

APPROVED AS TO FORM BY GENERAL COUNSEL,
AUGUST 18, 1966

C.S. 7362

79405

STREET OR HIGHWAY EASEMENT

Mile Post CF-528.9

This Indenture, made this 26th day of May, 1973, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a corporation of the State of Delaware, - - - - - herein called "Railroad," and STATE OF OREGON, acting by and through the Oregon State Highway Commission, address: Highway Building, Salem, Oregon 97310 - - - - - herein called "Grantee";

Witnesseth:

1. That Railroad hereby grants to Grantee the right to construct, reconstruct, maintain and use a street or highway, hereinafter termed "highway," upon and across the real property described on the attached Exhibit "A."
 2. The rights herein granted are expressly limited vertically and shall not extend beyond a plane parallel with and twenty (20) feet above the roadway surface of the highway as originally constructed, except that lighting fixtures and similar highway appurtenances may extend above said plane, provided that any such facilities will be removed or rearranged within thirty (30) days after notification from Railroad that such facilities interfere with Railroad's intended use of the space above said plane.
 3. This grant is subject and subordinate to the prior right of Railroad to use all the property described in the performance of its duty as a common carrier, and there is reserved unto Railroad the right to construct, reconstruct, maintain, use and remove existing and future, railroad, transportation, communication and pipeline facilities and appurtenances in, upon, over, under, across or along said property. In event tracks are removed from said property, Railroad shall not be obligated to make any change in the grade of said highway.
- This grant is subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title which may affect said property, and the word "grant" shall not be construed as a covenant against the existence thereof.
4. The rights herein granted shall lapse and become void if the construction or reconstruction of said highway is not commenced within ~~one (1) year~~ ^{two (2) years} from the date first herein written.
 5. This grant shall not be construed as conveying or otherwise vesting in Grantee the right to install or to authorize the installation of any ditches, pipes, drains, sewer or underground structures, or the facilities of any telegraph, telephone or electric power lines in, upon, over, under, across or along said property, except as necessary for maintenance of said highway, and subject to Oregon legislative enactments.
 6. Grantee shall obtain any necessary governmental authority to construct, reconstruct, maintain and use said highway. Any contractor performing work on the property herein described shall execute Railroad's standard form of contractor's agreement prior to commencing any work on Railroad's premises.
 7. Except as herein otherwise provided, Grantee shall bear the entire expense of constructing, reconstructing and maintaining said highway. The crossing of said highway over any tracks of Railroad shall be constructed and maintained at the grade of said tracks now or hereafter existing. After the construction or reconstruction of said highway has been completed, Railroad shall maintain the surface of that portion of said highway between lines two (2) feet outside the rails of each track located thereon. Should Railroad abandon tracks leading to said highway, Railroad may abandon its rails, ties and appurtenant materials and leave the same in place. In such event, Railroad shall not be liable for maintenance of the portion of said highway specified above.
 8. As part consideration herefor, Grantee agrees to pay Railroad an amount equal to all assessments levied by any lawful body against the property of Railroad to defray any part of the expense incurred in connection with the construction or reconstruction of said highway commenced within ~~one (1) year~~ ^{two (2) years} from the date first herein written.
 9. Should Grantee at any time abandon the use of said property or any part thereof, or fail to use the same for said purpose for a continuous period of one (1) year, the rights granted shall cease to the extent of the use so abandoned or discontinued, and Railroad shall at once have the right, in addition to, but not in qualification of, the rights hereinabove reserved, to resume exclusive possession of said property or the part thereof the use of which is so discontinued or abandoned. Upon termination of the rights hereby granted, Grantee agrees to remove said highway, including the paving, from said property of Railroad, to restore said property as nearly as practicable to the same state and condition in which it existed prior to the construction of said highway, and to bear the expense thereof. Should Grantee in such event fail, neglect or refuse to so remove said highway and restore said property, such removal and restoration may be performed by Railroad, at the expense of Grantee, which expense Grantee agrees to pay to Railroad upon demand, excluding therefrom any railroad signals, trackage, ballast ties and related railroad facilities.
 10. Should Railroad remove or abandon in place all of its facilities at said location and Railroad no longer desires to retain interest in said property, Grantee shall be required to purchase Railroad's interest in said property at the then fair market value.
 11. This indenture shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.
 12. Sections 13 to 18, inclusive, on the Insert hereto attached are hereby made parts of this indenture.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate as of the day and year first herein written.

SOUTHERN PACIFIC TRANSPORTATION COMPANY
By L. B. Blake
(Title) First Asst. Mgr., Contract Dept.
Attest: [Signature]
Assistant Secretary

STATE OF OREGON, acting by and through the Oregon State Highway Commission
By [Signature]
Chairman
By [Signature]
Commissioner
By [Signature]
Commissioner

ATTEST: C. M. Heald
Secretary

2650

James S. Lee
ATTORNEY GENERAL

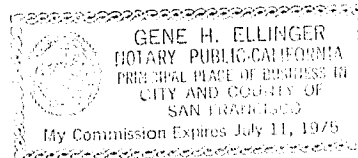
APPROVED

Hatt Baine
Chief Counsel

Approved
J. S. Daulton
ASST. STATE HWY. ENGR.

STATE OF CALIFORNIA } ss.
City and County of San Francisco

On this 3rd day of July in the year One Thousand Nine Hundred and Seventy three
before me, GENE H. ELLINGER, a Notary Public in and for the City and County of San Francisco, State of California, personally appeared
(One Market St.)



T. P. Blake and A. G. Richards
First Assistant Manager, Contract Department
and Assistant Secretary

known to me to be the person s whose name s subscribed to the
within instrument, and they duly acknowledged to me that he y executed the
same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal
at my office in the City and County of San Francisco, the day and year in this certificate first
above written.

Gene H. Ellinger
Notary Public in and for the City and County of San Francisco, State of California.

Corporation ~~99999~~

My Commission Expires July 11, 1975

I N S E R T

Crossing CF-528.9

Crescent Lake, Oregon

9651

13. Railroad shall furnish all necessary labor, materials, tools and equipment to install and shall install two (2) flashing light grade crossing signals equipped with automatic gate arms, together with actuating and operating circuits and adequate instrument housing, hereinafter collectively referred to as "signals", at said crossing. Said signals shall be located approximately as indicated on the attached print. Installation of and all materials for said signals shall be in accordance with Railroad's usual standards and in compliance with the Oregon Public Utility Commissioner's Standard Nos. 2 and 4 of Order No. 44783.

Grantee agrees to reimburse Railroad for fifty percent (50%) of all cost and expense incurred by Railroad in connection with the furnishing and installation of said signals.

14. Railroad, at its expense, will remove the existing grade crossing in the track area and prepare its tracks, including the furnishing and installation of solid timber planking along the rails of the tracks through the existing portion of the crossing area.

15. Railroad shall submit to Grantee a bill for sixty percent (60%) of the estimated cost to Railroad in performing work for which Grantee is obligated to reimburse Railroad hereunder upon completion of such work, which bill Grantee agrees to promptly pay. Should the actual cost prove upon completion of audit to be more or less than such estimated cost, the difference shall be promptly paid by Grantee or refunded by Railroad, as the case may be.

16. After installation of said signals has been completed, Railroad shall maintain same so long as they remain in place.

17. All work contemplated hereunder shall be performed in a good and workmanlike manner to the satisfaction of the parties hereto and each portion shall be properly commenced by the

EXHIBIT "A"

Crossing CF-528.9

Crescent Lake, Oregon

9652

That certain strip of land 60.0 feet in width, situate in the County of Klamath, State of Oregon, being a portion of the northeast quarter of the northwest quarter of Section 11, Township 24 South, Range 6 East, Willamette Base and Meridian, lying equally 30.0 feet on each side of the following described center line:

Commencing at the north quarter corner of said Section 11; thence South $9^{\circ}57'15''$ West, 1234.17 feet to a point in the southwesterly line of the land (200 feet wide) of the Southern Pacific Transportation Company, said point bears South $49^{\circ}36'19''$ West, 100.07 feet from the original located center line of said Company's main track at Railroad Engineer's Station 3165+85, said point also being the TRUE POINT OF BEGINNING of the center line to be described; thence North $49^{\circ}36'19''$ East, passing through said original located center line at said Engineer's Station, 200.14 feet to the northeasterly line of said Company's land.

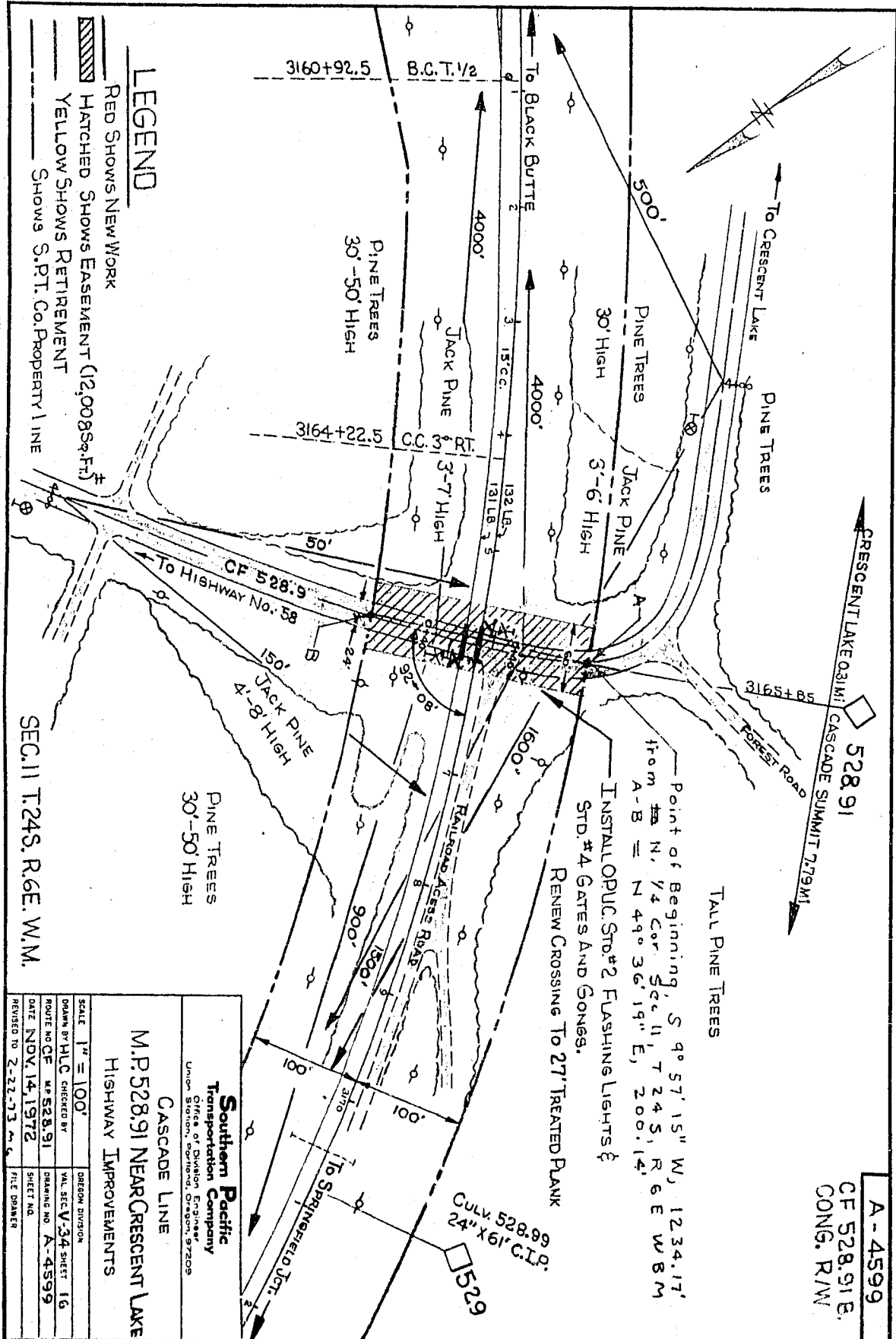
The side lines of the above described 60.0 foot wide strip of land terminate in said southwesterly and northeasterly lines of said Company's land.

The above described 60.0 foot wide strip of land contains an area of 0.276 of an acre, more or less.

The above described real property is shown on the print of Railroad's Oregon Division Drawing A-4599, revised February 22, 1973, attached and made a part hereof.

EXHIBIT "A"

9653



I N S E R T
(continued)

parties hereto obligated to do same and thereafter diligently prosecuted to conclusion in its logical order and sequence.

The books, papers, records and accounts of the parties hereto so far as they relate to the items of expense for labor and materials or are in any way connected with the work herein contemplated, shall at all reasonable times be open for inspection and audit by the agents and authorized representatives of the parties hereto and/or the Bureau of Public Roads.

18. Grantee hereby quitclaims to Railroad all of its right, title and interest in that certain 12,914 square foot parcel of land acquired by virtue of that certain indenture dated March 12, 1964, and recorded April 27, 1964 as Document 88295 in Volume 352, page 466, Deed Records of Klamath County.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of STATE OF OREGON HIGHWAY COMMISSION
this 26th day of JULY A.D. 1973 at 1:21 o'clock P.M., and
duly recorded in Vol. 473 of DEEDS on Page 9649

WIT 12.00

By W.D. MEENE, County Clerk
W.D. MEENE