

15994

EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that BURLINGTON NORTHERN RAILROAD COMPANY (formerly named Burlington Northern Inc.), a Delaware corporation, whose address for purposes of this instrument is 2100 First Interstate Center, 999 Third Avenue, Seattle, Washington 98104, Grantor, for Five Thousand and No/100 Dollars (\$5,000.00) to it paid by KLAMATH COUNTY, a political subdivision of the State of Oregon, Grantee, and the promises of the Grantee hereinafter specified, does hereby remise, release and quitclaim unto the Grantee, subject to the terms and conditions hereinafter set forth, an EASEMENT to widen and improve, maintain, replace, repair and remove existing County road overhead bridge (Washburn Way) public crossing at Railroad M.P. 1.04, hereinafter called roadway, over, upon and across the following described premises, situated in Klamath County, State of Oregon, to-wit:

A 20 foot wide strip of land lying over, upon, and across Burlington Northern Railroad Company's Wishram to Bieber Branch Line station ground right of way at South Klamath Falls, Oregon, situated in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10, T39S, R9E, of the W.M., said Klamath County; said 20 foot strip lies between lines drawn parallel with and distant 100.0 and 120.0 feet East, as measured at right angles, from the West line of said Section 10; bounded on the South by the South line of said Section 10 and bounded on the North by a line drawn parallel with and distant 100.0 feet Northeasterly, as measured at right angles, from the said Railroad's Main Track centerline; as shown on Exhibit "A" attached hereto and by this reference made a part hereof.

RESERVING, however, unto the Grantor, its successors and assigns, the right to construct, maintain, use, operate, relocate, reconstruct and renew such tracks and facilities as it may at any time, and from time to time, desire within the limits of the land hereinbefore described, including the right and privilege to use said land for any and all purposes, not inconsistent with the use thereof for roadway purposes.

The foregoing easement is made subject to and upon the following express conditions:

1. To existing interests in the above-described premises to whomsoever belonging and of whatsoever nature and any and all extensions and renewals thereof, including but not limited to underground pipe line or lines, or any type of wire line or lines, if any.
2. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of said roadway shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever

'90 JUN 12 AM 9 56

necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing.

3. The Grantee shall bear the cost of removal, relocation or reconstruction of any and all right of way fences, telephone or telegraph poles, or other facilities, the removal, relocation or reconstruction of which may be made necessary by reason of the use of said premises for said roadway purposes.
4. The Grantee shall, at its own cost and expense, make adjustment with industries or other lessees of Grantor for buildings or improvements that may have to be relocated, reconstructed or destroyed by reason of the construction and maintenance of said roadway on said premises.
5. This instrument is granted according to the terms and conditions of that certain Letter Agreement between the Grantor and the Grantee dated December 13, 1989 and made subject to the terms and conditions contained therein.
6. If said described premises, or any part thereof, shall at any time cease to be used by said Grantee, or by the public, for the purpose, as aforesaid, or should they be converted to any other use whatsoever, or should the Grantee fail to perform any of the conditions herein expressed, then and in any such event, all the right, title, interest, benefits and enjoyment of said Grantee, or of the public, in and to said premises, for any purposes whatsoever, shall immediately cease and the said Grantor, its successors and assigns, may, at its or their option, re-enter, retake and hold said described lands and premises as of the present estate of said Grantor without compensation to said Grantee, the public, or any other person whomsoever, for improvements or property removed, taken or destroyed, or liability for loss of, or damage to any premises or the improvements thereon abutting on said easement area or any part thereof.
7. The Grantee shall, or shall require its contractor to, notify the Grantor's Regional Chief Engineer a sufficient time in advance whenever the Grantee or its contractor is about to perform work on or adjacent to Grantor's right of way and tracks to enable Grantor to furnish flagging and such other protective service as might be necessary and Grantee shall reimburse Grantor for the cost thereof.
8. The Grantor does not warrant its title to said premises nor undertake to defend the Grantee in the peaceable possession, use or enjoyment thereof; and the grant herein made is subject to all outstanding rights or interest of others, including the tenants and licensees of the Grantor.

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging to Grantee for public use and enjoyment for the purposes aforesaid and for no other purpose whatsoever subject to the terms and conditions hereinbefore stated.

11299

IN WITNESS WHEREOF, the said BURLINGTON NORTHERN RAILROAD COMPANY has caused this instrument to be signed by its authorized officers, and the corporate seal affixed on the 5<sup>TH</sup> day of JUNE, 1990.

ACCEPTED:  
KLAMATH COUNTY

BY Nancy J. Freeland  
Title: Chairman of Board  
05-23-90

BY Ray Wilson  
Title: County Commissioner  
05-23-90

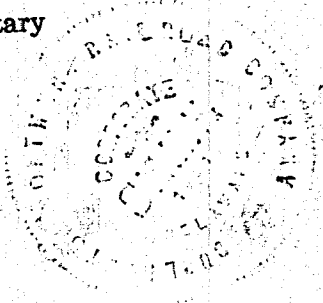
BY Out of Office Today  
Title: County Commissioner

BURLINGTON NORTHERN  
RAILROAD COMPANY

BY J. H. Ilkka  
J. H. Ilkka  
Director - Title Services

ATTEST:

BY Anita D. Wells  
Anita D. Wells  
Assistant Secretary



APPROVED:

Michael Spencer  
Michael Spencer  
Legal Counsel

BN 9732 Klamath Falls, OR

STATE OF OREGON )  
COUNTY OF KLAMATH ) ss.

On this 23<sup>RD</sup> day of May, 19 90, before me personally appeared HARRY FREDRICKS and ROGER HAMILTON, who, being duly sworn, each for himself and not one for the other, did say that the former is the CHAIRMAN OF KLAMATH BOCC and the latter is the COMMISSIONER OF KLAMATH BOCC of KLAMATH COUNTY, a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and each of them acknowledged said instrument to be its voluntary act and deed.

Before me: James B. Cay

Notary Public for Oregon

My commission expires: 02-02-91

STATE OF WASHINGTON )  
COUNTY OF KING ) ss.

On this 5<sup>TH</sup> day of JUNE, 19 90, before me personally appeared J. H. Ilkka, and Anita D. Wells, who, being duly sworn, each for himself and not one for the other, did say that the former is the Director - Title Services and the latter is the Assistant Secretary of Burlington Northern Railroad Company, a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and each of them acknowledged said instrument to be its voluntary act and deed.

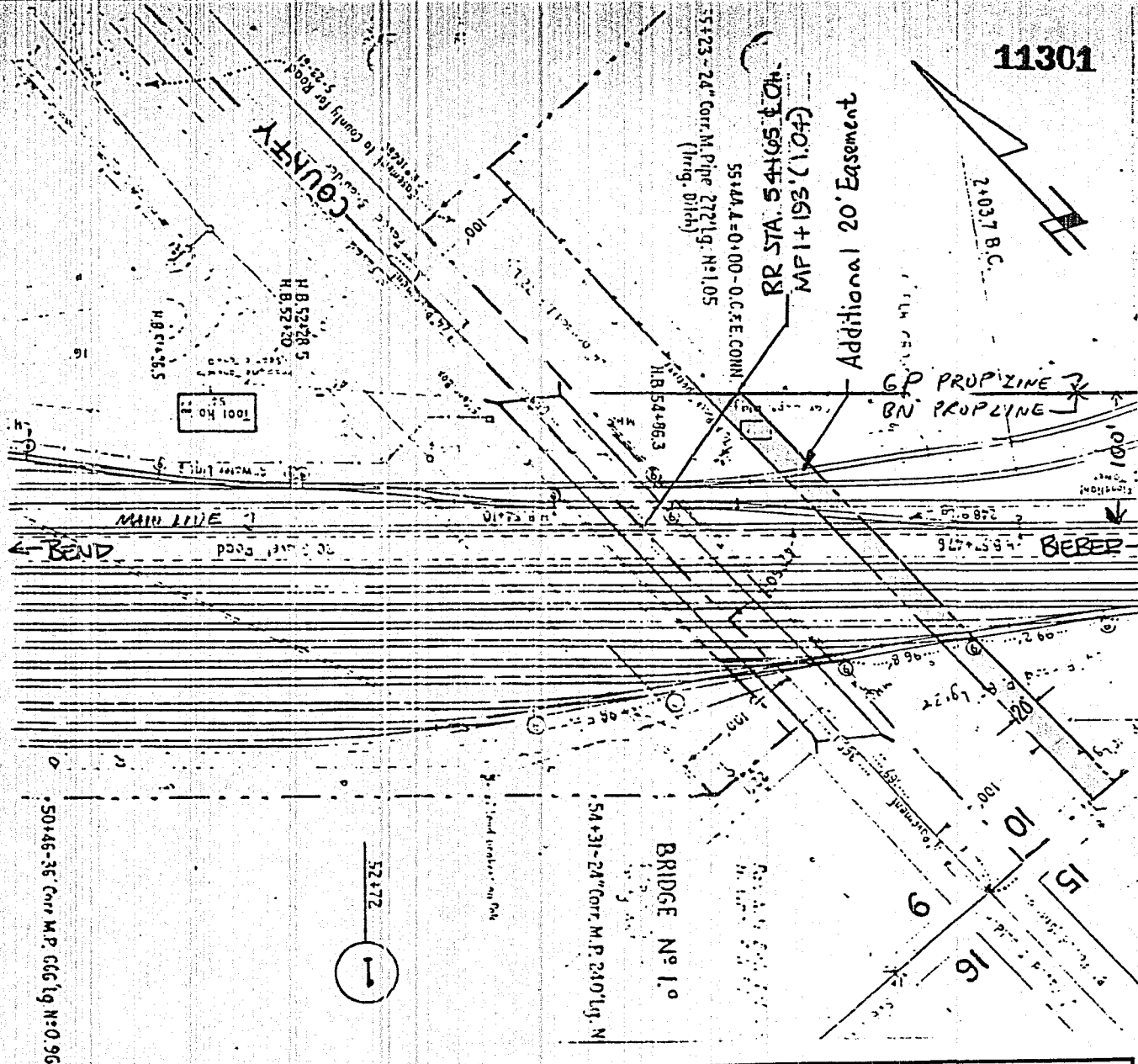
Before me: Allen A. Uyeda

Notary Public for Seattle, Washington

My commission expires: January 9, 1993

BN 9732 Klamath Falls, OR

11301



EASEMENT AREA  
REQUIRED SHOWN  
IN RED

**EXHIBIT "A"**  
B. N. RAILROAD COMPANY  
NORTHERN REGION - PACIFIC DIVISION  
**ADD'L EASEMENT FOR THE WIDENING  
OF WASHBURN WAY OVERHEAD BRIDGE  
KLAMATH FALLS, OR**

SCALE: 1" = 100'

SUPT. MAINT. & ENGINEERING - SEATTLE, WA. 9-27-89  
REVISED: 11-16-89

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 12th day  
of June A.D., 19 90 at 9:56 o'clock A M., and duly recorded in Vol. M90  
of Deeds on Page 11297.

FILE none

Evelyn Biehn, County Clerk

By Pauline M. Mendenhall

Return: Commissioners Journal