

**Recording Requested By and
When Recorded Mail To:**

Robb Etnyre
General Manager
Tahoe Donner Association
11509 Northwoods Blvd
Truckee, CA 96161

(THE ABOVE SPACE FOR RECORDER’S USE ONLY)

(APN#):

DOCUMENT TRANSFER TAX: 0.00

Town of _____ Unincorporated Area of Nevada County

**Agreement for Trail, Bridge, Parking Lot and Ancillary Facilities Construction, Access,
and Maintenance – Crabtree Canyon**

This Memorandum of Agreement for Trail, Bridge, Parking Lot and Ancillary Facilities Construction, Access, and Maintenance, dated August _____, 2018 (“Agreement”), is entered into by and between TAHOE DONNER ASSOCIATION (“TDA”), a California non-profit mutual benefit corporation (“Grantor”), and the TRUCKEE DONNER LAND TRUST (“TDLT”), a California non-profit, with reference to the following facts:

RECITALS

WHEREAS, Truckee Donner Land Trust has protected and preserved over 33,000 acres in the Truckee Donner region to maintain natural resources and continued recreational access;

WHEREAS, TDA is one of America’s largest homeowners associations and owns 5,018 acres of open space, which TDA makes available for certain recreational activities;

WHEREAS, pursuant to Articles VII and IX in its bylaws, TDA is entering into this agreement to provide enhanced access to recreational opportunities for the benefit of TDA’s members;

WHEREAS, TDA is the owner of certain property (APNs 16-060-02, 16-060-17, 16-060-18) and TDLT holder of conservation easements located in Nevada County, and in and around the Town of Truckee;

WHEREAS, parcels held by TDA include existing roads, trails and access points;

WHEREAS, TDLT seeks to complete public trail segment(s) across TDA property subject to a conservation easement (APN[s] 16-060-02, 16-060-17, 16-060-18);

Whereas, TDLT is the grantee of a conservation easement on the property;

WHEREAS, TDLT seeks a license for trail segments, and a public trail connection (APN[s] 16-060-18, 16-060-17, 16-060-02), including but not limited to, a future potential connection from the Carpenter Valley single-track trail to TDA's existing Mustang Sally trail;

WHEREAS, TDLT seeks to install a parking lot and ancillary facilities, including a boulder with plaque, on the Crabtree Canyon property (APN 16-080-18);

WHEREAS, TDLT seeks to install a bridge over the North Fork Prosser Creek on the Crabtree Canyon property (APN 16-060-18), and connect that bridge by way of trail to a parking lot;

WHEREAS, this Agreement establishes a cooperative arrangement between TDA and TDLT to permit and construct various trail segments and crossings (as depicted in Attachment A, hereto), provide for permitting, construction, and maintenance of the trails, crossings, and ancillary facilities, and ensure public access to the trails and crossings; and

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants contained therein, TDA and TDLT hereby agree, as follows:

Grant of License: this agreement creates a revocable license between TDA and TDLT regarding the construction, use, and maintenance of the trails, bridge, parking lot and ancillary facilities.

A. Construction and Licensing

1. TDLT shall be responsible for the design and construction of the proposed trail segments, public access connections, bridge, parking lot and ancillary facilities ("Improvements") and shall bear all associated costs.
2. Design and construction of ancillary facility improvements will be required to accommodate the trail segment and access connections. Necessary ancillary facilities include: a parking lot not to exceed 25 spaces; signage; trash receptacles; security gate(s); boulder and plaque, and a vault restroom or equivalent at the trailhead.
3. The design plans and construction schedule for the trails, public access connections, bridge and ancillary facilities, including elevations, lists of materials, grades, etc., must be in alignment with Tahoe Donner Trails Master Plan trails minimum standards (attached and incorporated herein by reference).
4. TDLT shall submit all design plans and construction schedules for each improvement and trail to TDA for consideration, and TDA shall approve the same, in TDA's discretion, which shall not be unreasonably withheld, prior to TDLT beginning construction of the Improvements.

5. TDLT shall be solely responsible for and shall bear all costs associated with obtaining any applicable State, local, and federal permits, licenses, and approvals required for construction of the Improvements. In addition, TDLT shall submit proposed conditions of any State, local, and federal permits, licenses, or approvals required for construction of the Improvements to TDA for TDA's review and written approval, which shall not be unreasonably withheld, prior to permit acceptance and execution. Finally, TDLT shall provide TDA with copies of all executed permits prior to commencement of construction.
6. TDLT shall be solely responsible for the construction of the Improvements and shall bear all associated costs.
7. TDLT shall provide TDA notice of intent to begin construction on the Improvements at least 30-days prior to beginning construction.
8. All materials used in construction shall be furnished by TDLT. TDA shall retain ownership of any materials installed on the Improvements.

B. Bridge Construction—Crabtree Canyon

1. TDLT shall design the proposed Crabtree Canyon Bridge to facilitate a trail crossing over the North Fork Prosser Creek on the Crabtree Canyon parcel (APN 16-060-18) and shall bear all associated costs.
2. TDLT shall provide recommended specifications, including elevations, lists of materials, grades, etc., for the proposed Crabtree Canyon Bridge to TDA for TDA's review and approval, which approval shall not be unreasonably withheld, prior to TDLT beginning construction of the bridge.
3. TDLT shall be solely responsible for obtaining all applicable state, local, and federal permits, licenses, and approvals required for construction of the Crabtree Canyon Bridge. In addition, TDLT shall submit proposed conditions of any state, local, and federal permits, licenses, or approvals required for construction of the Crabtree Canyon Bridge to TDA for TDA's review and written approval, which approval shall not be unreasonably withheld, prior to acceptance and execution. Finally, TDLT shall provide TDA with copies of all executed permits prior to commencement of construction.
4. TDLT shall provide TDA notice of intent to begin construction on the Crabtree Canyon Bridge at least 30-days prior to beginning construction.
5. TDLT shall be solely responsible for the construction of the Crabtree Canyon Bridge and shall bear all associated costs. All materials used in construction of the Crabtree Canyon Bridge shall be furnished by TDLT.
6. Upon completion of the Bridge, TDLT shall provide TDA with copies of as-built plans for the Bridge.

C. Trail, Bridge, Parking Lot and Ancillary Facilities Maintenance

1. **Routine Maintenance of the Trails, Bridge, Parking Lot and Ancillary Facilities.** As described more fully below, TDLT shall perform all necessary Routine Maintenance on the Improvements, including inspections and maintenance on all trails, and ancillary facilities, and the Crabtree Canyon Bridge, and an area extending five feet on either side of the Improvements, at its sole cost, in a manner that is satisfactory to TDA, such that the Improvements are in good repair, sound condition, and free from hazards to the public.

“Routine Maintenance,” for the purposes of this Agreement, means all tasks described in Paragraphs (1)(a) – (g) below. All Routine Maintenance, as defined herein, shall comply with applicable federal, state, and local laws. TDLT’s Routine Maintenance responsibilities for the Improvements shall specifically include the following, without limitation:

- a) Maintenance of the Improvements free from hazards and/or dangerous conditions, to include, without limitation, any fallen debris, overhanging tree limbs, and/or leaves. To the greatest extent feasible, the surface of the Improvements shall be maintained free from potholes to prevent injuries on the Improvements. The trail’s shoulders shall be mowed at least once every growing season (June-August).
- b) Monitoring the Improvements on no less than a monthly basis during the summer recreation season (May to October) and within 72 hours of receipt of a report from TDA that maintenance is required, to ensure that the Improvements are kept free from hazards to the public, including but not limited to potholes and rutting or heaving from tree roots, and free from litter, paper, trash, and other debris.
- c) Monitoring the Bridge for structural integrity using appropriate engineering or other qualified experts at least once per year. TDLT shall provide TDA with a report documenting the results of this monitoring, and attaching all expert evaluations, exhibits, and reports, within 30 days of the inspections.
- d) Promptly conferring with TDA staff in the event of a potentially dangerous condition on the Improvements, including, without limitation, heavy tree limbs, and/or other heavy fallen debris, fallen power or utility lines, significant rutting and/or other material deterioration of the Trail surface or any part of the Bridge, and ancillary facilities.
- e) Acquire, as needed, a sufficient supply of materials necessary to maintain and/or repair the Improvements. However, TDA shall provide, as needed and upon request, technical support to guide TDLT as to the required maintenance schedule and the appropriate materials.

- f) TDLT shall refrain from trespassing on or damaging adjacent properties and agrees that it shall not engage in any such activity. If, in the conduct of the work and in the opinion of TDLT, adjoining property must be utilized to perform Routine Maintenance, TDLT will promptly confer with TDA staff to notify adjacent property owners and gain permission to utilize such property if such right has not been granted by the particular easement at that location. Furthermore, TDLT shall, and hereby does, hold TDA harmless from any injuries or claims from the public or neighboring property owners resulting from activities conducted pursuant to this Agreement.
 - g) TDLT shall provide a report to TDA on an annual basis which describes all maintenance activities conducted on the Improvements during the prior calendar year. In addition, the annual report shall note any safety concerns or public usage issues addressed by TDLT during the prior calendar year. A copy of the annual report for the preceding calendar year shall be provided to TDA prior to May 1st.
2. **TDA Maintenance.** In the event TDLT is unable to carry out any of its Routine Maintenance responsibilities hereunder, as provided in Paragraph 1, after 30 days written notice to TDLT to make corrections, TDA may take whatever steps it deems reasonably necessary to adequately maintain the Improvements but not limited to conducting the maintenance, or if necessary to ensure safety, closing the Improvements until maintenance has taken place. The decision to close Improvements or perform maintenance shall be in TDA's reasonable discretion following the giving of written notice and opportunity to correct as set forth above. In the event TDA must conduct necessary maintenance pursuant to this section, TDA may seek reimbursement of reasonable expenses from TDLT. Nothing herein shall require TDA to provide any repairs or maintenance to the Improvements.

D. Term of Agreement and Improvements License

- 1. The term of this Agreement and Improvements License shall be deemed to have commenced on the Effective Date, and shall expire **30 years** from the effective date, unless renewed or terminated pursuant to the terms of this Agreement.
- 2. At all times during the term of the Agreement and Improvements License, TDLT shall provide Routine Maintenance work on the Improvements and TDA hereby grants TDLT all necessary rights to enter upon the Improvements to perform such maintenance. TDLT shall provide at least 24 hours' notice before entering TDA's property to conduct Routine Maintenance.
- 3. TDA shall have the right to terminate this Agreement and Improvements License for cause by providing to TDLT thirty (30) days prior written notice of its intention to terminate. Appropriate cause for determination includes, but is not limited to, failure to inspect, maintain, or repair the bridge, ancillary facilities, or trails, or failure to abide by the terms of this Agreement and Improvements License, failure to maintain or provide

evidence of insurance, pursuant to paragraph E, below, or any violation of applicable laws or permits. Upon any such termination, neither TDA nor TDLT shall have any further rights under the terms of this Agreement and Improvements License.

4. TDLT shall not assign any right conferred to it under this Agreement and Improvements License without prior written consent of TDA, which may be withheld in TDA's sole and absolute discretion.
5. Prior to expiration of the thirty-year term, TDLT and TDA, or their successors or assigns, may agree to renew this Agreement and Improvements License, if provided in writing.

E. Insurance

1. **TDLT Liability Insurance**: TDLT shall maintain the insurance policies and coverages described in this Section E.1. All Policies and Riders shall list TDA, and its members, officers, Board Members and employees as an "additional insured," and the Certificate of Insurance shall include a provision that TDLT's policy coverage is primary to all other coverage TDA may possess. Each policy which provides coverage for losses shall contain a waiver of subrogation as to TDA.
 - a. During the term of this Agreement, TDLT shall maintain a policy of commercial general liability insurance insuring TDA against any liability arising out of the maintenance of the Trails. The insurance will be maintained with limits in an amount of not less than FIVE MILLION DOLLARS (\$5,000,000.00) per occurrence and TEN MILLION DOLLARS (\$10,000,000.00) in the aggregate;
 - b. During the term of this Agreement, TDLT shall maintain auto liability insurance covering owned, non-owned, leased and hired automobiles in the amount of ONE MILLION DOLLARS (\$1,000,000) combined single policy limit for bodily injury and property damage for each accident;
 - c. During the term of this Agreement, TDLT shall maintain workers compensation coverage in the amount of ONE MILLION DOLLARS (\$1,000,000) and in compliance with the Applicable Law;
 - d. During the term of this Agreement, TDLT shall maintain pollution liability insurance for claims arising from the discharge, dispersal release or escape or any irritant or contaminant into or upon land, any structure, the atmosphere, watercourse or body of water, including groundwater. This shall include on and off-site clean up and emergency response costs, with minimum limits of not less than ONE MILLION DOLLARS (\$1,000,000);
 - e. During the term of this Agreement, TDLT shall maintain employment practices liability insurance ("EPLI");
 - f. During the term of this Agreement, TDLT or its contractor shall maintain Course of Construction insurance for the Bridge, parking lot and restroom.

2. TDLT Contractor's Policies and Third Party Policies. TDLT's contractors and any additional organizations working for TDLT shall maintain the insurance policies and coverages described in this Section D.2. All Policies and Riders shall list TDA, and its members, officers, Board Members and employees as an "additional insured," and the Certificate of Insurance shall include a provision that the policy coverage is primary to all other coverage TDA may possess. Each policy which provides coverage for losses shall contain a waiver of subrogation as to TDA.
 - a. During the term of this Agreement, TDLT's contractors and any additional organizations working for TDLT shall maintain a policy of commercial general liability insurance insuring TDA against any liability arising out of the construction and maintenance of the Trails. The insurance will be maintained with limits in an amount of not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence and in the aggregate;
 - b. During the term of this Agreement, TDLT's contractors and any additional organizations working for TDLT shall maintain auto liability insurance covering owned, non-owned, leased and hired automobiles in the amount of ONE MILLION DOLLARS (\$1,000,000) combined single policy limit for bodily injury and property damage for each accident;
 - c. During the term of this Agreement, TDLT's contractors and any additional organizations working for TDLT shall maintain workers compensation coverage in the amount of ONE MILLION DOLLARS (\$1,000,000) and in compliance with the Applicable Law.
3. Insurance Policies: Insurance carried by TDLT will be with companies acceptable to TDA in TDA's sole and absolute discretion. TDLT shall deliver to TDA a certificate of insurance evidencing the existence and amounts of the insurance and listing TDA as an additional insured prior to accessing any TDA property and shall provide an updated certificate of insurance within sixty (60) days prior to beginning construction. No policy shall be subject to cancelation or reduction of coverage or other modification except after 30 days prior written notice to TDA. Upon cancelation, TDLT shall promptly provide TDA with a certificate evidencing the purchase of replacement coverage as required by Paragraph (E)(1) above.

F. Indemnity

1. Indemnification: During the Term, TDLT agrees to, and hereby does, indemnify and hold harmless TDA and its members, officers, agents, employees, and volunteers from any and all claims arising in any way from TDLT's Construction and Routine Maintenance of Improvements and use of Improvements, as described in sections A through C, above. In connection with such claims, TDLT agrees to indemnify and hold harmless TDA and its members, offices, agents, employees, and volunteers from the costs of investigation and all expenses of litigation, including but not limited to reasonable attorneys' fees and costs of appeals. Nothing herein shall be construed to create a right or cause of action in any third party.

G. Miscellaneous

1. Entire Agreement. The terms, conditions, and covenants of this Agreement constitute the entire agreement between the parties with respect to the subject matter of this Agreement and supersede all prior discussions, understandings, agreements, and negotiations between the parties with respect to the construction and maintenance of the Trails.
2. Modifications. This Agreement may be modified only by a written instrument duly executed by the Parties.
3. Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of California.
4. Severability. If any term, covenant or condition of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
5. Notice. All requests, proposals, notices and other communication hereunder shall be in writing unless otherwise specified herein and shall be sent or delivered by certified mail, return receipt requested, to the address set forth below (or such other address as may be hereafter specified in writing):

To TDA: Tahoe Donner Association
11509 Northwoods Blvd
Truckee, CA 96161
Attn: Robb Etnyre
General Manager

With a copy to:

Sproul Trost LLP
3200 Douglas Boulevard, Suite 300
Roseville, CA 95661

To TDLT: Truckee Donner Land Trust
P.O. Box 8816
Truckee, CA 96162

6. Public Use of Private Property: The Parties acknowledge that public use of TDA's private property is allowed solely by permission of TDA and does not confer, nor will ripen into, any rights (vested, prescriptive, or otherwise) to make such use permanent. (Cal. Civ. Code § 1009.)
7. Headings. The headings used in this Agreement are for convenience of reference and shall not be used to define any provision

8. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed original for all purposes.

WHEREFORE, the undersigned execute this Agreement as follows:

Dated: _____

TAHOE DONNER ASSOCIATION

By: _____

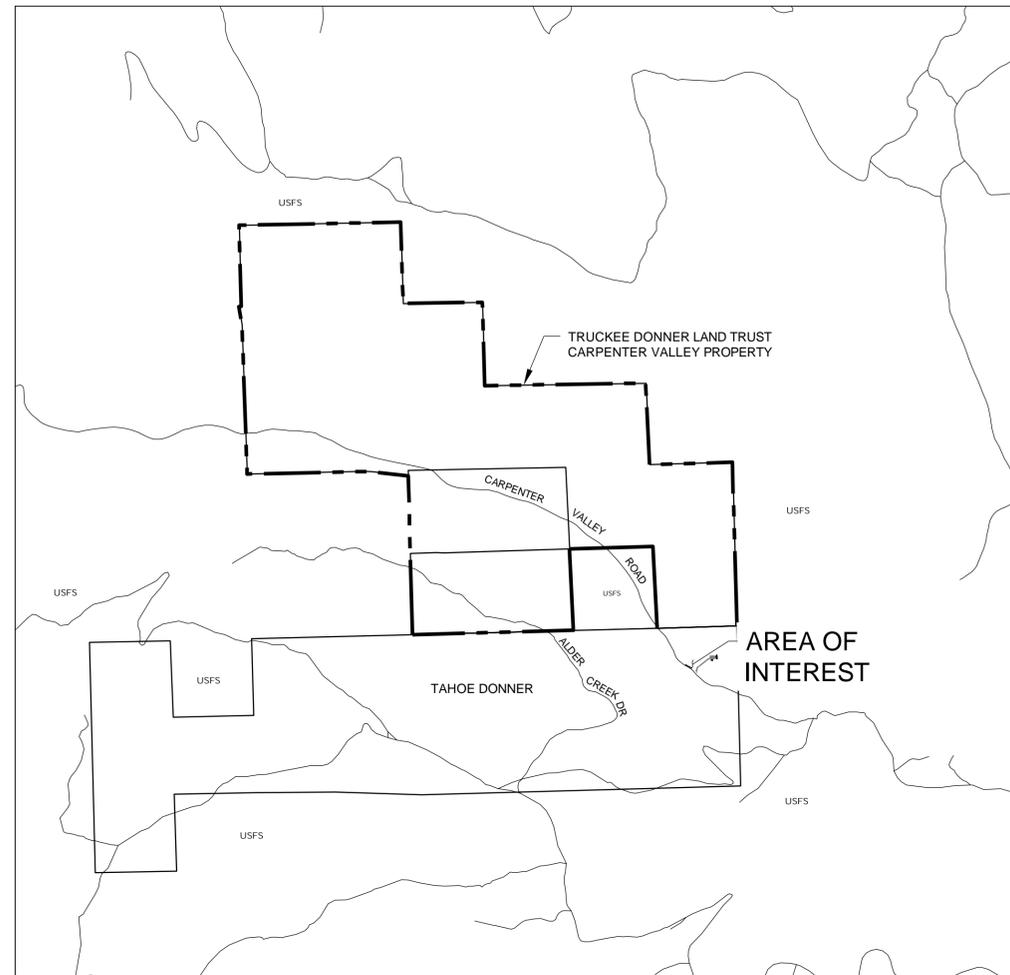
Dated: _____

TRUCKEE DONNER LAND TRUST

By: _____

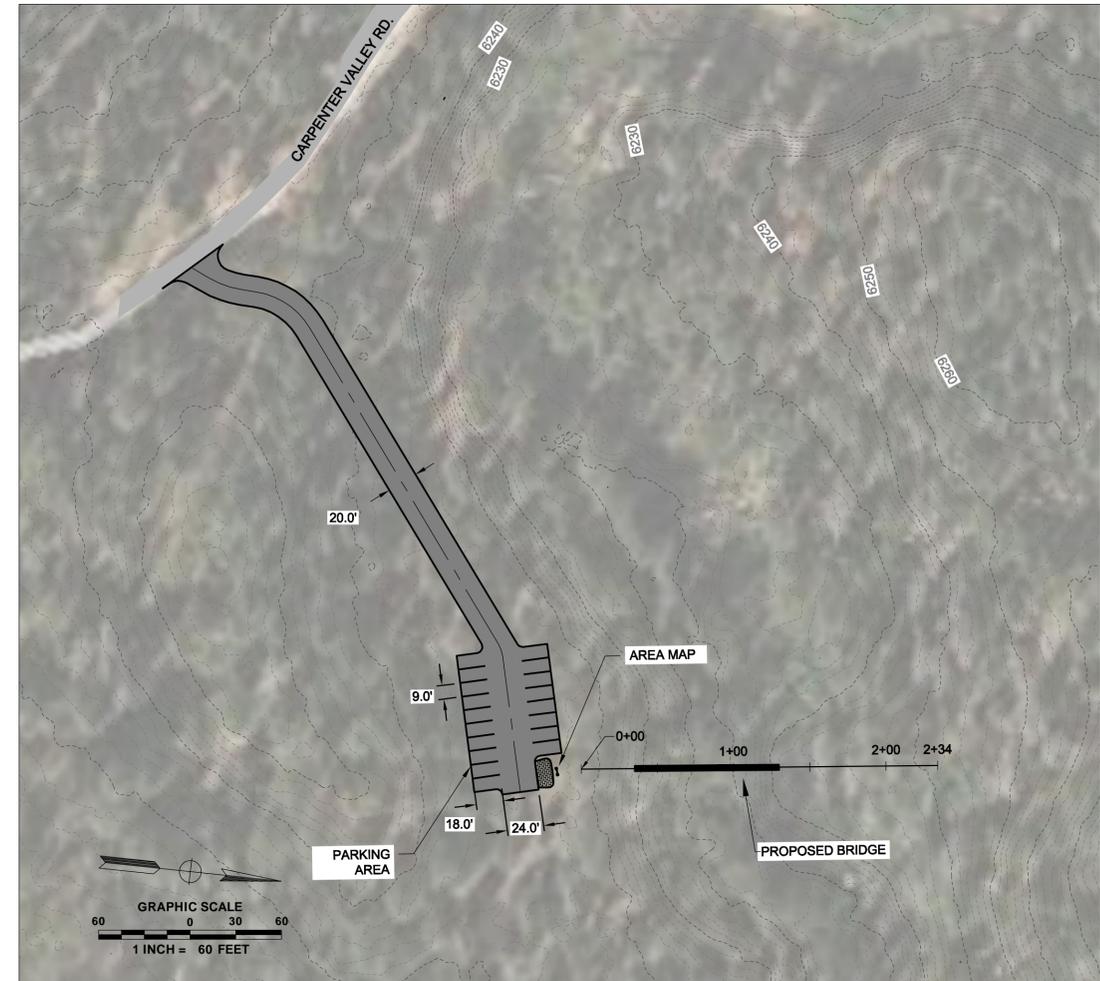
Attachment A
[Trails, Bridge, and Access Plans for Crabtree Canyon]

Attachment B
[Tahoe Donner Trails Master Plan—Trails Minimum Standards]



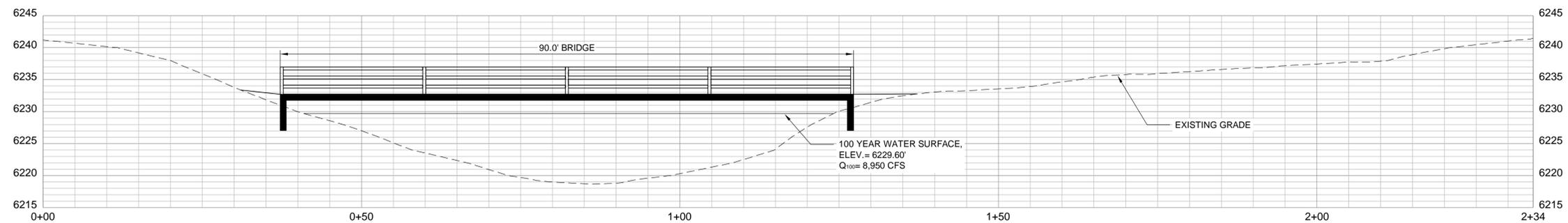
VICINITY MAP

SCALE: 1" = 1500'



PLAN

SCALE: 1" = 60'



PROFILE

SCALE: 1" = 10' (H)
1" = 10' (V)

Proposed Bridge Location Profile Carpenter Valley Trailhead

Cross Section
Carpenter Valley
451.00 June 2018