

16886

EASEMENT

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THIS EASEMENT, dated this 9th day of September, 1982, 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 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 33 South, Range 15 East, Willamette Meridian

Section 21 $NE^{\frac{1}{4}}NE^{\frac{1}{4}}$

Section 22 $NW^{\frac{1}{4}}NW^{\frac{1}{4}}$, $NE^{\frac{1}{4}}NW^{\frac{1}{4}}$, $SE^{\frac{1}{4}}NW^{\frac{1}{4}}$, $SW^{\frac{1}{4}}NE^{\frac{1}{4}}$

The word "premises" when used herein means 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. 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 reasonable 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 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:

Operating vehicles with bunk widths not to exceed 10 feet, with log lengths not to exceed 48 feet and with gross weight not to exceed 130,000 pounds, and logging and other equipment in excess of the size and weight limitations otherwise applicable to public roads may be used on the road; Provided, that if there is any increase in the cost of road construction or reconstruction, repair, or maintenance, which increased cost is solely attributable to Grantee's hauling of loads in excess of those permitted on adjacent State Highways, Grantee shall bear such increase in cost.

- B. Grantee shall comply with all applicable State and Federal laws, Executive orders, 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 material 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-Weyerhaeuser Road Right-of-Way Construction and Use Agreement dated July 1, 1971, 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 construction, reconstruction, 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 liability insurance in a form generally acceptable in the trade and customary in this area, insuring said party against liability arising out of its operations 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 land 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.
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-Weyerhaeuser Road Right-of-Way Construction and Use Agreement, dated July 1, 1971, 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 Delegation of Authority to the Chief, Forest Service, 7 CFR 2.60, and the Delegation of Authority by the Chief, Forest Service, dated December 14, 1979 (44FR 75690), on the day and year first above written.

UNITED STATES OF AMERICA

By Robert M. Beeman
for JEFF M. SIRMON
Regional Forester
Forest Service
Department of Agriculture

STATE OF Oregon)
COUNTY OF Multnomah)

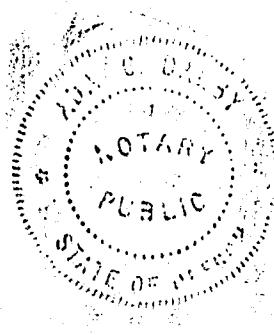
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On the 9th day of September, 1982, before me a Notary Public within and for said State, personally appeared Robert M. Beeman, the same person who executed the within and foregoing instrument, who being by me duly sworn according to law, did say that he executed said instrument for Jeff M. Sirmon, 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 by official seal the day and year above written.

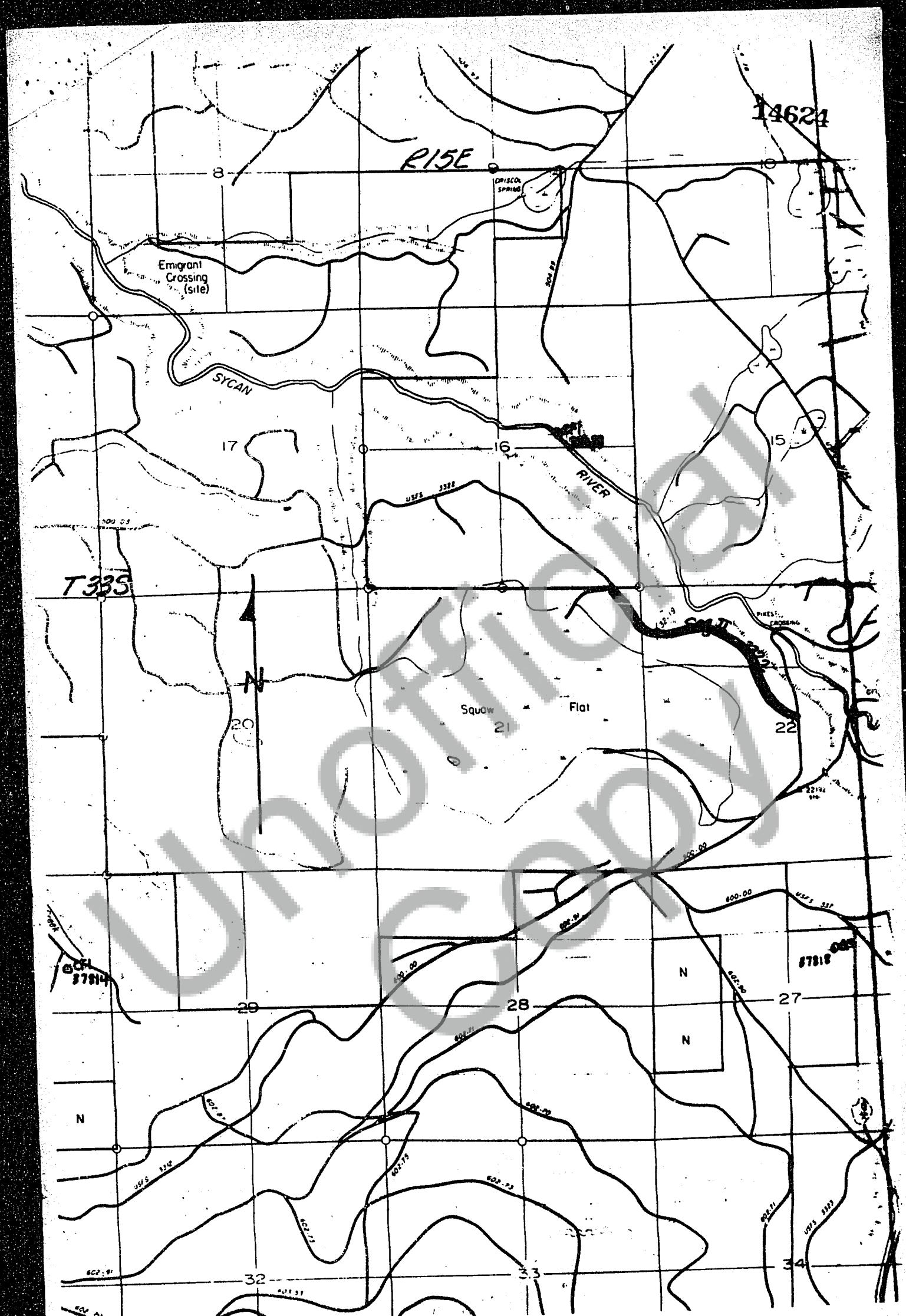
Ada C. Daly
Notary Public for the State of

Oregon
Residing at Portland
My Commission Expires 11-23-82



Weyerhaeuser Company

P.O. Box 9
Klamath Falls, Oregon 97601
A/C 503 • 884-2241



State of OREGON: COUNTY OF KLAMATH: ss.

I hereby certify that the within instrument was received and filed for record on the

3 day of Nov A.D., 19 82 at 11:54 o'clock A.M., and duly recorded in

Vol M82 of Deeds on page 14620.

Fee \$ 20.00

EVELYN BIEHN
COUNTY CLERK

Joyce M. Elmer — deputy