

35841

Vol. 17 Page 17365

Yellow Jacket Road No. 3673
Mineral Creek Road No. 3678

EASEMENT

THIS EASEMENT, dated this 9th day of August, 1977, from the United States of America, acting by and through the Forest Service, Department of Agriculture, hereinafter called Grantor, to WEYERHAEUSER COMPANY, a Corporation of the State of Washington, hereinafter called "Grantee,"

WITNESSETH:

WHEREAS, Grantee has applied for a grant of an easement under the Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. 532-538), for a road over certain lands or assignable easements owned by the United States in the County of Klamath, State of Oregon and administered by the Forest Service, Department of Agriculture.

NOW THEREFORE, Grantor, for and in consideration of \$1.00 and the grant of reciprocal rights received by Grantor, does hereby grant to Grantee, its successors and assigns, and to successors in interest to any lands now owned or hereafter acquired by Grantee (hereinafter collectively referred to as Grantee), subject to existing easements and valid rights, a perpetual easement for a road along and across a strip of land, hereinafter defined as the premises, over and across the following described lands in the County of Klamath, State of Oregon:

Township 37 South, Range 12 East, Willamette Meridian

Section 1: SW1/4NE1/4, S1/2NW1/4, Lot 4, SE1/4
Section 2: S1/2NE1/4, E1/2SE1/4NW1/4, Lot 5

Township 37 South, Range 13 East, Willamette Meridian

Section 6: Lot 7
Section 7: S1/2NE1/4, E1/2NW1/4, Lots 1 and 2, N1/2SE1/4
Section 8: S1/2NW1/4, N1/2SW1/4, NW1/4SE1/4, S1/2SE1/4

Grantor also does grant and convey unto Grantee an easement along a road right-of-way acquired by the United States in the Statement of Owners of Allotted Indian Lands to accompany Application for Right-of-Way dated August 11, 1954, recorded June 11, 1958, in Volume 12 at page 549, Miscellaneous Records, Klamath County, State of Oregon, 50 feet in width over and across the NE1/4SE1/4, Section 34, Township 36 South, Range 12 East, Willamette Meridian.

Grantor also does grant and convey unto Grantee an easement along a road right-of-way reserved by the United States in the Deed of Tribal Property dated November 13, 1959, recorded December 21, 1959, in Volume 317, at page 682, Klamath County Deed Records, State of Oregon, 60 feet in width, over and across the W1/2SE1/4, Section 34, Township 36 South, Range 12 East, Willamette Meridian.

Grantor also does grant and convey unto Grantee an easement along a road right-of-way reserved by the United States in the Deed of Tribal Property dated April 10, 1959, recorded April 21, 1959, in Book 311 at page 632, Klamath County Deed Records, State of Oregon, 60 feet in width over and across the SE1/4SE1/4, Section 34, Township 36 South, Range 12 East and the NE1/4NE1/4, Section 3, Township 37 South, Range 12 East, Willamette Meridian.

Grantor also does grant and convey unto Grantee an easement along a road right-of-way acquired by the United States in the Statement of Owners of Fee Patent Indian Lands to Accompany Application for a Right-of-Way dated January 22, 1960, recorded March 2, 1960, in Volume 13 at page 654, Miscellaneous Records, Klamath County, State of Oregon, 60 feet in width over and across Lots 4 and 6, Section 2, Township 37 South, Range 12 East, Willamette Meridian.

Grantor also does grant and convey Grantee an easement along a road right-of-way acquired by the United States in the Statement of Owners of Allotted Indian Lands to Accompany Application for a Right-of-Way dated April 3, 1958, recorded June 11, 1958, in Volume 12 at page 540, Miscellaneous Records, Klamath County, State of Oregon, 60 feet in width over and across Lot 3, Section 1, Township 37 South, Range 12 East, Willamette Meridian.

The word "premises" when used herein means said strip of land whether or not there is an existing road located thereon. Except where it is defined more specifically, the word "road" shall mean roads now existing or hereafter constructed on the premises or any segment of such roads.

The location of said premises is shown approximately on Exhibit A attached hereto.

Said premises shall be 33 feet on each side of the centerline with such additional width as required for accommodation and protection of cuts and fills, except the width of the premises reserved and acquired from Tribal Property and Indian Lands shall be the full width reserved and acquired by the United States. If the road is located substantially as described herein, the centerline of said road as constructed is hereby deemed accepted by Grantor and Grantee as the true centerline of the premises granted. If any subsequent survey of the road shows that any portion of the road, although located substantially as described, crosses lands of the Grantor not described herein, the easement shall be amended to include the additional lands traversed; if any land described herein is not traversed by the road as constructed, the easement traversing the same shall be terminated in the manner hereinafter provided.

This grant is made subject to the following terms, provisions, and conditions applicable to Grantee, its permittees, contractors, assignees, and successors in interest:

- A. Except as hereinafter limited, Grantee shall have the right to use the road on the premises without cost for all purposes deemed necessary or desirable by Grantee in connection with the protection, administration, management, and utilization of Grantee's lands or resources, now or hereafter owned or controlled, subject to such traffic-control regulations and rules as Grantor may reasonably impose upon or require of other users of the road without reducing the rights herein granted: Provided, however, That any timber or other materials hauled by the Grantee from lands now owned by third parties in the agreement area as shown on Exhibit B attached hereto shall be treated as though hauled by someone else. Grantee shall have the right to construct, reconstruct, and maintain roads within the premises.

Grantee's right to use the road shall include, but shall not be limited to, use for the purpose of operating and moving specialized logging vehicles and other equipment subject to the following limitations:

Subject to compliance with legal maximum dimensions and weights of motor vehicles imposed by State law on comparable public roads or highways: Provided, That gross weights of equipment or vehicles shall not exceed the capacity of bridges and other structures, and Provided further, That cteated equipment shall not be used on paved roads.

- B. Grantee shall comply with all applicable State and Federal laws, Executive orders, and Federal rules and regulations, except that no present or future administrative rules or regulations shall reduce the rights herein expressly granted.
- C. Grantee shall have the right to charge and to enforce collections from purchasers of timber or other materials when removed from Grantor's lands over the road at such rate per unit of material hauled, or at such higher rate as may be approved by the Regional Forester, as set forth in Fremont National Forest-Weyerhaeuser Company Road Right-of-Way Construction and Use Agreement dated July 1, 1971, as amended April 3, 1975,

17367

and December 14, 1976, until such time as the amounts paid by such means or by credits received from Grantor shall total the amount set forth in said agreement. Timber or other materials hauled by Grantee from lands of the Grantor shall be regarded as though hauled by someone else.

- D. Grantee shall have the right to cut timber upon the premises to the extent necessary for constructing, reconstructing, and maintaining the road. Timber so cut shall, unless otherwise agreed to, be cut into logs of lengths specified by the timber owner and decked along the road for disposal by the owner of such timber.
- E. The costs of road maintenance shall be allocated on the basis of respective uses of the road.

During the periods when either party uses the road or Grantor permits use of the road by others for hauling of timber or other materials, the party so using or permitting such use will perform or cause to be performed, or contribute or cause to be contributed that share of maintenance occasioned by such use of the road.

On any road maintained by Grantee, Grantee shall have the right to charge purchasers of National Forest timber and other commercial haulers, or to recover from available deposits held by the Grantor for such purchasers or haulers, reasonable maintenance charges based on the ratio that said hauling bears to the total hauling on such road. Grantor shall prohibit noncommercial use unless provision is made by Grantor or by the noncommercial users to bear proportionate maintenance costs.

- F. Grantee shall have the right to require any user of the road for commercial or heavy hauling purposes to post security guaranteeing performance of such user's obligations with respect to maintenance of the road and with respect to payments of any charges hereinabove stated as payable to Grantee for use of the road: Provided, the amount of such security shall be limited to the amount reasonably necessary to secure such payment as approved by the Regional Forester.
- G. If it is customary in the industry in this locality to require liability insurance at the time commercial users are allowed to use the road, the Grantee shall have the right to require any user of the road for commercial hauling to procure, to maintain, and to furnish satisfactory evidence of liability insurance in a form generally acceptable in the trade and customary in this area, insuring said party against liability arising out of its operation on the premises with limits of \$100,000 for injury or death to one person, \$300,000 for injury or death to two or more persons and \$100,000 for damage to property.
- H. The Grantee shall maintain the right-of-way clearing by means of chemicals only after specific written approval has been given by the Regional Forester. Application for such approval must be in writing and specify the time, method, chemicals, and the exact portion of the right-of-way to be chemically treated.

This easement is granted subject to the following reservations by Grantor, for itself, its permittees, contractors and assignees:

- 1. The right to use the road for all purposes deemed necessary or desirable by Grantor in connection with the protection, administration, management, and utilization of Grantor's lands or resources, now or hereafter owned or controlled, subject to the limitations herein contained, and subject to such traffic-control regulations and rules as Grantor may reasonably impose upon or require of other users of the road without reducing the rights herein granted to Grantee: Provided, That all use by the public for purposes of access to or from Grantor's lands shall be controlled by Grantor so as not unreasonably to interfere with use of the road by Grantee or to cause the Grantee to bear a share of the cost of maintenance greater than Grantee's use bears to all use of the road.

17368

2. The right alone to extend rights and privileges for use of the premises to other Government departments and agencies, States, and local subdivisions thereof, and to other users including members of the public except users of land or resources owned or controlled by Grantee or its successors: Provided, That such additional use also shall be controlled by Grantor so as not unreasonably to interfere with use of the road by Grantee or to cause Grantee to bear a share of the cost of maintenance greater than Grantee's use bears to all use of the road.
3. The right to cross and recross the premises and road at any place by any reasonable means and for any purpose in such manner as will not unreasonably interfere with use of the road.
4. The right to all timber now or hereafter growing on the premises, subject to Grantee's right to cut such timber as hereinbefore provided.

Provided that so long as the Fremont National Forest-Weyerhaeuser Company Road Right-of-Way Construction and Use Agreement dated July 1, 1971, as amended April 3, 1975, and December 14, 1976, remains in full force and effect, the terms and conditions thereof shall govern all aspects of use of the premises, including, but not limited to reconstruction, and maintenance of the road and the allocation and payment of costs thereof.

The Chief, Forest Service, may terminate this easement, or any segment thereof, (1) by consent of the Grantee, (2) by condemnation, or (3) after a five (5) year period of nonuse, by a determination to cancel after notification and opportunity for hearing as prescribed by law; provided the easement, or segment thereof, shall not be terminated for nonuse so long as the road, or segment thereof, is being preserved for prospective future use.

IN WITNESS WHEREOF, the Grantor, by its Regional Forester, Forest Service, has executed this easement (pursuant to the act above mentioned, the Delegation of Authority by the Secretary of Agriculture to the Assistant Secretary for Conservation, Research, and Education, the Delegation of Authority by the Assistant Secretary for Conservation, Research, and Education to the Chief, Forest Service, effective June 6, 1973, (38 F.R. 14944), the Delegation of Authority by the Chief, Forest Service, dated June 5, 1968 (33 F.R. 8552), and the Delegation of Authority by the Deputy Chief, Forest Service, dated April 16, 1965, (30 F.R. 5647), the provisions of which have been complied with), on the day and year first above written.

UNITED STATES OF AMERICA

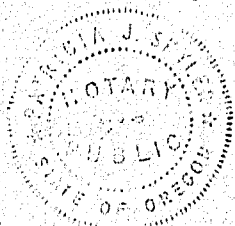
By:

Robert M. Beeman
Acting Regional Forester
Forest Service
Department of Agriculture

STATE OF Oregon)
COUNTY OF Multnomah) ss

On the 9th day of August, 1977, before me, a Notary Public within and for said State, personally appeared Robert M. Beeman, Acting Regional Forester, Forest Service, Department of Agriculture, and the same person who executed the within and foregoing instrument, who being by me duly sworn according to law, did say that he is the Acting Regional Forester, Forest Service, Department of Agriculture, and that said instrument was signed in behalf of the United States of America by its authority duly given and by him delivered as and for its act and deed. And he did further acknowledge that he executed said instrument as the free act and deed of the United States of America, for the purposes and consideration herein mentioned and set forth, and I do hereby so certify.

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



Patricia J. Skyles
Notary Public in and for the State of
Oregon
Residing at Portland
My commission expires 10-23-78

RIGHT OF WAY PLAT

FREMONT NATIONAL FOREST

KLAMATH COUNTY, OREGON W M

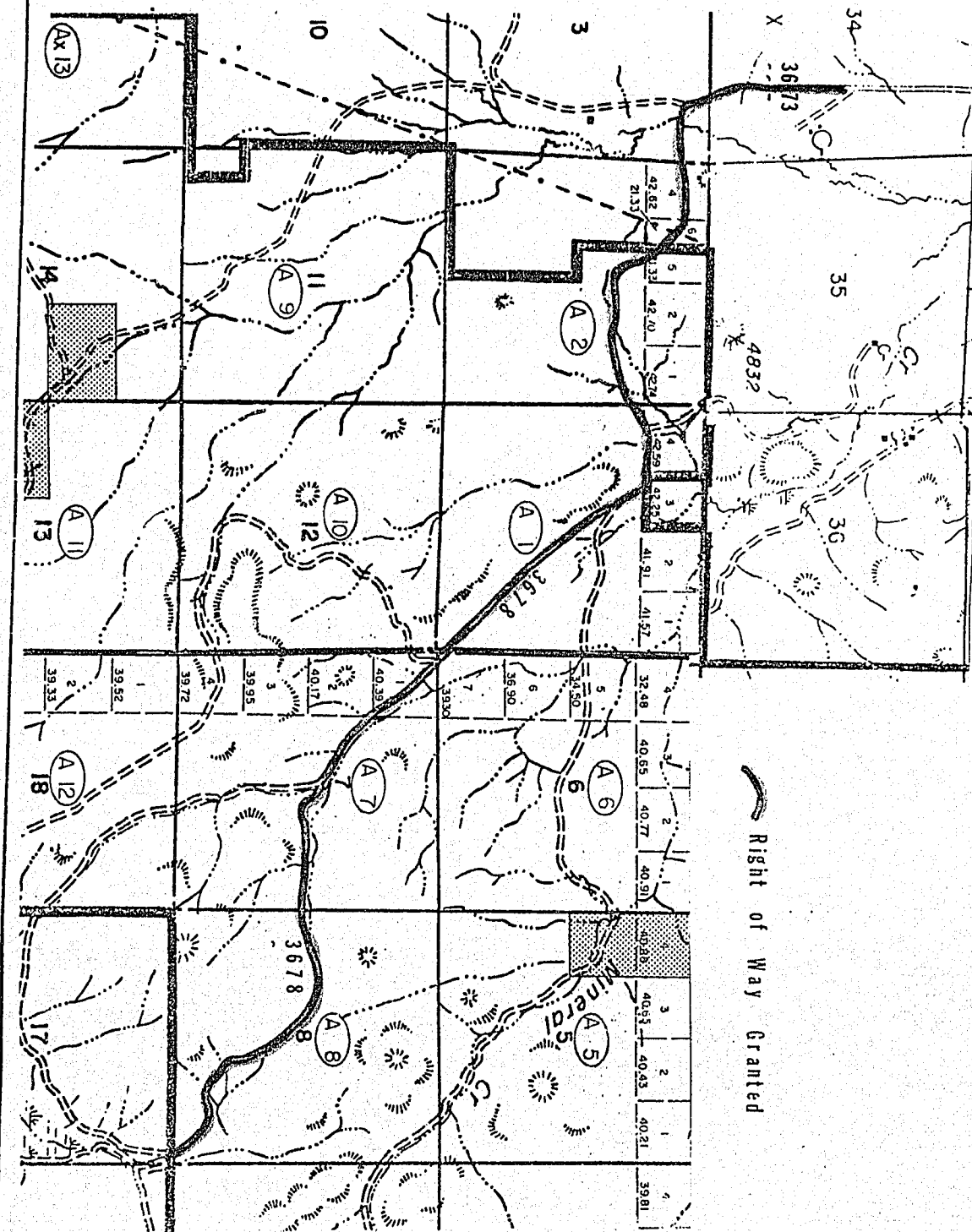
17363

R 12 E

R 13 E

T 36 S

T 37 S



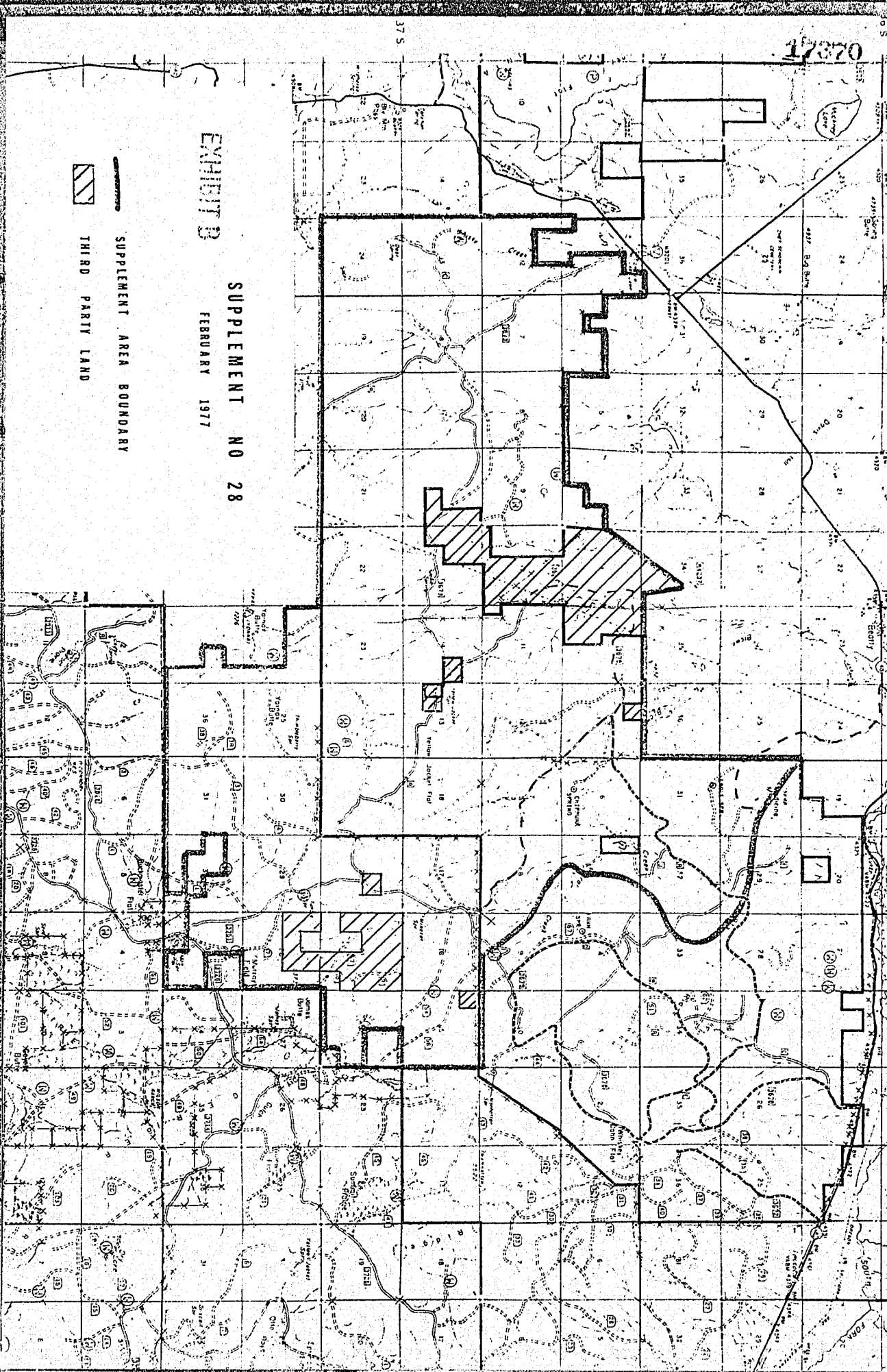
Right of Way Granted

EXHIBIT A

SCALE 2 inches = 1 mile

EXHIBIT D
SUPPLEMENT NO 28
FEBRUARY 1977

THIRD PARTY LAND



STATE OF OREGON; COUNTY OF KLAMATH; ss. *Ret: Wymenhausen Co.*
Box C - Taconia Wn 48401

I hereby certify that the within instrument was received and filed for record on the 16th day of
SEPTEMBER A.D., 19 77 at 12:53 o'clock P.M., and duly recorded in Vol. M 77
of DEEDS on Page 17365.

FEE \$ 18.00

WM. D. MILNE, County Clerk

By *Razil Drazil* Deputy