

2008-016772

Klamath County, Oregon



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Fee: \$30.00

Authorization ID: BLY67
Contact ID: MORINAKA, B. & R.
Use Code: 752

FS-2700-9j (03/06)
OMB No. 0596-0082

U. S. DEPARTMENT OF AGRICULTURE
Forest Service
PRIVATE ROAD EASEMENT ISSUED UNDER THE FEDERAL LAND POLICY AND
MANAGEMENT ACT
Act of October 21, 1976, (P.L. 94-579);
36 CFR 251.50, et seq

THIS EASEMENT, dated this 21 day of OCTOBER, 2008, from the United States of America, acting by and through the Forest Service, Department of Agriculture, hereinafter called Grantor, to **Barry S. Morinaka and Robert A. Morinaka**, individuals of the State of California hereinafter called Grantee.

WITNESSETH:

WHEREAS, Grantee has applied for a grant of an easement under the Act of October 21, 1976 (90 Stat. 2743; 43 U.S.C. 1761), 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 payment of an annual use fee paid by Grantee does hereby grant to Grantee, subject to existing easements and valid rights, a nonexclusive easement for use of a road, along and across a strip of land, over and across the following described lands in the County of Klamath, State of Oregon:

Willamette Meridian

T. 37 S., R. 11 E.
Sec. 1, NW1/4SW1/4SE1/4, W1/2NW1/4SE1/4

The location of said easement is shown (approximately) on Exhibit A attached hereto.

Said easement shall be 8.25 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 easement granted.

This grant is made subject to the following terms, provisions, and conditions applicable to Grantee, its permittees, contractors, assignees, and successors in interest.

A. Grantee shall comply with applicable Federal or State law and shall comply with State standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance of or for rights-of-way for similar purposes, if those standards are more stringent than applicable Federal standards.

B. The rights herein conveyed do not include the right to use the road for access to developments for short- or long-term residential purposes, unless and until the Grantor and the Grantee agree upon traffic control regulations, rules, and other provisions to accommodate such use of the road.

C. Upon change in ownership of the land or facility served by this road, the rights granted under this easement may be transferred to the new owner upon written notification to the Regional Forester.

Approved as to Consideration, Description, and Conditions and Form.

Date: 9/16/08

By: [Signature]

D. This easement shall continue for as long as the property served is used for a single-family home; Provided, That the Grantor shall review the terms and conditions of this easement at the end of each 30-year period from the date of issuance, and may incorporate in the easement such new terms, conditions, and stipulations as existing or prospective conditions may warrant. These shall have the same force and effect in the future as if incorporated in this grant.

E. All construction or reconstruction of the road shall be in accordance with plans, specifications, and written stipulations approved by the Grantor prior to beginning such construction or reconstruction.

F. Grantee shall have the right to cut timber upon the easement area to the extent necessary for maintaining the road. Timber so cut shall, unless otherwise agreed to, be cut into standard log lengths or other products as specified by the authorized officer and decked along the road for disposal by the owner of such timber.

G. The Grantee shall maintain the right-of-way clearing by means of chemicals only after the Grantor has given specific written approval. Application for such approval must be in writing and must specify the time, method, chemicals, and the exact portion of the right-of-way to be chemically treated.

H. The Grantee shall provide maintenance so that there is no damage on adjacent National Forest land. The Grantee shall construct and maintain lead-off drainage and water barriers as necessary to prevent erosion.

I. Grantee shall pay annually in advance a sum determined by the Forest Service to be the fair market value of the use authorized by this easement. The initial payment is set at \$100.00 for the remainder of the calendar year. Payments for each subsequent calendar year shall be the amount of \$100.00 adjusted using the Implicit Price Deflator-Gross National Product index (IPD-GNP), or other factor selected by the Forest Service, to reflect more nearly the current fair-market value of the use. At intervals to be determined by certain changes in the indexes used to establish the linear rights-of-way fee schedule, the fee shall be reviewed and adjusted as necessary to assure that it is commensurate with the value of the rights and privileges authorized. Failure of the holder to pay the annual payment, late charges, or other fees or charges shall cause the authorization to terminate.

J. Pursuant to 31 U.S.C. 3717, et seq., interest shall be charged on any fee amount not paid within 30 days from the date the fee or fee calculation financial statement specified in this authorization becomes due. The rate of interest assessed shall be the higher of the rate of the current value of funds to the U.S. Treasury (i.e., Treasury tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins annually or quarterly or at the Prompt Payment Act rate. Interest on the principal shall accrue from the date the fee or fee calculation financial statement is due.

In the event the account becomes delinquent, administrative costs to cover processing and handling of the delinquency will be assessed.

A penalty of 6 percent per annum shall be assessed on the total amount delinquent in excess of 90 days and shall accrue from the same date on which interest charges begin to accrue.

Payments will be credited on the date received by the designated collection officer or deposit location. If the due date for the fee or fee calculation statement falls on a non-workday, the charges shall not apply until the close of business on the next workday.

Disputed fees are due and payable by the due date. No appeal of fees will be considered by the Forest Service without full payment of the disputed amount. Adjustments, if necessary, will be made in accordance with settlement terms or the appeal decision.

If the fees become delinquent, the Forest Service will:

Liquidate any security or collateral provided by the authorization.

If no security or collateral is provided, the authorization will terminate and the holder will be responsible for delinquent fees as well as any other costs of restoring the site to its original condition including hazardous waste cleanup.

Upon termination or revocation of the authorization, delinquent fees and other charges associated with the authorization will be subject to all rights and remedies afforded the United States pursuant to 31 U.S.C. 3711 *et seq.* Delinquencies may be subject to any or all of the following conditions:

Administrative offset of payments due the holder from the Forest Service.

Delinquencies in excess of 60 days shall be referred to United States Department of Treasury for appropriate collection action as provided by 31 U.S.C. 3711 (g), (1).

The Secretary of the Treasury may offset an amount due the debtor for any delinquency as provided by 31 U.S.C. 3720, *et seq.*)

K. This easement shall terminate in the event an easement is granted subsequently by the United States to a public road agency for operation of this road as a public highway.

L. Grantee shall pay the United States for all injury, loss, or damage, including fire suppression costs, in accordance with existing Federal and State laws.

M. Grantee shall indemnify the United States for any and all injury, loss, or damage, including fire suppression costs the United States may suffer as a result of claims, demands, losses, or judgments caused by the Grantee's use or occupancy under this easement.

N. Upon termination of this easement, the Grantee shall remove within a reasonable time the structures and improvements and shall restore the site to a condition satisfactory to the Grantor, unless otherwise waived in writing. If the Grantee fails to remove the structures or improvements within a reasonable period, as determined by the Grantor, the Grantor may remove and dispose of any improvements and restore the area and all costs shall be paid by the Grantee.

If the Grantor waives the removal of the improvements and restoration of the site, all improvements shall become the property of the United States.

The foregoing notwithstanding, this easement is granted subject to the following reservations by Grantor, for itself, its holders, contractors, and assignees:

1. The right to cross and recross the road at any place by any reasonable means and for any purpose in such manner as will not interfere unreasonably with Grantee's use of the road.
2. The right to all timber now or hereafter growing on the right-of-way, subject to Grantee's right to cut such timber as herein provided.
3. The right alone to extend rights and privileges for use of the road constructed on the premises to other users, provided that nonfederal users shall bear a fair share of the current replacement cost less depreciation of the road and shall reconstruct the road as necessary to accommodate their use.
4. The Grantor reserves the right to use or authorize the use of the road by other Federal agencies, without cost other than the performance or payment, as it may elect, for its proportionate share of maintenance costs.

5. The Grantor retains the right to occupy and use the right-of-way, and to issue or grant rights-of-way for other land uses, for other than road purposes, upon, over, under, and through the easement area provided that the occupancy and use do not interfere unreasonably with the rights granted herein.

6. The right to terminate this easement if the Grantor assumes jurisdiction and control of the road as a Forest Development Road and issues a replacement easement providing only for use of the road. The replacement easement shall be in the current standard format, which provides the Grantee the right to use the road for the purposes and for the period authorized by this easement, subject to such traffic control regulations and rules as Grantor may impose reasonably upon or require of other users of the road without unreasonably reducing the rights herein granted.

The Grantor may take action to suspend, revoke, or terminate this easement under the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes in 7 CFR 1.130-1.151. An administrative proceeding is not required when the easement terminates on the occurrence of a fixed or agreed-upon condition, event, or time.

IN WITNESS WHEREOF, the Grantor, by its Deputy Forest Supervisor, Fremont-Winema National Forests, Pacific Northwest Region, Forest Service, has executed this easement pursuant to the delegation of authority by the Secretary of Agriculture to the Assistant Secretary for Natural Resources and Conservation, the delegation of authority by the Assistant Secretary for Natural Resources and Conservation, to the Chief, Forest Service, 7 CFR 2.60, and the delegation of authority by the Chief, Forest Service, dated August 16, 1982, (47 FR 36465), and the delegation of authority by the Regional Forester, Pacific Northwest Region, 58 FR 30766, published May 27, 1993, on the day and year first above written.

UNITED STATES OF AMERICA

By: 

J. Richard Newton
Deputy Forest Supervisor
Fremont-Winema National Forests
Pacific Northwest Region
Forest Service
Department of Agriculture

State of Oregon))ss.
County of Lake)

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

Catherine Gallagher



Catherine Callaghan
Notary Public for the State of Oregon
Residing at Lakeview
My Commission Expires: 08/26/2010

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

MAP OF FLPMA

PRIVATE ROAD EASEMENT

LOCATED WITHIN THE NW1/4SW1/4SE1/4 AND
WITHIN THE W1/2NW1/4SE1/4 OF SECTION 1
TOWNSHIP 37 SOUTH, RANGE 11 EAST, W.M.,
KLAMATH COUNTY, OREGON

LEGEND

- FOUND 5/8 INCH IRON ROD AS PER CS 3451 AS FILED IN THE KLAMATH COUNTY SURVEYOR'S OFFICE.
- ⊗ COMPUTED POSITION AS PER CS 3451, NO MONUMENT FOUND OR SET.
- () DATA AS PER CS 3451
- SURVEYED POINTS ON THE CENTERLINE OF AN EXISTING DIRT ROAD.

CENTERLINE DIMENSIONS

- | | |
|----------------------------|-----------------------------|
| 1) S18°16'52"E 167.51 FEET | 14) S3°20'29"W 120.08 FEET |
| 2) S11°19'02"E 36.01 FEET | 15) S9°01'17"W 66.05 FEET |
| 3) S3°32'52"E 41.76 FEET | 16) S15°14'37"W 61.47 FEET |
| 4) S62°20'07"W 41.08 FEET | 17) S19°39'43"W 72.01 FEET |
| 5) S52°07'58"W 54.43 FEET | 18) S23°46'40"W 100.40 FEET |
| 6) S42°38'41"W 67.58 FEET | 19) S26°58'54"W 86.32 FEET |
| 7) S56°46'04"W 24.49 FEET | 20) S31°36'13"W 80.43 FEET |
| 8) S43°07'04"W 37.57 FEET | 21) S36°55'03"W 129.90 FEET |
| 9) S45°15'30"E 14.99 FEET | 22) S6°00'50"E 137.05 FEET |
| 10) S55°03'44"E 11.74 FEET | 23) S10°45'34"E 19.52 FEET |
| 11) S61°37'28"E 34.62 FEET | 24) S17°53'40"E 42.24 FEET |
| 12) S33°41'29"E 45.58 FEET | 25) S89°58'49"E 48.39 FEET |
| 13) S32°44'07"E 75.19 FEET | |

CENTERLINE CURVE DATA

CURVE A

DELTA= 65°53'00"
RADIUS= 244.74 FEET
LENGTH= 281.42 FEET
TANGENT= 158.58 FEET
CHORD= S29°23'38"W
266.17 FEET

CURVE B

DELTA= 88°22'34"
RADIUS= 61.85 FEET
LENGTH= 95.40 FEET
TANGENT= 60.12 FEET
CHORD= S1°04'09"E
86.22 FEET

CURVE C

DELTA= 27°56'01"
RADIUS= 211.21 FEET
LENGTH= 102.97 FEET
TANGENT= 52.53 FEET
CHORD= S47°39'28"E
101.95 FEET

CURVE D

DELTA= 36°04'52"
RADIUS= 150.00 FEET
LENGTH= 94.46 FEET
TANGENT= 48.86 FEET
CHORD= S14°41'31"E
92.91 FEET

R-O-W DESCRIPTION

RIGHT-OF-WAY IS 16.5 FEET WIDE,
8.25 FEET ON BOTH SIDES OF THE
CENTERLINE.
LENGTH: 2142.3± FEET

R-O-W AREA

TOTAL AREA= 0.80± ACRES

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Rodney F. Callaghan
OREGON
JULY 21, 1992

RODNEY F. CALLAGHAN
2551

RENEWAL: 12/31/2009

EXHIBIT A SHEET 1 OF 1

ROAD EASEMENT
SECTION 1, T37S, R11E, W.M.
KLAMATH COUNTY, OREGON

GRANTEE: BARRY S. MORINAKA
RONALD A. MORINAKA
10330 JOHANNA AVENUE
SUNLAND, CA 91040

2730 RIGHT-OF-WAY GRANT

USDA FOREST SERVICE
PACIFIC NORTHWEST REGION

FREMONT-WINEMA
NATIONAL FORESTS

SURVEYED BY: RODNEY F. CALLAGHAN DATE: 5/15/2008
CATHERINE CALLAGHAN

DRAWN BY: RODNEY F. CALLAGHAN DATE: 5/16/2008

REVIEWED BY: Walt Miller DATE: 9/3/08
FOREST LAND SURVEYOR

APPROVED BY: Richard H. Rye DATE: 2/15/08
FOREST ENGINEER

GRANTEE: MORINAKA, BARRY S. & RONALD A.