

51954

RECORDING REQUESTED BY

[RAF - VI - 5/13/85 - 07005/323]

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53999

RETURN TO  
OREGON STATE HIGHWAY DIVISION  
RIGHT OF WAY SECTION  
STATE HIGHWAY BLDG. ROOM 119  
SALEM, OREGON 97310ODOT AGREEMENT NO. RR 1191

AND WHEN RECORDED MAIL TO

Name

Street  
AddressCity  
State  
Zip

SPACE ABOVE THIS LINE FOR RECORDER'S USE

RELMIS: CF-427.0-A(N)

THIS INDENTURE, made this 21 day of May, 1985, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation, herein called "Railroad," and STATE OF OREGON, DEPARTMENT OF TRANSPORTATION, HIGHWAY DIVISION, herein called "Grantee";

## WITNESSETH:

1. That Railroad hereby grants to Grantee the right to construct, reconstruct, maintain and use a street or highway by means of an overpass, hereinafter termed "highway," upon and across that certain property of Railroad, situate in the County of Klamath, State of Oregon, more particularly described in Exhibit "A," attached and hereby made a part hereof.

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 made subject and subordinate to the prior and continuing right and obligation of Railroad, its successors and assigns, to use all the property described herein in the performance of its duty as a common carrier and for that purpose there is reserved unto Railroad, its successors and assigns, the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use existing and future transportation, communication and pipeline facilities and appurtenances in, upon, over, under, across or along said property.

4. This grant is made subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title which may affect said property and the word "grant" as used herein shall not be construed as a covenant against the existence of any thereof.

5. The rights herein granted to Grantee shall lapse and become void if the construction or reconstruction of said highway upon said property is not commenced within two (2) years from the date first herein written.

6. This grant shall not be construed as conveying or otherwise vesting in Grantee the right to install or the power 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 may be necessary for the maintenance of said highway.

7. Grantee shall obtain any necessary authority and permission required to construct, reconstruct, maintain and use said highway upon said property from the governmental body or bodies having jurisdiction thereover.

8. Grantee agrees to reimburse Railroad for any and all assessments which may be levied by order of any authorized lawful body against the property of Railroad (and which may have been paid by Railroad) to defray any part of the cost or expense incurred in connection with the construction or reconstruction of said highway upon said property commenced within two (2) years from the date first herein written.

9. Should Grantee, its successors or assigns, at any time abandon the use of said property, or any part thereof, or fail at any time 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, its successors or assigns, shall at once have the right, in addition to but not in qualification of the right hereinabove reserved, to resume exclusive possession of the 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.

10. Grantee shall record this indenture in the office of the Recorder of the County of Klamath, State of Oregon, in which said property is located.

11. Upon completion of the construction of said highway, State, at its expense, shall maintain same, including pavement, highway drainage, lights and all highway facilities and Railroad, at its expense, shall

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maintain its tracks, railroad drainage and all railroad facilities.

12. The parties intend that the promises and obligations of this indenture shall constitute covenants running with the land so as bind and benefit their respective successors and assigns.

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

SOUTHERN PACIFIC TRANSPORTATION  
COMPANY,

BY W. J. Fowler  
(Title) Manager - Miscellaneous Contracts

Attest: A. L. O'Donnell  
Assistant Secretary

The State Highway Engineer, acting under delegated authority from the Oregon Transportation Commission, authorized the Right of Way Engineer to approve and execute this contract on behalf of the Commission.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1985.

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

B. B. Boyd  
Right of Way Engineer

APPROVED: May 21, 1985

APPROVED AS TO FORM:

James S. Larkin  
Asst. Attorney General  
and Counsel

53997 PMV  
4/2/85  
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EXHIBIT "A"

That certain parcel of land situated in the northeast quarter of the southwest quarter of Section 9, Township 39 South, Range 9 East, Willamette Base and Meridian, County of Klamath, State of Oregon, more particularly described as follows:

Commencing at the point of intersection of the center line of the Oregon State Highway Division's The Dallas/Calif. Hwy - Washburn Section FAS B-319 (South Side Bypass), with the original located center line of Southern Pacific Transportation Company's main track (Klamath Falls - Dunsmuir) said point being distant North  $42^{\circ}49'37''$  East 2183.88 feet from the southwest corner of said Section 9 and also at Highway Engineer's Station 164+80.39 and Railroad Engineer's Station 3261+69.11; thence North  $48^{\circ}56'30''$  West along said center line of Highway, 54.14 feet to a point in the northwesterly line of said Company's land (140 feet wide) and the Actual Point of Beginning of the parcel of land to be described; thence southwesterly along said northwesterly line being concentric with and distant 50.00 feet northwesterly, measured radially, from said center line of main track, on a curve to the right having a radius of 2814.825 feet and a central angle of  $1^{\circ}38'46''$  (tangent to said curve at said Actual Point of Beginning bears South  $18^{\circ}17'27''$  West) an arc distance of 80.87 feet to a point that is distant 75.00 feet southwesterly, measured at right angles, from said center line of Highway; thence South  $43^{\circ}24'50''$  East, 155.72 feet to a point in

the southeasterly line of said Company's land that is distant 90.00 feet southwesterly, measured at right angles, from said center line of Highway; thence northeasterly along said southeasterly line on a curve to the left having a radius of 2954.825 feet and a central angle of  $3^{\circ}26'20''$  (tangent to said curve at last mentioned point bears North  $21^{\circ}17'29''$  East) an arc distance of 177.35 feet to a point that is distant 75.00 feet northeasterly, measured at right angles, from said center line of Highway; thence North  $43^{\circ}34'56''$  West, 160.60 feet to a point in said northwesterly line that is distant 90.00 feet northeasterly, measured at right angles, from said center line of Highway; thence southwesterly along said northwesterly line on a curve to the right with a central angle of  $2^{\circ}00'06''$ , being the continuation of said curve having a radius of 2814.825 feet, (tangent to said curve at last mentioned point bears South  $16^{\circ}17'21''$  West) an arc distance of 98.34 feet to the Actual Point of Beginning, containing an area of 0.573 of an acre, more or less.

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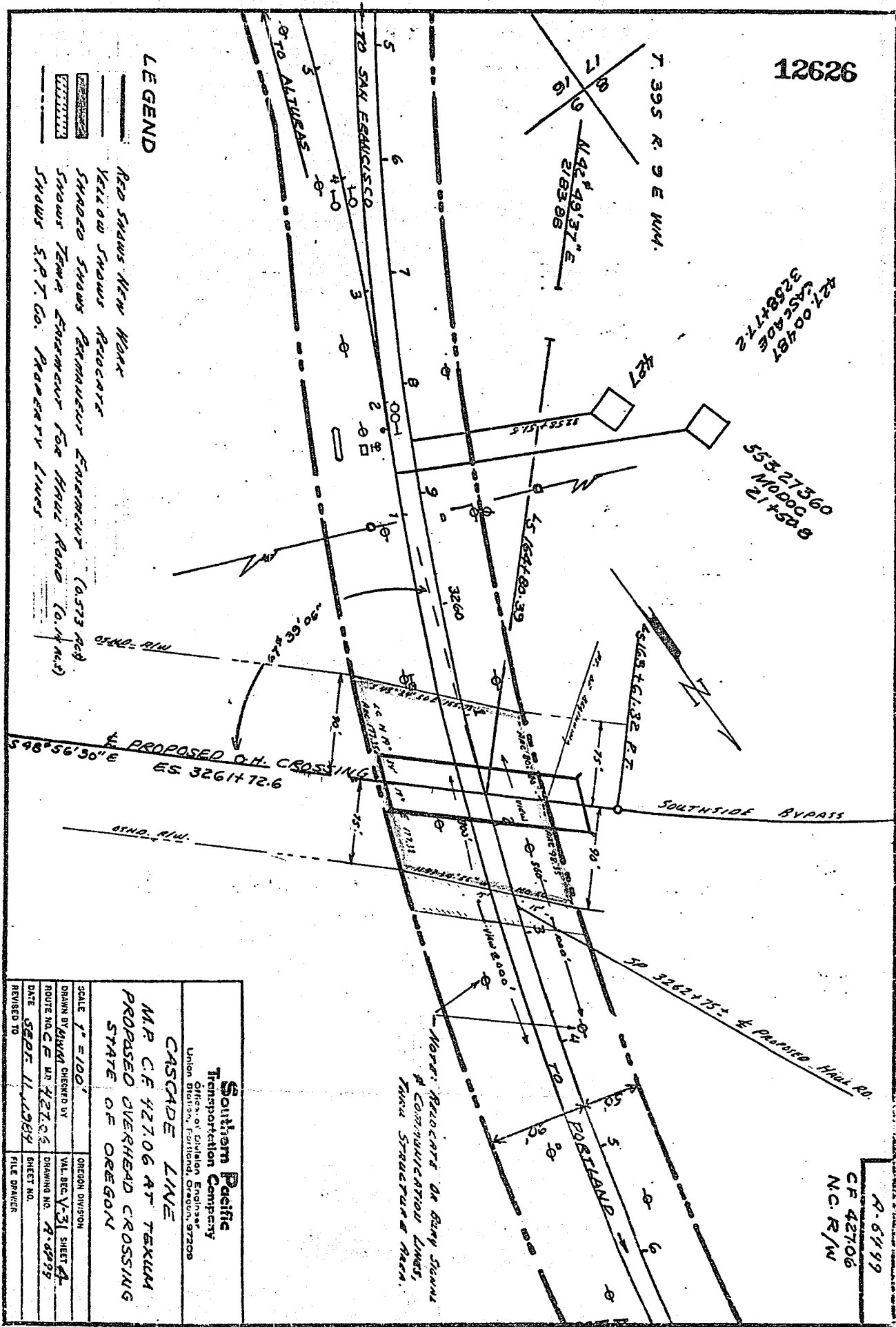
427.00481  
CASCAD  
3288+77.2

55327360  
M0000  
21+52.8

A-6449  
CF 42706  
N.C.R/W

LEGEND

- Red shows New Work
- Yellow shows Relocate
- Shaded shows Permanent Eminent (0.573 Ac)
- Shows Term Eminent for Road (0.44 Ac)
- Shows S.P.T. Co. Property Lines



Notes: Relocate the Gary Signs & Communication Lines, These Structures Remain.

<b>Southern Pacific</b> Transportation Company Office of Division Engineer Union Division, Portland, Oregon 97208	
<b>CASCADE LINE</b>	
<b>M.P. C.F. 427.06 AT TUKUM</b>	
<b>PROPOSED OVERHEAD CROSSING</b>	
<b>STATE OF OREGON</b>	
SCALE 1" = 100'	OREGON DIVISION
DRAWN BY <u>W.H.M.</u> CHECKED BY <u>W.L. REC. V-31</u> SHEET <u>4</u>	
ROUTE NO. <u>C.F. 42706</u>	DRAWING NO. <u>A-6449</u>
DATE <u>SEPT. 11, 1984</u>	SHEET NO.
DESIGNED BY	FILE DRAWER

FOR INFORMATION ONLY

STATE OF OREGON: COUNTY OF KLAMATH: SS.

Filed for record at request of \_\_\_\_\_ the 12th day  
of August A.D., 19 85 at 10:32 o'clock A M., and duly recorded in Vol. M85  
of Deeds on Page 12621

FEE \$29.00

Evelyn Biehn,  
By \_\_\_\_\_ County Clerk  
Pam Smith