

02 SEP 20 PM 3:42

Vol M02 Page 53834

State of Oregon, County of Klamath  
Recorded 09/20/2002 3:42 p. m.  
Vol M02, Pg 53834-42  
Linda Smith, County Clerk  
Fee \$ 61<sup>00</sup> # of Pgs 9

Space above this line for Recorder's use

311.18124

After recording, return to:

Jon and Carol Knapp  
44330 N. El Macero Drive  
El Macero, CA 95618

*K57253*

Until further notice, send tax statements to:

Oregon Department of Forestry  
2600 State Street  
Salem, OR 97310

**GRANT OF NON-EXCLUSIVE EASEMENT  
for  
ROAD ACCESS**

In consideration of One Dollar (\$1.00), the **State of Oregon**, by and through its Board of Forestry ("Grantor") hereby grants and conveys a non-exclusive easement for road access (the "Easement") appurtenant to the real property owned and held by **Jon and Carol Knapp** ("Grantees"). Grantees' land (the "Dominant Estate") and the Grantor's land (the "Servient Estate") over, upon and across which the road easement is granted are located generally within Section 10, Township 33 South, Range 7½ East, W.M., Klamath County, Oregon, and more particularly described as follows:

Grantor's real property comprising the Servient Estate is described in the attached **Exhibit A**. Grantees' real property comprising the Dominant Estate is described in the attached **Exhibit B**. The Easement location is described in the attached **Exhibit C** and the relationship to the Servient and Dominant Estates is shown generally as drawn on the Partition Plat Map, attached as **Exhibit D**.

The Easement granted herein shall be for the purposes of providing ingress and egress to and from the Dominant Estate, over, across and on an existing unimproved forest road within the Servient Estate, providing access to the public road way to Grantor's otherwise landlocked parcel.

To have and to hold said easement FOREVER subject to the following terms:

**1. Limitations on Use.** Grantees' use of the Easement shall be limited to non-commercial access to and from one (1) single-family dwelling located on the Dominant Estate, and for incidental purposes related thereto. Without limitation, Grantees shall take no action that would damage, destroy or alter property of the State of Oregon including, without limitation, any of the following activities:

1.1 cutting or removing timber from the Servient Estate, except as reasonably necessary and following notice to and approval from the Grantor;

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- 1.2 erecting or placing any structure within the Servient Estate;
- 1.3 storing or disposing of any hazardous materials, as defined under federal or state law, on or within the Servient Estate;
- 1.4 applying chemical herbicides or pesticides within the Servient Estate;
- 1.5 closing or restricting access to the Servient Estate;
- 1.6 committing or permitting any unlawful act within the Servient Estate; or
- 1.7 interfering with legal uses of the road easement, the Servient Estate, and adjacent State Forest land by Grantor and others.

**2. Condition and Maintenance of the Road.** Grantees acknowledge and agree that the Easement granted is for use of an unimproved forest road. Grantees covenant and agree that:

2.1 Grantees shall exercise due diligence in Grantees' use of the said road in order to protect the Servient Estate from damage or destruction by fire or other causes;

2.2 Grantees shall maintain the said road to protect the Servient Estate from damage in accordance with the standards for road maintenance in the Forest Practices Act, ORS 527.610 to 527.770, 527.990(1) and 527.992.

2.3 Should Grantees fail to perform the road maintenance required by this Easement, Grantor shall have the right to perform or cause to have performed said maintenance and recover all associated costs from Grantees. Grantees shall reimburse Grantor within 30 days from date billed.

**3. Compliance with Laws, Regulations and Ordinances.** Grantees shall comply with all laws, ordinances and regulations of the Grantor and other governmental agencies applicable to the Servient Estate or to Grantees' use of the said road.

**4. Limitation of Liability.** Grantees acknowledge that they have examined the existing road and have satisfied themselves as to its condition. Grantees accept the Easement and agree to use the road easement in the condition existing as of the effective date of the grant, AS IS, with all defects, if any. Grantees covenant and agree not to use the road easement, or permit others to use said road, to gain access to or from the Dominant Estate, if the road is in other than a safe condition. Grantees agree to be responsible for all repair and work necessary to maintain said road in a safe condition. Grantor shall not be responsible for any injury or damages to persons or property that may arise from or be incident to use of said road by Grantees or Grantees' agents, servants, employees, guests or invitees or others who may use the road at the invitation of any of them.

**5. Indemnification.** Grantees shall indemnify and hold the State of Oregon, its boards, commissions, departments, including the Grantor, and their employees and agents harmless from and against all liability of whatever kind arising from or incident upon use of said road by Grantees and by Grantees' agents, servants, employees, guests or invitees or others who may use the road at the invitation of any of them.

**6. Proof of Insurance.** Grantees shall provide proof of general liability insurance, or its equivalent, in the amount of at least \$500,000 per occurrence and \$500,000 aggregate, insuring against the indemnification described in Section 5 of this Easement. The insurance shall name the State of Oregon, its boards, commissions, and departments, including the Grantor, and their employees, officers and directors as additional insureds with respect to the indemnity provided above.

**7. Reservation of Rights in the Servient Estate.** Without limiting any other rights it may have, the Grantor specifically reserves the right:

7.1 to use, and to license others to use the Servient Estate, including the road, for purposes not inconsistent with the Easement granted herein;

7.2 to restrict or prohibit access to the Servient Estate, including the road, when the Grantor, in the Grantor's sole discretion, deems such restrictions on access are necessary to protect forest resources or are otherwise in the public interest; and

7.3 to substitute another road to be used by Grantees in the event the Grantor must temporarily or permanently restrict access to the road.

If the Grantor restricts access to the road, the Grantor will make a good faith effort to limit the nature and duration of such restriction on Grantees' use of the road; however, Grantees covenant and agree that no claim against the Grantor for damages or injunctive relief shall arise from any such temporary restriction by the Grantor on Grantees' use of the road.

**8. Easement—Conditional and subject to reverter.** This Easement is terminable and will revert to Grantor and all right, title and interest herein granted cease immediately in the event:

8.1 If Grantees abandon said easement, or if for a period of 5 years Grantees fail to use said easement; or;

8.2 If Grantees fail, neglect, or refuse to keep, observe, or perform any of the conditions or agreements herein contained, for a period of 30 days after having been given written notice to comply therewith; or

8.3 Grantees obtain access to a public road by some other means.

Upon Grantor's written notice of termination, Grantees shall execute a recordable document evidencing termination of easement.

**9. Notice Requirements.** Any notice required to be given under this Easement shall be in writing, and shall be delivered by regular mail deposited with the United States Postal Service, postage prepaid and addressed to the Grantor or Grantees, as the case may be, at the most recent address provided by the party for such notice. Notice will be deemed to have been received as of 5:00 p.m. local time on the third day following the date of mailing. As of the date of execution of this Easement, the address for notices for each party are:

Grantor: Oregon Department of Forestry  
Forest Management Division  
2600 State Street  
Salem, OR 97310

Grantees: Jon and Carol Knapp  
44330 N. El Macero Drive  
El Macero, CA 95618

**10. Miscellaneous Provisions.**

**10.1 Governing Law; Venue.** This Easement shall be subject to and governed by the laws of the State of Oregon. Any claim, action suit or proceeding (collectively, a "Claim") between the Grantor and Grantees that arise from or relates to this Easement shall be brought and conducted solely in the Circuit Court of Marion County for the State of Oregon; provided that, if a Claim must be brought in a federal forum, such Claim shall be brought and conducted solely in the District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution or otherwise. By execution and acceptance of this Easement, Grantees consent to the personal jurisdiction of such courts.

**10.2 Severability.** If any term or provision of this Easement is held to be invalid, illegal or unenforceable by a court of competent authority, the offending term or provision shall be deleted and the remainder of the Easement shall not be affected by such invalidity, illegality or unenforceability, but shall remain valid and enforceable to the fullest extent permitted by law.

**10.3 No Implied Waiver.** The failure of the Grantor to enforce any provision of this Easement shall not constitute a waiver by the Grantor of that provision or of any other provision of this Easement.

10.4 Amendments. No modification or amendment of this Easement or of any of its conditions or provisions shall be binding upon the parties unless in writing signed by both parties.

10.5 Merger Clause. This Easement constitutes the entire agreement between the parties on the subject matter addressed herein. There are no understandings, agreements, or representations, oral or written, regarding this Easement except as contained, incorporated or referenced herein.

The reciprocal promises contained in this Easement and payment to Grantor by Grantees of the sum of One Dollar (\$1.00), receipt of which is hereby acknowledged, constitute the entire consideration for the Easement.

AGREED TO this 4th day of September 2002

**GRANTOR:**

The State of Oregon, by and through its Board of Forestry.

By Steven R. Thomas  
Steven R. Thomas  
Assistant State Forester  
Forest Management Division

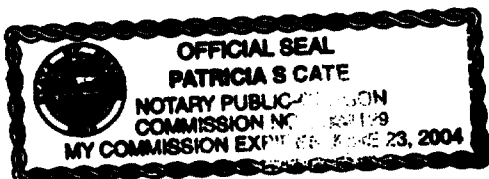
**GRANTEES:**

Jon Knapp  
Jon Knapp

Carol Knapp  
Carol Knapp

STATE of Oregon     )  
                                  ) ss.  
COUNTY of Marion   )

SUBSCRIBED and SWORN to before me by Steven R. Thomas, who personally appeared and stated that he is the Assistant State Forester of the Oregon Department of Forestry and that he is authorized to act on behalf of the Board of Forestry pursuant to statute, and acknowledged the foregoing instrument to be the voluntary act of said state agency, acting on behalf of the State of Oregon this 4th day of September, 2002.



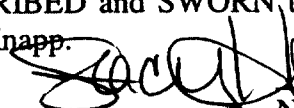
Patricia S. Cate  
Notary Public for Oregon  
My Commission expires: 6/23/04



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STATE of Oregon )  
COUNTY of Clatsop ) ss.

SUBSCRIBED and SWORN to before me this 20th day of Sept 2002 by  
Jon and Carol Knapp.

  
Notary Public for Oregon  
My Commission expires: 8-2-03



**EXHIBIT A**

**Legal Description of the SERVIENT ESTATE**

Exhibit A to Non-Exclusive Easement from State of Oregon, by and through its Board of Forestry to Jon and Carol Knapp.

The Northwest quarter of the Southeast quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$ ) of Section 10, Township 33 South, Range 7 $\frac{1}{2}$  East, Willamette Meridian, Klamath County, Oregon.

**EXHIBIT B**

**Description of the Dominant Estate**

Exhibit B to Non-Exclusive Easement from State of Oregon, by and through its Board of Forestry to Jon and Carol Knapp.

Lots 8, 9, 10, 18, and 19 of Section 10, Township 33 South, Range 7½ East, Willamette Meridian, Klamath County, Oregon.

And also, a tract of land described as follows:

Beginning at the Southwest corner of Lot 11 of Section 10, Township 33 South, Range 7½ East, Willamette Meridian, Klamath County, Oregon, thence North 89° 52" East 467 feet to the middle of Wood River, thence following the middle of Wood River N. 47° 45' West 90 feet; thence, North 21° 15' East 100 feet; thence North 58° 45' East 278 feet; thence North 8° 30' East 80 feet; thence, leaving the middle of Wood River North 59° West 50 feet; thence, North 74° 30' West 281 feet; thence, North 5° 45' East 430 feet to middle of the River; thence, following the middle of the River North 75° West 100 feet, thence, North 35° 30' West 140 feet; thence North 1° East 100 feet; thence, North 65° 45' East 190 feet; thence, North 53° 30' West 220 feet; thence North 29° West 63 feet; thence, leaving the River West 221 feet to the Northwest corner of said Lot 11; thence, South 0° 15' West 1325 feet to the place of beginning, containing 12.42 acres, more or less; the whole premises conveyed contained 214.74 acres, more or less.



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**EXHIBIT D**  
**Map showing location of the EASEMENT**

Exhibit D to Non-Exclusive Easement from State of Oregon, by and through its Board of Forestry to Jon and Carol Knapp.

