

2008-016773

Klamath County, Oregon



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12/23/2008 01:24:51 PM

Fee: \$35.00

Authorization ID: BLY69  
Contact ID: HARRINGTON, R. & M.  
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 18 day of DECEMBER, 2008, from the **United States of America**, acting by and through the Forest Service, Department of Agriculture, hereinafter called Grantor, to **Richard and Mary Harrington**, a married couple 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. 15 E., sec. 20, SE $\frac{1}{4}$ SE $\frac{1}{4}$ .

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

Said easement shall be 10 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: Dec. 8, 2008

By: Alan Guthridge

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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.

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.

O. Operating Plan (C8). The holder shall provide an Operating Plan. The plan shall be prepared in consultation with the authorized officer or designated representative and cover operation and maintenance of facilities, dates or season of operations, and other information required by the authorized officer to manage and evaluate the occupation and/or use of National Forest System lands. The provisions of the Operating Plan and the annual revisions shall become a part of this authorization and shall be submitted by the holder and approved by the authorized officer or their designated representative(s). This Operating Plan is hereby made a part of the authorization. See Exhibit B for Forest Service Stipulations and Resource Protection Measures.

**UNITED STATES OF AMERICA**

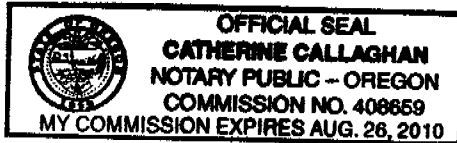
**By:**

## ACKNOWLEDGMENT

On this 18 day of DECEMBER, 2008, before me, the undersigned, personally appeared J. Richard Newton, Deputy Forest Supervisor, Fremont-Winema National Forests, Pacific

Northwest Region, Forest Service, Department of Agriculture, the same person who executed the within and foregoing instrument, who being by me duly sworn according by law; did say that he executed said instrument on 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 official seal the day and year first above written.



*Catherine Callaghan*

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

# MAP OF FLPMA

## PRIVATE ROAD EASEMENT

LOCATED WITHIN THE SE1/4SE1/4 OF SECTION 20  
TOWNSHIP 37 SOUTH, RANGE 15 EAST, W.M.,  
KLAMATH COUNTY, OREGON

### BASIS OF BEARINGS

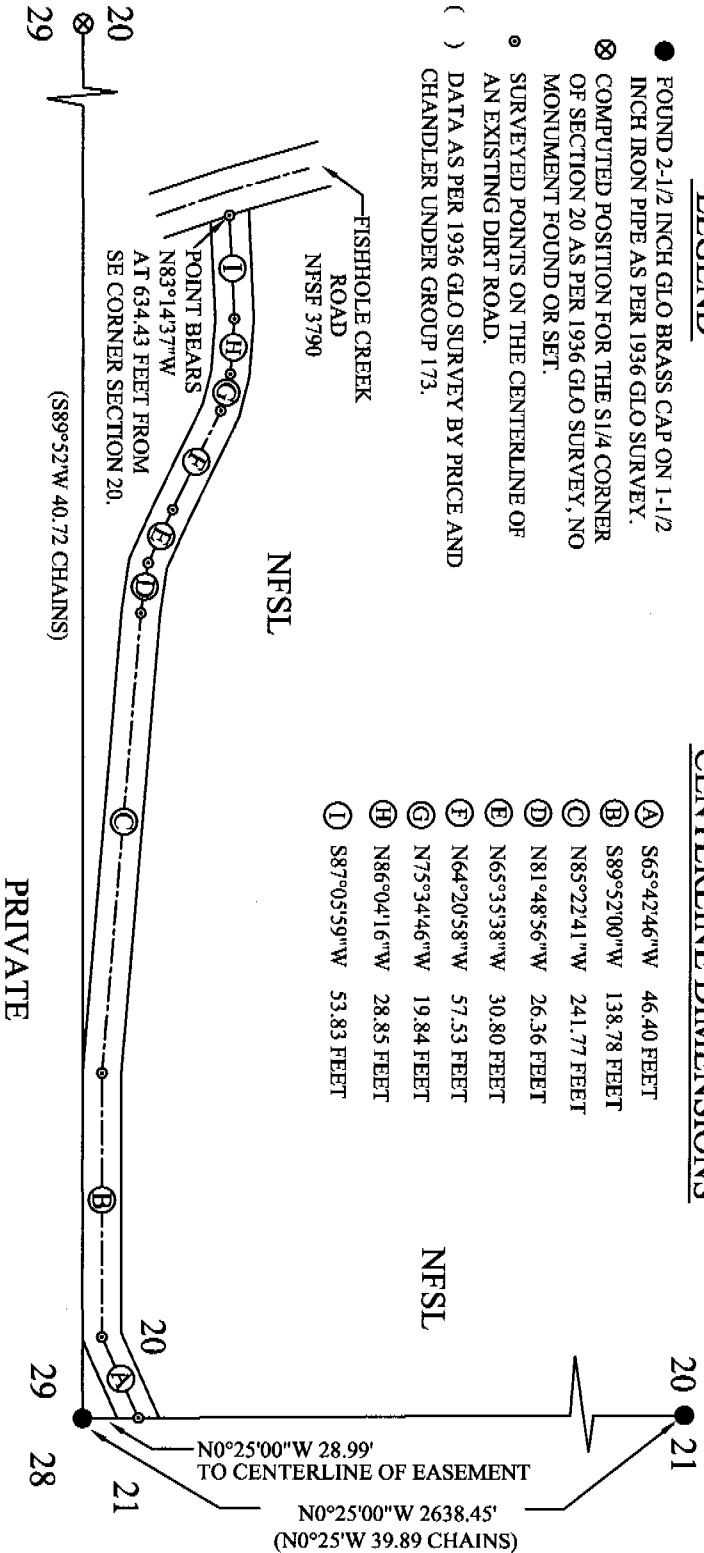
BEARINGS FOR THIS MAP ARE BASED  
ON THE LINE FROM THE SE CORNER  
OF SECTION 20 TO THE E1/4 CORNER  
OF SECTION 20 AS PER 1939 GLO  
SURVEY BY PRICE AND CHANDLER.

### LEGEND

- FOUND 2-1/2 INCH GLO BRASS CAP ON 1-1/2 INCH IRON PIPE AS PER 1936 GLO SURVEY.
- ⊗ COMPUTED POSITION FOR THE S1/4 CORNER OF SECTION 20 AS PER 1936 GLO SURVEY, NO MONUMENT FOUND OR SET.
- SURVEYED POINTS ON THE CENTERLINE OF AN EXISTING DIRT ROAD.
- ( ) DATA AS PER 1936 GLO SURVEY BY PRICE AND CHANDLER UNDER GROUP 173.

### CENTERLINE DIMENSIONS

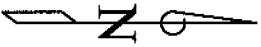
|   |             |             |
|---|-------------|-------------|
| Ⓐ | S65°42'46"W | 46.40 FEET  |
| Ⓑ | S89°52'00"W | 138.78 FEET |
| Ⓒ | N85°22'41"W | 241.77 FEET |
| Ⓓ | N81°48'56"W | 26.36 FEET  |
| Ⓔ | N65°35'38"W | 30.80 FEET  |
| Ⓕ | N64°20'58"W | 57.53 FEET  |
| Ⓖ | N75°34'46"W | 19.84 FEET  |
| Ⓗ | N86°04'16"W | 28.85 FEET  |
| Ⓘ | S87°05'59"W | 53.83 FEET  |



### R-O-W DESCRIPTION

RIGHT-OF-WAY IS 20.0 FEET WIDE,  
10.0 FEET ON BOTH SIDES OF THE  
CENTERLINE.  
LENGTH: 644.16 FEET

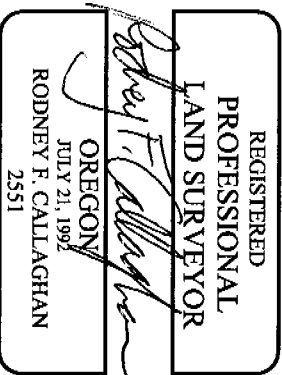
1 INCH = 100 FEET



### R-O-W AREA

TOTAL AREA = 0.30 ACRES

EXHIBIT A  
SHEET 1 OF 1



RENEWAL: 12/31/2009

|  |  |  |   |
|--|--|--|---|
| ROAD EASEMENT<br>SECTION 20, T37S, R15E, W.M.<br>KLAMATH COUNTY, OREGON        | 2730 RIGHT-OF-WAY GRANT  | SURVEYED BY: <u>RODNEY F. CALLAGHAN</u><br><u>JANET MOULTON</u>  | DATE: <u>8/12/2008</u>  |
| GRANTEE: RICHARD & MARY<br>HARRINGTON<br>597 CARROL AVENUE<br>FELTON, CA 95018 | USDA FOREST SERVICE<br>PACIFIC NORTHWEST REGION<br>FREMONT-WINEMA<br>NATIONAL FOREST | DRAWN BY: <u>RODNEY F. CALLAGHAN</u><br>REVIEWED BY: <u>Rodney F. Callaghan</u><br>FOREST LAND SURVEYOR<br>APPROVED BY: <u>Thom Schatz</u> FOR <u>Rich Kehr</u><br>FOREST ENGINEER | DATE: <u>10/14/2008</u><br>DATE: <u>10/14/08</u><br>DATE: <u>11/21/08</u> |

GRANTEE: RICHARD & MARY HARRINGTON

## **EXHIBIT B**

### **BLY69**

#### **Project Specific Design and Resource Protection Measures (outlined in Decision Memo, signed March 20, 2007)**

Grantee shall coordinate the layout and design of the road with the Southeast Zone Road Manager prior to construction activities.

At the Fishhole Creek Forest Service Road #3790 junction with Grantee's private road, Grantee shall install a culvert with a minimum width of 24" under the new private road to accommodate the existing naturally rock-lined ditch running next to Forest Service Road #3790.

Grantee shall install a rock ford to accommodate the unmapped ephemeral drainage that the private road will cross.

Grantee will ensure that culverts or dips will have outlets that are protected by rock or other types of splash basins to reduce the energy of emerging water (rock is available adjacent to private road right of way on National Forest lands).

Grantee will ensure that all in stream work will be conducted between July 1<sup>st</sup> and September 15<sup>th</sup> as recommended by the Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources (ODFW 2000).

Grantee will ensure that all road construction and culvert installation on National Forest System lands will be done in accordance with the attached Fremont National Forest Roads Best Management Practice (BMP) Standards (See Appendix A).

The Forest Archaeologist will determine the appropriate level of monitoring required for all subsurface activities, and will assign a monitor as necessary. In the event that cultural resources are discovered during road construction or maintenance activities, Grantee will ensure that operations cease, and notify the Fremont-Winema National Forests immediately. Operations will be interrupted while measures are developed to allow the mitigation of any adverse effects resulting from project implementation.

Grantee will comply with: Equipment Cleaning: Actions conducted or authorized by written authorization by the Forest Service that will operate outside the limits of a road prism, require the cleaning of all equipment and vehicles prior to entering National Forest System Land for all projects, and before leaving the project site when operating in areas where invasive plant seed or vegetative root fragments is likely and a concern. If the equipment used to construct the road is going to be used immediately after this project for work on National Forest System Lands, it needs to be cleaned to prevent introducing Medusahead into a currently un-infested area. Fill Material: Use only gravel, fill, sand, or rock that is judged to be weed free by Fremont-Winema National Forests' weed specialists. If fill material is being used for this project, the source must be identified and inspected by a Forest Service weed specialist before placing it on National Forest lands.