

12/5/78

57821

Highway Division  
File 9793

ORIGINAL

DEED

Vol. <sup>m</sup>78 Page 24804

KNOW ALL MEN BY THESE PRESENTS, That the STATE OF OREGON, by and through its DEPARTMENT OF TRANSPORTATION, Highway Division, Grantor, for the consideration of the sum of Four Thousand One Hundred and No/100 DOLLARS (\$4,100.00) hereby conveys unto STEVEN/HOSP and SARAH HOSP, husband and wife; JOHN J. WITHEY and PATTY A. WITHEY, husband and wife, Grantees, the following described property, to wit:

A parcel of land lying in Section 33, Township 38 South, Range 9 East, W.M., Klamath County, Oregon and being a portion of that property described in that deed to the State of Oregon, by and through its State Highway Commission, recorded in Book 147, Page 125 of Klamath County Record of Deeds; the said parcel being described as follows:

Beginning on the Southerly line of said property at a point 55 feet Easterly of the Southwest corner of said property; thence Westerly along said Southerly line 55 feet to said Southwest corner; thence Northerly along the Westerly line of said property to a line parallel with and 40 feet Southwesterly of the center line of the Klamath Falls - Lakeview Highway; thence South 55° 50' 30" East parallel with said center line 47 feet; thence Southerly in a straight line to the point of beginning.

The center line of the Klamath Falls - Lakeview Highway is referred to in that deed to the State of Oregon, by and through its State Highway Commission, recorded in Book 219, Page 301 of Klamath County Record of Deeds.

The parcel of land to which this description applies contains 1315 square feet, more or less.

This conveyance is made and delivered upon the following express conditions, reservations and restrictions:

1. That there is reserved to the State of Oregon, its successors, and assigns, all minerals, as defined in ORS 273.775(1), and all geothermal resources, as defined in ORS 273.775(2), together with the right to make such use of the surface as may be reasonably necessary for prospecting for, exploring for, mining, extracting, re-injecting, storing, drilling for, and removing, such minerals, and geothermal resources; provided, however, that the right hereby reserved to use the surface for any of the above activities shall be subordinate to that actual use of the surface of the premises deeded herein, or any part thereof, being made by the surface rights owner at the time that the State's lessee conducts any of the above activities. In the event such use of the premises by a surface rights owner would be damaged by one or more of the activities described above, then such owner shall be entitled to compensation from State's lessee to the extent of the diminution in value of the real property, based on the actual use by the surface rights owner at the time the State's lessee conducts any of the above activities.
2. That there is reserved to Grantor, and waived by Grantees, all access rights between the above described real property and the right of way of the Klamath Falls-Lakeview Highway abutting on said parcel, which public highway is further identified as State Highway No. 20. This reservation shall run with the land and shall not be subject to modification, cancellation or destruction by adverse user or estoppel, no matter how long continued. Nothing in this conveyance contained shall be construed as conveying any estate, right, title or interest in and to said public highway right of way or any rights of reversion therein or thereto.
3. That the above described land shall never be used for the placing or maintenance of any advertising sign, display or device, except such sign, display or device used to advertise the activities on said land, or the lease of said land or any portion thereof. In the event of violation of this condition, Grantor shall have

Tax statements are to be sent to the following address:

2244 S. Sixth Street  
KLAMATH FALLS, OREGON 97601

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24805

the right, through its authorized officers, agents or employees to enter upon said land and remove, destroy or obliterate any unauthorized sign, display or device, without liability for damage or injury thereto, and to recover the cost of such removal, destruction or obliteration from the owner of said land.

4. That no junk, scrap, junked motor vehicles or parts thereof, debris, trash, waste or other such materials shall be placed on said land for whatever purpose in any manner so as to be visible from a state highway, provided that such items as listed above can otherwise be placed on said land without violating any applicable law, ordinance or regulation. In the event of violation of this condition, Grantor shall have the right, through its authorized officers, agents or employees to enter upon said land and remove or destroy any unauthorized junk, scrap or other material mentioned above and recover the cost of such removal or destruction from the owner of said land.

5. That this property shall not be used for the operation of any garbage dump or sanitary land fill. If such use is made of the property, Grantor may, at its election, enter upon said land and restore it to the condition that existed prior to said use for garbage dump or sanitary land fill purposes and recover the cost thereof from the owner of said land.

6. That this conveyance is made upon the further condition, which shall constitute a covenant running with the land, that Grantor shall not at any time become liable to Grantees, their heirs, assigns or successors in interest for damages to the land herein described or any buildings, structures, improvements or property of any kind or character now or hereafter located upon said land or for any injuries to any owner, occupant or any person in or upon said land or for any interference with the use and enjoyment of said land or for damages which except for this covenant might constitute a nuisance caused directly or indirectly by noise or air pollutant emissions from transportation vehicles using the highway or transportation facility adjacent to said land. Any reference in this covenant to the highway or transportation facility as it now exists and also as it will exist with future improvements. Grantees for themselves and for those who may hold title to any of said land under or through them, hereby covenant not to sue Grantor for any of said injuries or damages.

It is understood that the conditions, restrictions, covenants and reservations herein set out have been considered in determining the amount of consideration of this conveyance.

The rights and remedies herein reserved or provided shall not be exclusive and shall not be in derogation of any other right or remedy which Grantor may have. The restrictions, rights, and conditions herein contained shall run with said land and shall forever bind Grantees, their heirs, successors, and assigns. Where any action is taken to enforce the above mentioned conditions, Grantor shall not be liable for any trespass or conversion as to any real or personal property. Where legal proceedings are commenced by Grantor to enforce the foregoing restrictions or for the recovery of the aforementioned removal or destruction costs, Grantor, if successful, shall be entitled to reasonable attorney fees and court cost.

The real property hereinabove described is no longer needed or required by Grantor for state highway, scenic or park purposes.

Dated this 23 day of October, 1978.

APPROVED AS TO FORM

James S. Lucas  
Asst. Attorney General and Counsel

STATE OF OREGON, by and through its  
DEPARTMENT OF TRANSPORTATION,  
Highway Division

By

J. B. Boyd  
J. B. Boyd, Right of Way Manager

24806

STATE OF OREGON, County of Marion

October 23, 1978. Personally appeared J. B. Boyd, who being sworn,  
stated that he is the Right of Way Manager for the State of Oregon, Department of  
Transportation, Highway Division, and this document was voluntarily signed on behalf  
of the State of Oregon, by authority delegated to him. Before me:



E. Ruth Keller  
Notary Public for Oregon

My Commission expires Oct. 8, 1981

The above Deed is hereby accepted by Grantees in accordance with the terms and  
conditions set out therein.

Steven P. Hosp  
Steven Hosp

Sarah Hosp  
Sarah Hosp

John J. Withey  
John J. Withey

Patty A. Withey  
Patty A. Withey

enc/la

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of Dept. of Transportation

on 2nd day of November A. D. 1978 at 3:19 clock P. M., or

fully recorded in Vol. 478, of Deeds on Page 24804

Wm D. MILNE, County Clerk

By Bernard A. Keloch

Fee \$9.00

