unless conveyed under this Easement) and the right of use of the Easement Area for any purpose including but not limited to the right to remove timber within the Easement Area; the right at all times to cross and recross the Easement Area at any place on grade or otherwise; and the right to use, maintain, patrol, reconstruct or repair the Easement Area so long as it does not unreasonably interfere with the rights granted herein. State may grant to third parties any and all rights reserved. Once Grantee clears timber conveyed under this Easement, if any, timber subsequently grown in such cleared areas shall belong to State. State further reserves the right to relocate the right of way. If the right of way is relocated at the sole request of State, State shall construct the relocated right of way to the same standards existing at the time of relocation.

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

Compliance with Laws. Grantee shall, at its own expense, conform to all applicable laws, regulations, permits, or requirements of any public authority affecting the Easement Area and the use thereof. Upon request, Grantee shall supply State with copies of permits or orders.

Export Restrictions. Any export restricted timber originating from state land under this Easement shall not be exported until processed. Grantee shall comply with all applicable requirements of WAC 240-15-015 (relating to the prohibitions on export and substitution), WAC 240-15-025 (relating to reporting requirements), and WAC 240-15-030 (relating to enforcement). All export restricted timber from state lands shall be painted and branded in compliance with WAC 240-15-030(2). If Grantee knowingly violates any of the prohibitions in WAC 240-15-015, Grantee shall be barred from bidding on or purchasing export restricted timber as provided. Grantee shall comply with the Export Administration Act of 1979 (50 U.S.C. App. Subsection 2406(i)) which prohibits the export of unprocessed western cedar logs harvested from state lands.

Compliance with Habitat Conservation Plan. The Easement Area is located within an area that is subject to the State's Habitat Conservation Plan adopted in connection with Incidental Take Permit No. TE812521-1 and as supplemented by Permit No. 1168 (collectively "ITP"). As long as the Habitat Conservation Plan remains in effect, Grantee and all Permittees acting under Grantee shall comply with the terms and conditions set forth in Exhibit "D" while operating on the Easement Area.

Indemnity. Grantee shall indemnify, defend with counsel acceptable to State, and hold harmless State, its employees, officers, and agents from any and all liability, damages, expenses, causes of action, suits, claims, costs, fees (including attorney's fees), penalties, or judgments, of any nature whatsoever, arising out of the use, occupation, or control of the Easement Area by Grantee, its contractors, subcontractors, invitees, agents, employees, licensees, or other Permittees, including but not limited to the use, storage, generation, processing, transportation, handling, disposal, release, or threatened release of any hazardous substance or materials. To the extent that RCW 4.24.115 applies, Grantee shall not be required to indemnify State from State's sole or concurrent negligence. This indemnification shall survive the expiration or termination of the Easement. Grantee waives its immunity under Title 51 RCW to the extent required to indemnify the State.

Insurance. Before using any of said rights granted herein and at its own expense, the Grantee shall obtain and keep in force during the term of this Easement and require its contractors, sub-contractors, or other Permittees to obtain while operating on the Easement area, the following liability insurance policies, insuring Grantee against liability arising out of its operations, including use of vehicles. Failure to buy and maintain the required insurance may result in the termination of the Easement at State's option. The limits of insurance, which may be increased by State, as deemed necessary, shall not be less than as follows:

- (a) Commercial General Liability (CGL) insurance with a limit of not less than \$1,000,000 per each occurrence. If such CGL insurance contains aggregate limits, the general aggregate limits shall be at least twice the "each occurrence" limit, and the products-completed operations aggregate limit shall be at least twice the "each occurrence" limit.
- (b) Employer's liability ("Stop Gap") insurance, and if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.
- (c) Business Auto Policy (BAP) insurance, and if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 per accident, with such insurance covering liability arising out of "Any Auto". Business auto coverage shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary the policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense" as provided in the 1990 or later versions of CA 00 01. Grantee waives all rights against State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.
- (d) Grantee shall comply with all State of Washington workers' compensation statutes and regulations. Workers' compensation coverage shall be provided for all employees of Grantee and employees of any contractors, sub-contractors or other Permittees. Except as prohibited by law, Grantee(s) waives all rights of subrogation against State for recovery of damages to the extent they are covered by workers compensation, employer's liability, commercial general liability or commercial umbrella liability insurance.

All insurance must be purchased on an occurrence basis and should be issued by companies admitted to do business within the State of Washington and have a rating of A- or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved in advance by the Risk Manager for the Department of Natural Resources. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and Chapter 284-15 WAC.

The State of Washington, Department of Natural Resources, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, and umbrella insurance policies.

Before using any said rights granted herein, Grantee shall furnish State with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified above. Certificate(s) must reference State's easement number.

State shall be provided written notice before cancellation or non-renewal of any insurance referred to herein, as prescribed in statute (Chapter 48.18 RCW or Chapter 48.15 RCW).

Grantee shall include all contractors, sub-contractors and other Permittees as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each. Contractors, sub-contractors and other Permittees must comply with all insurance requirements stated herein. Failure of contractors, sub-contractors and other Permittees to comply with insurance requirements does not limit Grantee's liability or responsibility.

All insurance provided in compliance with this Easement shall be primary as to any other insurance or self-insurance programs afforded to or maintained by State. Grantee waives all rights against State for recovery of damages to the extent these damages are covered by general liability or umbrella insurance maintained pursuant to this Easement.

By requiring insurance herein, State does not represent that coverage and limits will be adequate to protect Grantee, and such coverage and limits shall not limit Grantee's liability under the indemnities and reimbursements granted to State in this Easement.

If Grantee is self-insured, evidence of its status as a self-insured entity shall be provided to State. If requested by State, Grantee must describe its financial condition and the self-insured funding mechanism.

Waste. Grantee shall not cause or permit any filling activity to occur in or on the Easement Area, except as approved by State. Grantee shall not deposit refuse, garbage, or other waste matter or use, store, generate, process, transport, handle, release, or dispose of any hazardous substance, or other pollutants in or on the Easement Area except in accordance with all applicable laws.

The term hazardous substance means any substance or material as those terms are now or are hereafter defined or regulated under any federal, state, or local law including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA 42 USC 9601 *et seq.*) as administered by the US Environmental Protection Agency, or the Washington Model Toxic Control Act (MTCA RCW 70.105D) as administered by the State Dept. of Ecology.

Grantee shall immediately assume responsibility for a hazardous substance release (spill) caused by Grantee or its Permittees on or adjoining the Easement Area.

As responsible party, Grantee shall:

- Immediately notify all necessary emergency response agencies, as required under federal, state and local laws, regulations, or policies.
- Following emergency response agency notifications, notify State (Dept. of Natural Resources) of all spill releases and Grantee actions completed for spill reporting and actions planned or completed toward spill cleanup. State notification requirements are “same business day” notification for normal state work days and “next available business day” notification for weekends and holidays.
- At Grantees sole expense, conduct all actions necessary to mitigate the spill release. Mitigation response actions may include, but are not necessarily limited to, initial release containment, follow-up site cleanup and monitoring actions, and continued contact and coordination with regulators and State, as defined under the aforementioned laws, regulations, policies and this agreement.
- Other than performing initial emergency response cleanup/containment actions; obtain approvals in advance of all site cleanup actions (e.g. site characterization investigations, feasibility studies, site cleanup and confirmation sampling, and groundwater monitoring) conducted on State lands, in coordination with regulatory agencies and State.
- Obtain and understand all necessary hazardous substance spill release notification and response mitigation requirements, in advance of conducting Grantee operations on State land.

Survey Markers. Grantee shall not destroy any land survey corner monuments and/or reference points (including but not limited to corner markers, witness objects, or line markers) without prior written approval from State, which shall not be unreasonably withheld. Monuments or reference points that must necessarily be disturbed or destroyed during road construction or maintenance activities must be adequately referenced and replaced, at the Grantee’s cost, under the direction of a State of Washington Professional Land Surveyor, in accordance with all applicable laws of the State of Washington in force at the time of construction, including but not limited to RCW 58.24, and all Department of Natural Resources regulations pertaining to preservation of such monuments and reference points.

Notice of Operation. When the Grantee or one of its Permittees plans to use any portion of the road for the purpose of hauling timber or other profits, such party shall notify State thereof at least five (5) days prior to the commencement of such use, advising of the portion of road to be used, the approximate dates when such use will begin and end, and of the approximate volumes of timber, forest products, or other profits to be hauled and promptly upon the completion of such use notify State.

Construction/Reconstruction. Sixty (60) days prior to any construction or reconstruction by Grantee on the Easement Area, Grantee shall submit to State a written plan of construction outlining the construction or activity for State's approval, which shall not be unreasonably withheld.

In the event of an emergency requiring immediate action to protect person or property, Grantee may take reasonable corrective action without prior notice to State. Grantee shall notify State within thirty (30) days of any corrective action taken and all construction or reconstruction shall comply with applicable state or local laws.

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

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

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

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

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

Easement Closure Risk. Grantee assumes all risk and costs associated with easement access due to road closures and blockages caused by any road closure event, including but not limited to environmental regulation, or natural disasters including, fire, flood, snow, slides, tree wind throw, or road wash out.

State is not obligated to repair or unblock an existing road leading to the easement area or any part of the easement area described herein if State determines the road is no longer safe or viable for trust management purposes.

Improvements. Grantee shall construct no improvements without the prior written consent of State, which shall be at State's sole discretion. Unless the parties agree in writing to share the cost of improvements, improvements shall be at the sole expense of the improver. Any improvements to the Easement Area shall become property of State unless the applicable consent specifically provides otherwise. Improvements installed by Grantee shall, at State's option, be removed by Grantee at the termination or expiration of the Easement at Grantee's expense.

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

To State:

DEPARTMENT OF NATURAL RESOURCES
Northwest Region
919 North Township Street
Sedro-Woolley, WA 98284
360-856-3500

To Grantee:

BEAR CREEK TREE FARM, LLC
103 North Township Street
Sedro-Woolley, WA 98284
360-856-2068

Recording. Grantee shall record this Easement in the county in which the Easement Property is located, at Grantee's sole expense. Grantee shall provide State with a copy of the recorded Easement. Grantee shall have thirty (30) days from the date of delivery of the final executed agreement to comply with the requirements of this section. If Grantee fails to record this Easement, State may record it and Grantee shall pay the costs of recording, including interest, upon State's demand.

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

Lien. Any amount due from but not paid by Grantee as required under this Easement within thirty (30) days of demand shall be a lien upon the Benefited Parcel. Grantee hereby authorizes State to file a notice of lien with the county auditor and to foreclose such lien as a mortgage.

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

Abandonment. If Grantee ceases to use the Easement Area for the purposes set forth herein for a period of fifty (50) successive years, this Easement shall be deemed abandoned and terminate without further action by State. Timber remaining on the Easement Area shall be deemed abandoned.

Construction. The terms of this Easement shall be given their ordinary meaning unless defined herein and shall not be presumed construed against the drafter.

Effective Date. The Effective Date of this Easement shall be the date on which the last party executes this Easement. The Effective Date will be inserted on the first page of the Easement when such date is determined.

Exhibits. All exhibits referenced in this Easement are incorporated as part of the Easement.

Headings. The headings in this Easement are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Easement nor the meaning of any of its provisions.

Modification. Any modification of the Easement must be in writing and signed by the parties. State shall not be bound by any oral representations or statements.

Non-waiver. The waiver by State of any breach or the failure of State to require strict compliance with any term herein shall not be deemed a waiver of any subsequent breach.

Severability. If any provision of this Easement shall be held invalid, it shall not affect the validity of any other provision herein.

Successors and Assigns. This Easement shall be binding upon and shall inure to the benefit of the parties, their successors and assigns except to the extent that this section conflicts with the section labeled "Nature of Estate" in which case the Nature of Estate section will control.

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

BEAR CREEK TREE FARM, LLC

Dated: April 29, 2020

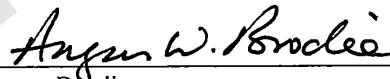


Rob Janicki
Owner
103 North Township Street
Sedro-Woolley, WA 98284
(360) 856-2068



STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: June 7, 2020



Angus Brodie
Deputy Supervisor for State Uplands
1111 Washington Street SE
PO Box 47001
Olympia, WA 98504-7001
360-902-1123

Approved as to Form
January 21, 2003
by Mike Rollinger
Assistant Attorney General
for the State of Washington

REPRESENTATIVE ACKNOWLEDGEMENT

State of Washington

County of Skagit

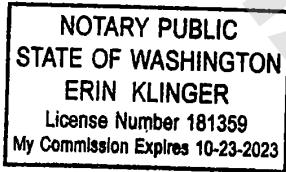
I certify that I know or have satisfactory evidence that Rob Janicki is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Owner of Bear Creek Tree Farm, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 4-29-2020

Erin Klinger
(Signature)

(Seal or stamp)

Erin Klinger
(Print Name)



Notary Public in and for the State of Washington,
residing at Skagit County.
My appointment expires 10-23-2023.

STATE ACKNOWLEDGEMENT

State of Washington

County of Thurston

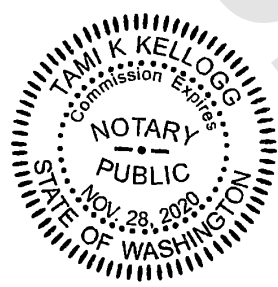
I certify that I know or have satisfactory evidence that Angus Brodie is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Deputy Supervisor for State Uplands of the Department of Natural Resources of the State of Washington to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 06/17/2020

Tami K. Kellogg
(Signature)

(Seal or stamp)

Tami K. Kellogg
(Print Name)



Notary Public in and for the State of Washington,
residing at McClenny
My appointment expires 11/28/2020

**EXHIBIT A
BURDENED PARCEL**

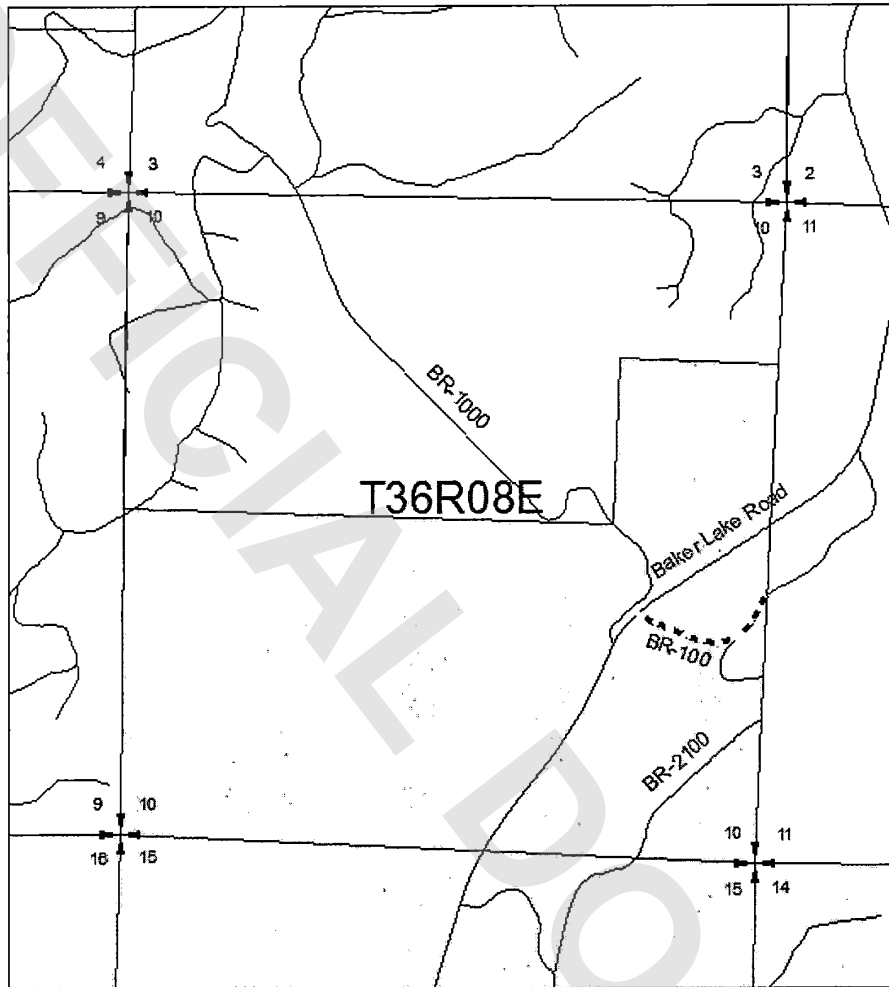
Township 36 North, Range 08 East, W.M., Skagit County


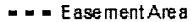
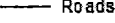

Section
10

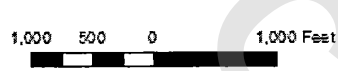
Legal Subdivision
NE 1/4 SE 1/4

Tax Parcel Number
P51442

**EXHIBIT B
EASEMENT AREA**



-  Section Corner
-  Easement Area
-  Roads
-  State Land



Easement Area Dimensions
Length (feet): 1,284.4
Width (feet): 60
Area (acres): 2.8

Prepared by: Cassie Davis
Date Prepared: 03/09/2020

**EXHIBIT C
BENEFITED PARCEL**

Township 36 North, Range 08 East, W.M., Skagit County

<u>Section</u>	<u>Legal Subdivision</u>	<u>Tax Parcel Number</u>
11	SW 1/4	P51447
14	NE 1/4 NW 1/4, W 1/2 NW 1/4 NE 1/4, SW 1/4 NE 1/4	P51496

**EXHIBIT D
HCP REQUIREMENTS**

- 1) Grantee shall immediately notify State of the following:
 - a) That Grantee has discovered locations of any species listed by the U.S. Fish and Wildlife Service as threatened or endangered species (listed species) under the Endangered Species Act as such list may be updated from time to time; and
 - b) That Grantee has located any live, dead, injured, or sick specimens of any listed species.
- 2) Notification required in subsection 1) must in all circumstances occur as soon as practicable but in any event within 24 hours.
- 3) Grantee may be required to take certain actions to help State safeguard the well-being of any live, injured or sick specimen of any listed species until the proper disposition of such specimen can be determined by State.
- 4) Any application for a Forest Practices Permit submitted by Grantee for activities on the State Easement Area must identify that the State Easement Area is covered by the HCP.