

472988

**Instrument # 472988**

WALLACE, SHOSHONE COUNTY, IDAHO

6-19-2013 10:06:00 No. of Pages: 12

Recorded for : TERRAGRAPHS ENVIRON. ENG INC

PEGGY DELANGE-WHITE Fee: 43.00

Ex-Officio Recorder Deputy *Spiner*

Index to: ENVIRONMENTAL COVENANT

2013 JUN 19 AM 10 06

**TERRY HARWOOD**  
**%DEPT OF ENVIRONMENTAL QUALITY**  
**1005 W. MCKINLEY AVE.**  
**KELLOGG, ID 83837** (11)

RECEIVED  
JUL 01 2013  
DEPT. OF ENVIRONMENTAL QUALITY  
WASTE PROGRAM

472988

Recording Requested By and  
When Recorded Return to:

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SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

**ENVIRONMENTAL COVENANT**

**THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTING ACCESS AND IMPOSING ACTIVITY AND USE LIMITATIONS PURSUANT TO THE UNIFORM ENVIRONMENTAL COVENANTS ACT, IDAHO CODE § 55-3001, et seq.**

This instrument is an Environmental Covenant executed by Vincent F. Kozak (hereinafter "Grantor"), the United States Environmental Protection Agency ("EPA"), the Idaho Department of Environmental Quality ("Department") and City of Smelterville ("Holder") pursuant to Idaho law including but not limited to the Uniform Environmental Covenants Act, Idaho Code §§ 55-3001 through 3015.

**Property.** This Environmental Covenant concerns a part of real property located in a portion of Government Lot 2, Section 3, Township 48 North, Range 2 East, Boise Meridian, Shoshone County, Idaho (hereafter referred to as "the Property"). The subject property is also known as Tax Parcel F00000030925 A as shown on Instrument No. 377196. The portion of the Property that is affected by this Environmental Covenant is legally described in the attached Exhibit A. Grantor hereby represents and warrants to the other signatories to this instrument that he/she is the sole owner of the Property as of the date this instrument is executed, holds fee simple title to the Property, and has the power and authority to enter into this instrument.

**Reason for Activity and Use Limitations.** Historic mining activity in the Coeur d'Alene Basin (hereinafter "Basin") has left residual contamination throughout the communities and flood plains of the Basin. Pursuant to CERCLA, EPA and the Department have been implementing remedies throughout the Basin designed to protect human health and the environment. Certain aspects of these remedies are threatened by the potential for recontamination due to uncontrolled flooding. During these events, contaminated sediments from un-remediated areas may be deposited in already cleaned properties necessitating further remedial actions. This instrument is necessary because the EPA and/or the Department have implemented remedy protection measures on the Property which are intended to protect implemented remedies on the Property or other parcels of property in the vicinity. This instrument ensures EPA and the Department necessary access and requires that activities on the Property protect and do not interfere with remedy protection features on the Property that have been implemented.

**Name and Location of Administrative Record.** A copy of the administrative record for EPA decision-making at the Bunker Hill Mining and Metallurgical Complex Superfund Site (which includes the Property) can be found at the Molstead Library, North Idaho College, 1000 Garden

Avenue, Coeur d'Alene 83814 or Superfund Records Center, EPA Region 10, 1200 Sixth Avenue (Suite 900), Seattle, Washington 98101.

**Access and Activity and Use Limitations.** By acceptance and recordation of this Environmental Covenant, Grantor and any successor in interest with respect to the Property, are hereby restricted from using the Property, or any portion thereof, now or at any time in the future, as specifically set forth below unless such use has been expressly approved in writing by the Department:

- 1. Access.** A right of access is granted to the Department and EPA, their respective contractors and third parties authorized by them for the purpose of the remedy protection work, and as necessary to ensure continued maintenance and repair of the work, as described in Exhibit "C" together with all necessary fixtures and appurtenances "facilities" on, over, across and under the Property described in Exhibit "A" at the location shown on Exhibit "B". Holder, its contractors and third parties authorized by it shall have a perpetual right of access necessary to perform maintenance and repair of facilities constructed under this agreement.
- 2. Activity and Use Limitations.** By acceptance and recordation of this instrument, Grantor, and any successors in interest with respect to the Property, are hereby restricted from using the Property, or any portion thereof, now or at any time in the future, in a manner that will materially interfere with or adversely affect the integrity or protectiveness of the remedy protection measures taken on the Property and as described in Exhibit C, unless such use has been expressly approved in writing by the Department.

**Grantor's Use of the Property.** Except as provided herein, Grantor reserves the right to the use and enjoyment of the Property subject to this Environmental Covenant, but such use shall not conflict or interfere with the Department's, EPA's or the Holder's rights herein granted.

**Duration, Amendment and/or Termination by Consent.** This Environmental Covenant shall be perpetual and may only be amended or terminated pursuant to Idaho Code §§ 55-3009 and 3010. Except for an assignment undertaken pursuant to a governmental reorganization, assignment of the Environmental Covenant to a new Holder is an amendment requiring consent.

**Recording/Filing.** This Environmental Covenant, once fully executed, and any amendment or termination of the Environmental Covenant, shall be recorded for the Grantee by the Department in the county recorder's office of every county in which any portion of the Property subject to the Easement and Environmental Covenant is located. Upon receipt of the copy of the recorded Easement and Environmental Covenant, and any amendment or termination therein, the Department shall post the copy of the fully executed instrument in the Registry as required by Idaho Code § 55-3012(1).

**Partial Invalidity.** If any portion of this Environmental Covenant or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such invalidated portion had not been included herein.

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March 14, 2013

**No Third-Party Beneficiaries.** There are no intended third-party beneficiaries, and the parties hereto expressly disclaim any unintended third-party beneficiaries to this Environmental Covenant or any part hereof.

**Effective Date.** The effective date of this instrument shall be the date the fully executed Environmental Covenant is recorded at the county recorder's office.

**Signature and Acknowledgments**

Vincent F. Kozak VINCENT F. KOZAK  
Grantor/ Property Owner

By:

STATE OF IDAHO )  
)ss.  
COUNTY OF Shoshone )

On this 2nd day of May, 2013, before me, a Notary Public in and for said State, personally appeared, Vince Kozak, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Mary Eixenberger  
Notary Public for the State of Idaho  
Residing at: Kellogg, ID  
My Commission Expires: 1-3-2017

Dated, May 2, 2013.



472988

Larry E Huber  
Holder  
By: Mayor

STATE OF IDAHO )  
 )ss.  
COUNTY OF Shoshone )

On this 6<sup>TH</sup> day of May, 2013, before me, a Notary Public in and for said State, personally appeared, Larry E. Huber, known or identified to me to be the Mayor of Smelterville, ID and the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Mary Eixenberger  
Notary Public for the State of Idaho  
Residing at: Kellogg, ID  
My Commission Expires: 1-3-2017

Dated, May 6, 2013.



*CF*

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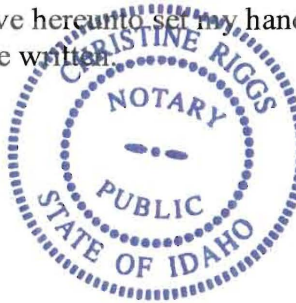
IDEQ

By: Curt Fransen, Director

STATE OF IDAHO )  
COUNTY OF Ada ) ss.

On this 10<sup>th</sup> day of May, 2013, before me, a Notary Public in and for said State, personally appeared, Curt Fransen, known or identified to me to be the Director of the Idaho Department of Environmental Quality and whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



*Christine Riggs*  
Notary Public for the State of Idaho  
Residing at: Boise, ID  
My Commission Expires: 10-18-2020

Dated, May 10, 2013

[Signature]

472988

EPA

By: Richard Albright, Director Office of Environmental Cleanup

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF King )

On this 20th day of May, 2013, before me, a Notary Public in and for said State, personally appeared, Richard Albright, known or identified to me to be the Director of the Office of Environmental Cleanup, Environmental Protection Agency Region 10 and whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Signature]  
Notary Public for the State of  
Washington Residing at:  
Seattle, Washington  
My Commission Expires: 10-1-2016

Dated, 5-20, 2013.



December 11, 2012  
Revised December 18, 2012  
Revised February 8, 2013

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## EXHIBIT A

### Legal Description by Hodge & Associates, Inc.

### An environmental covenant and an access agreement for construction and maintenance purposes

(Property Reference 1B)

An environmental covenant and an access agreement for construction and maintenance purposes, being located in a portion Government Lot 2, Section 3, Township 48 North, Range 2 East, of the Boise Meridian, City of Smelterville, Shoshone County, Idaho, and being more particularly described as follows:

Commencing at the intersection of the centerline of "K" Street with the centerline of Old U.S. Highway 10 as shown on Record of Survey for the City of Smelterville, by L. Hodge, PE/LS #3003, and filed in 2007 under Instrument #438261, thence along the centerline of said Old U.S. Highway 10, as shown on said Record of Survey, S71°56'12"W, 413.98 feet, thence departing said centerline, S18°03'48"E, 30.00, to the intersection with the southerly right-of-way of said Old U.S. Highway 10, point being the Northeast corner of that certain parcel described in that Judgment Quieting Title to Real Property filed under Instrument #377196, thence along said southerly right-of-way line, being the northerly line of said certain parcel, S71°56'12"W, 65.19 feet, to the POINT OF BEGINNING of this covenant and agreement;

Thence departing said southerly right-of-way line and departing the northerly line of said certain parcel, S43°52'52"E, 88.91 feet, to the intersection with the easterly line of said certain parcel;

Thence along said easterly line, S0°13'34"W, 59.59 feet;

Thence departing said easterly line, N55°17'38"W, 49.63 feet;

Thence N43°15'20"W, 62.27 feet;

Thence S77°09'10"W, 166.28 feet;

Thence N34°44'11"W, 26.75 feet, to the intersection with said southerly right-of-way line being the northerly line of said certain parcel;

Thence along said southerly right-of-way line, N71°56'11"E, 209.78 feet, to the POINT OF BEGINNING of this covenant and agreement.

The above described area contains 11,405 sq. ft., more or less.



CURVE DATA					
CURVE	RADIUS	DELTA	LENGTH	CHORD	CHORD BEARING
C5	924.93'	15°17'58"	246.98'	246.25'	S 79°35'12" W

LANDS OF KOZAK  
JUDGEMENT QUIETING TITLE  
INSTRUMENT # 377196  
TAX PARCEL # RP F00000030925 A



DRAWN BY:  
A. K. Younger  
Hodge & Assoc. Inc.

PROJECT MANAGER  
Scott Brown

PROJECT NO:  
12034-05-03  
(3420-11-12)  
DATE 12/11/2012  
REV 12/18/2012  
REV 2/08/2013

Grouse Creek Remedy  
Protection Project

Property Reference 1B  
For Construction and Maintenance Purposes  
Section 3, Township 48 North, Range 2 East, BM  
City of Smeaterville, Shoshone County, Idaho

F:\3420-TerraGraphics Grouse Creek\3420 Acad\3420 Exhibit 1B.dwg 2/8/20'3

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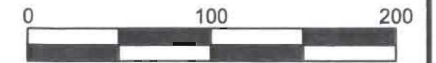
NOTE:

1. PARCEL BOUNDARY AND PROPERTY OWNERSHIP DATASETS WERE OBTAINED FROM SHOSHONE COUNTY GIS AND HAVE NOT BEEN INDEPENDENTLY VERIFIED.

LEGEND

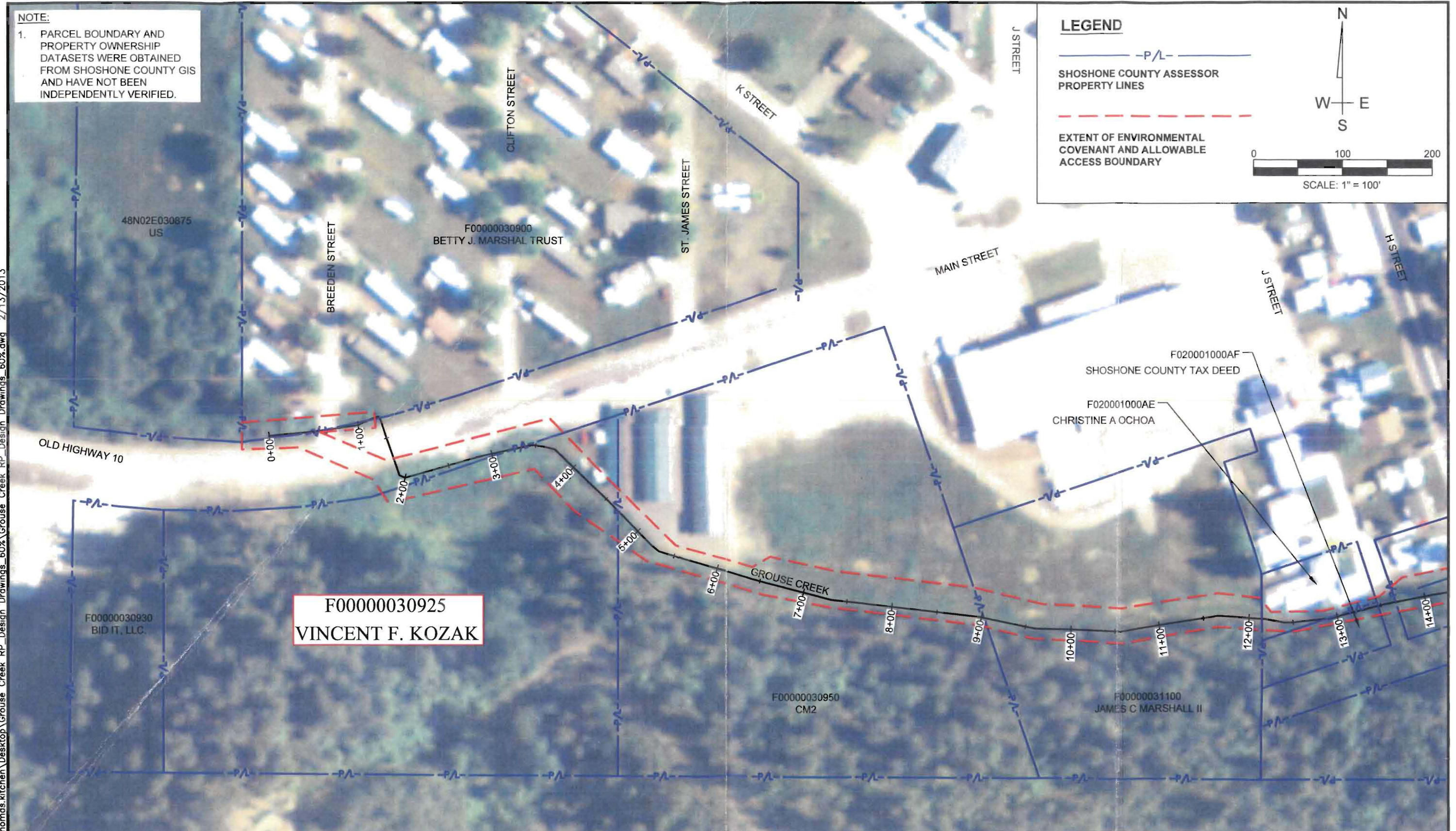
—P/L—  
SHOSHONE COUNTY ASSESSOR  
PROPERTY LINES

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EXTENT OF ENVIRONMENTAL  
COVENANT AND ALLOWABLE  
ACCESS BOUNDARY



SCALE: 1" = 100'

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DRAWN:		C. HEWETT		COORDINATE SYSTEM:	
ENGINEER:		S. BROWN		NAD83, ISP, WEST ZONE, US FT	
CHECKED:				SCALE:	
DATE:				1" = 100'	
APPROVED:					
DATE:					
NO.	DATE	REVISIONS	BY	CHK	



**TerraGraphics**  
Environmental Engineering, Inc.

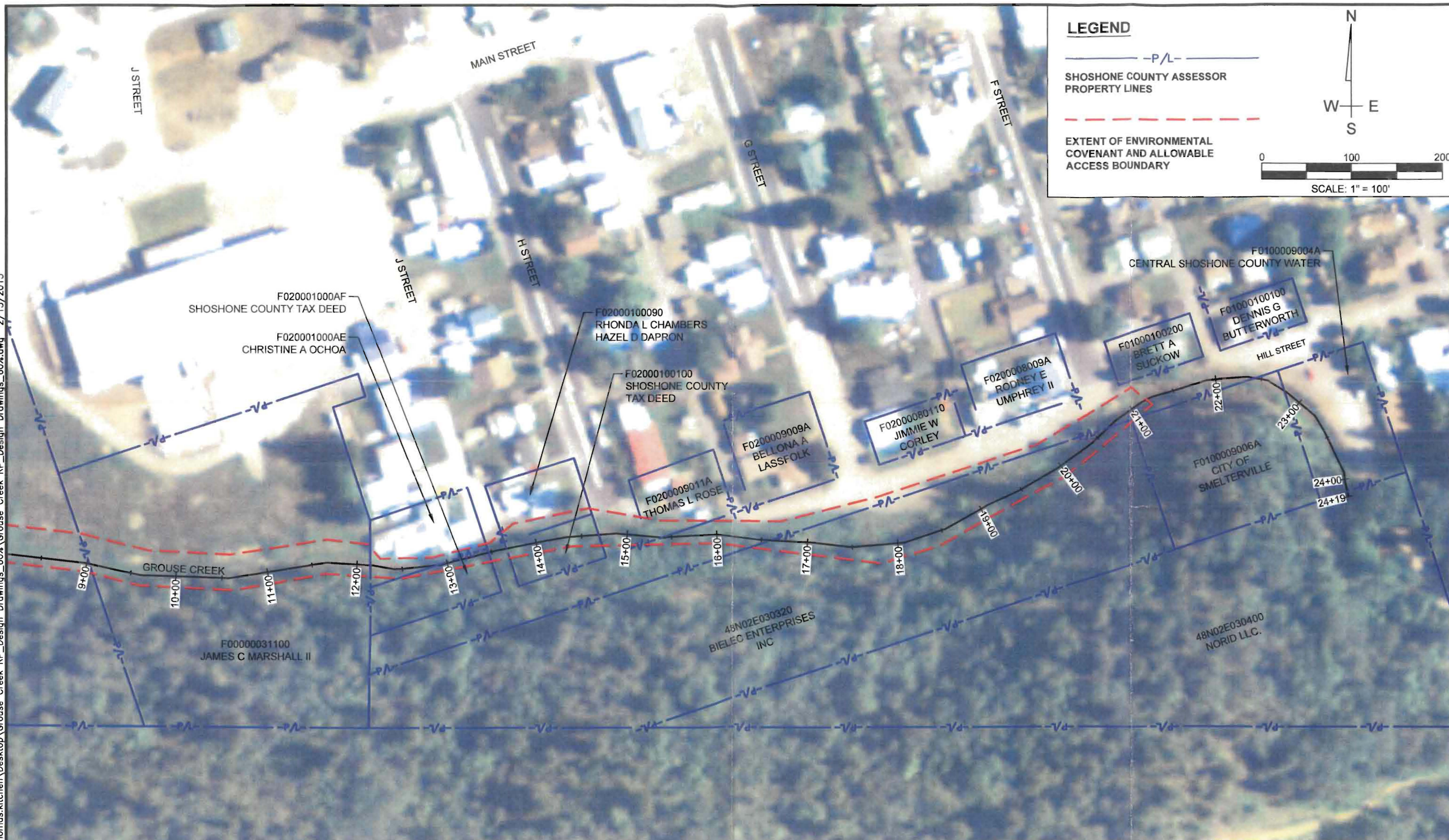
**GROUSE CREEK  
REMEDY PROTECTION**

EXHIBIT C

SHEET NAME:		WEST SECTION
DATE:	2/13/2013	
PROJECT NO.:	7045-2	
SHEET:	1 OF 4	

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NO.	DATE	REVISIONS	BY	CHK	DRAWN: C. HEWETT	COORDINATE SYSTEM: NAD83, ISP, WEST ZONE, US FT
					ENGINEER: S. BROWN	SCALE: 1" = 100'
					CHECKED:	APPROVED:
					DATE:	DATE:

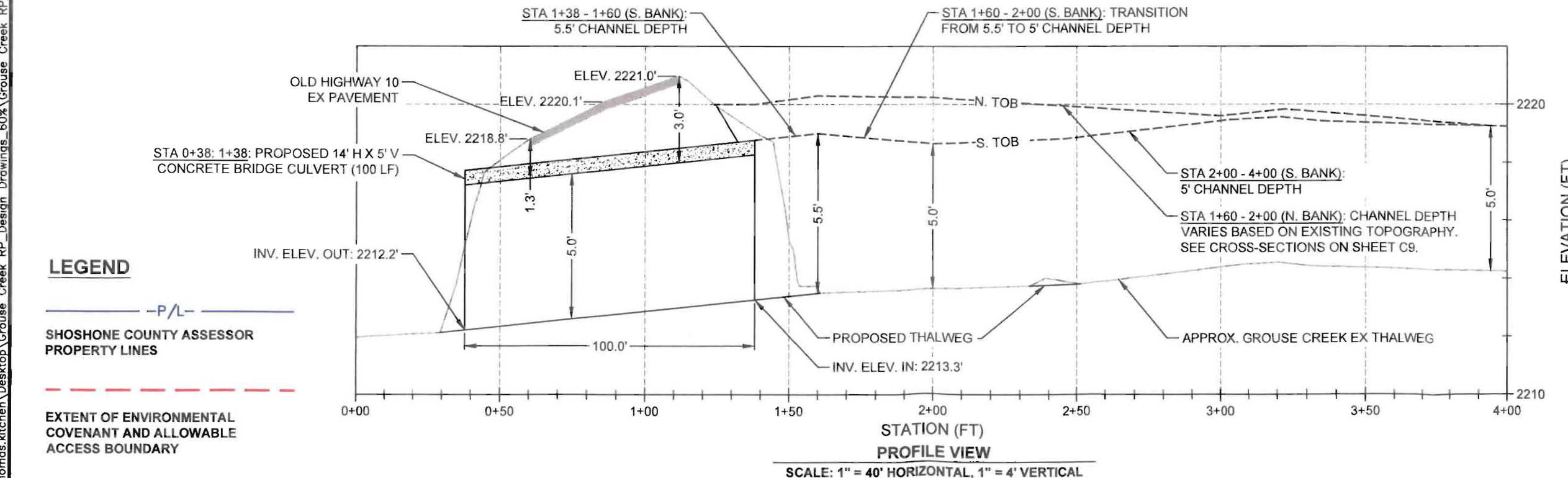


**GROUSE CREEK  
REMEDY PROTECTION**

**EXHIBIT C**

SHEET NAME:	EAST SECTION
DATE:	2/13/2013
PROJECT NO.:	7045-2
SHEET:	2 OF 4

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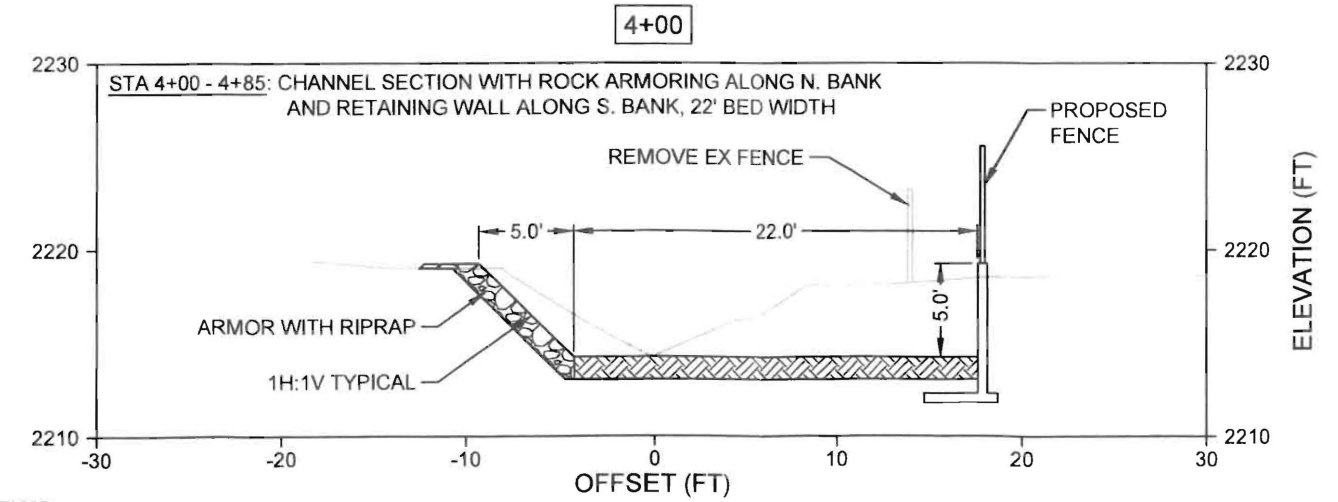
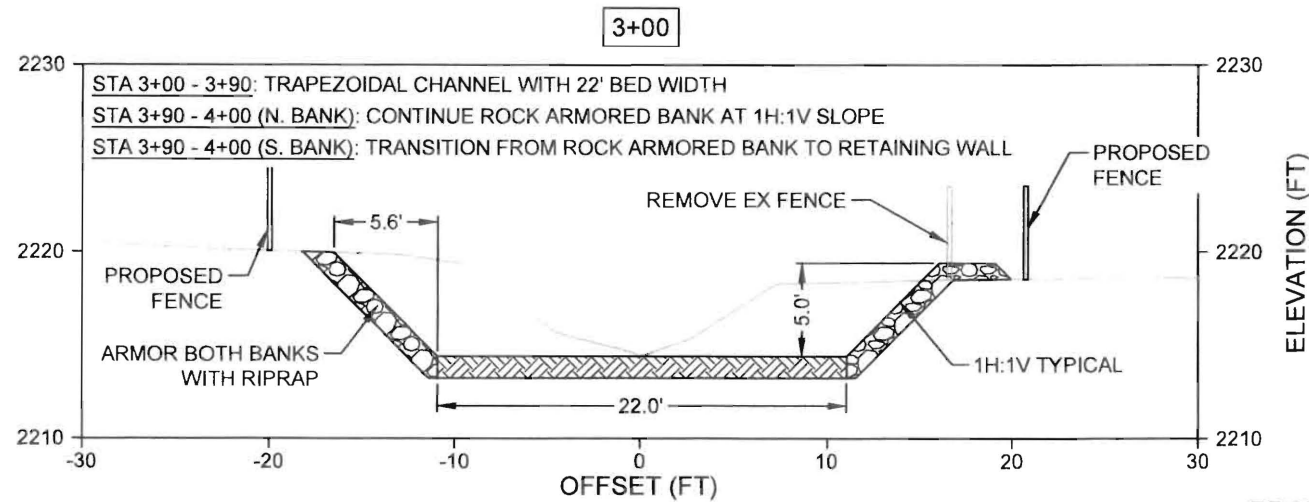
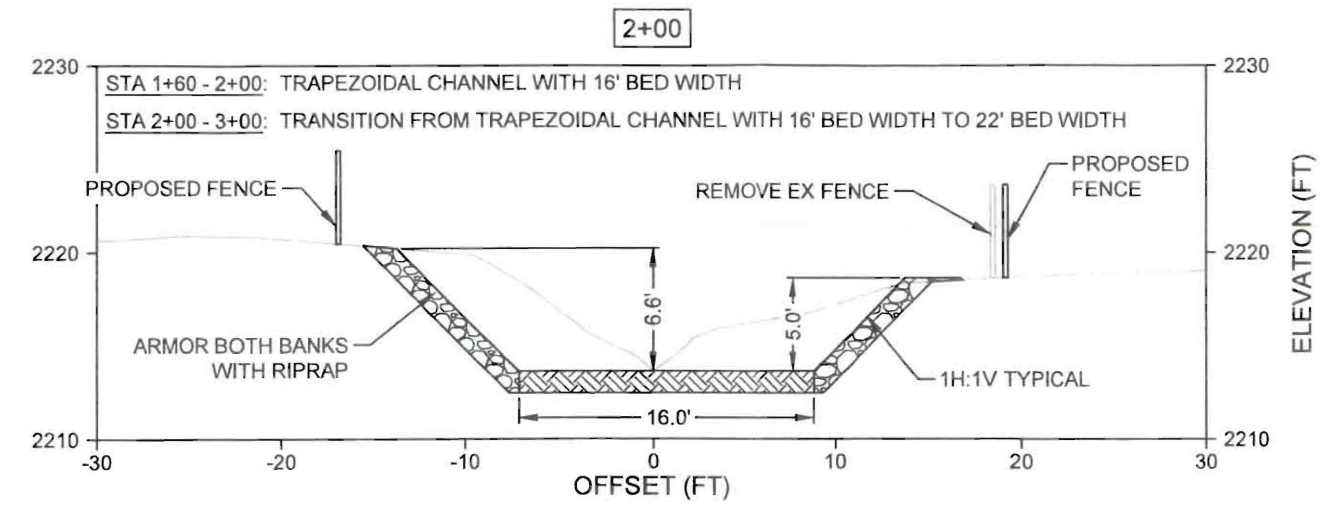
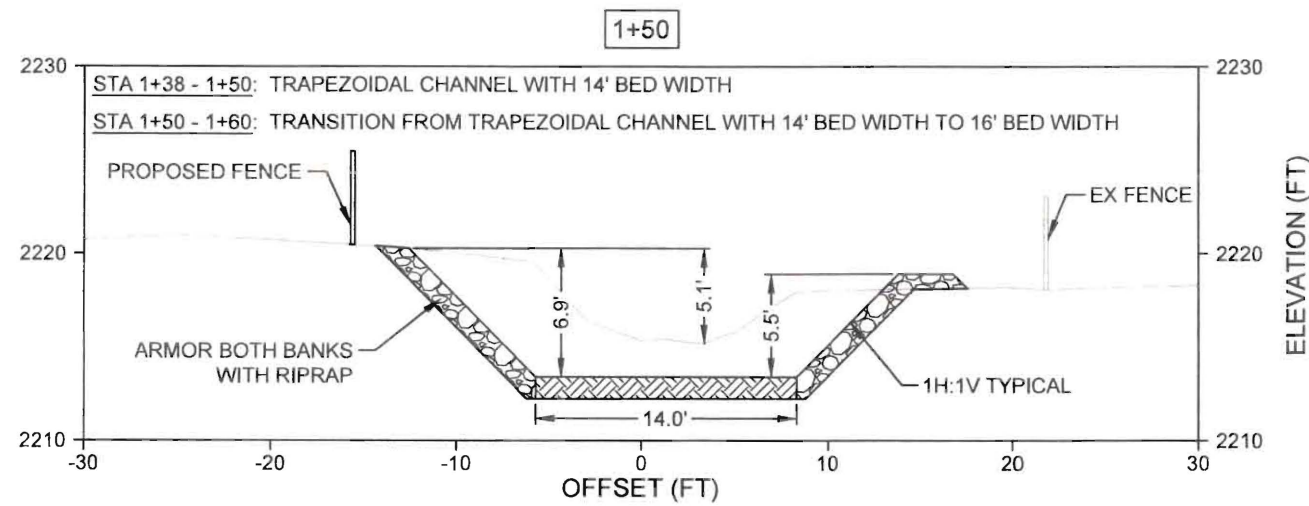
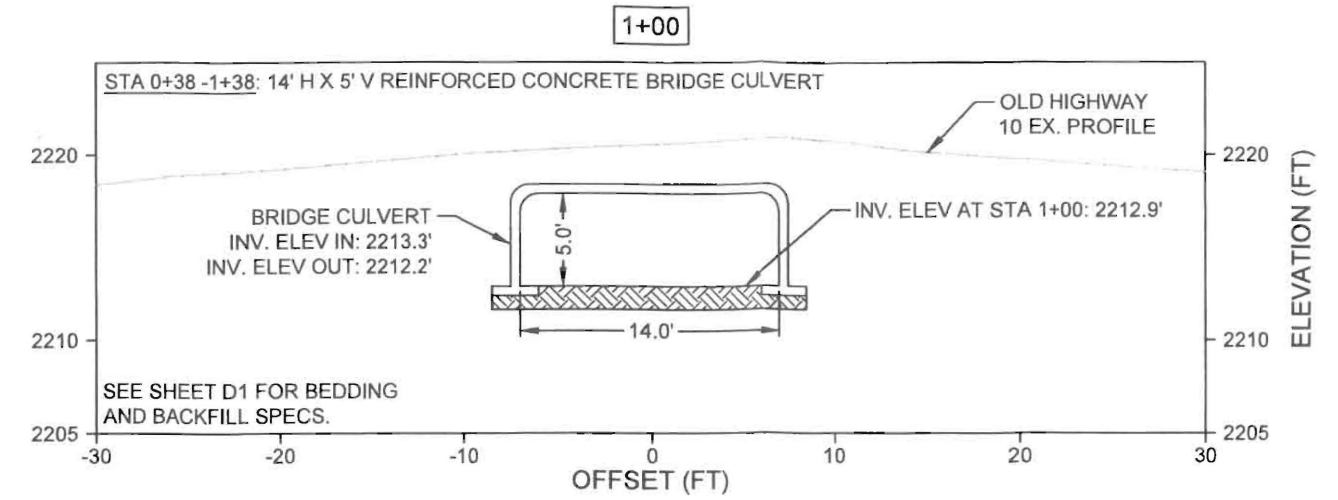
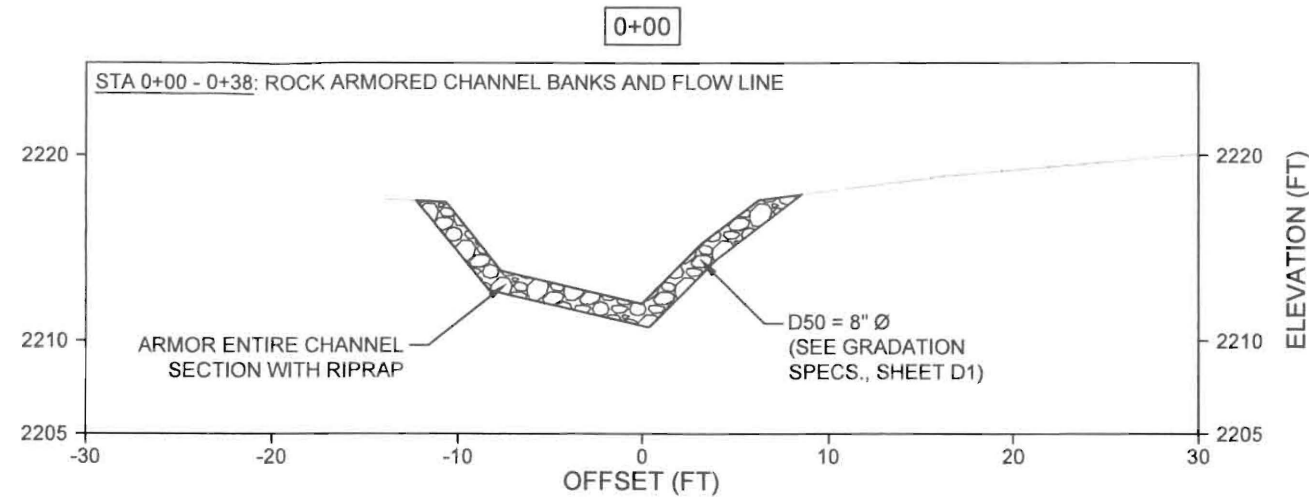


**NOTES:**

1. DESIGN STRUCTURE POINTS LISTED ABOVE REFER TO THE TOP FACE OF EACH COMPONENT (CLOSEST TO THE CREEK CENTERLINE)

				DRAWN: C. HEWETT		COORDINATE SYSTEM: NAD83, ISP, WEST ZONE, US FT			<b>GROUSE CREEK REMEDY PROTECTION</b>	<b>EXHIBIT C</b>	SHEET NAME: C	
				ENGINEER: S. BROWN		SCALE: AS NOTED					DATE: 2/4/201	
				CHECKED:		APPROVED:					PROJECT NO.: 7045	
NO.	DATE	REVISIONS		BY	CHK	DATE:	DATE:				SHEET: 3 OF	

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PROFILE VIEWS  
SCALE: 1" = 10' HORIZONTAL, 1" = 10' VERTICAL

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DRAWN:	C. HEWETT	COORDINATE SYSTEM:	NAD83, ISP, WEST ZONE, US FT
ENGINEER:	S. BROWN	SCALE:	AS NOTED
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GROUSE CREEK  
REMEDY PROTECTION

EXHIBIT C  
SECTIONS  
0+00 - 4+00

SHEET NAME:	C9
DATE:	2/4/2013
PROJECT NO.:	7045-2
SHEET:	4 OF 4