

NJC 1396-9750

2009-012783

Klamath County, Oregon



00073261200900127830130130

09/28/2009 11:23:11 AM

Fee: \$97.00

Space above this line for Recorder's use.

After recording, return to:

Oregon DEQ
475 NE Bellevue, Suite 110
Bend, OR 97701
Attn: Mr. David Anderson

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes is made Sept 21, 2009 between Steven H. Killian and Rozalia M. Killian ("**Grantor**") and the State of Oregon, acting by and through the Oregon Department of Environmental Quality ("**DEQ**" or "**Grantee**"). *du*

RECITALS

A. Grantor is the owner of certain real property located at 25750 Railroad Avenue, Beatty, Oregon 97621 County, Oregon in County Tax Map [R-3612-00000-05000-000], Tax Lot [5000] (the "**Property**") the location of which is more particularly described in Attachment A to this Easement and Equitable Servitudes, and referenced under the name Weyerhaeuser, ECSI #650 in the files of DEQ's Environmental Cleanup Program at Eastern Region, Bend, Oregon. Interested parties may contact the DEQ's Eastern Region office to review a detailed description of the residual risks present at the Property and found in the CH2M-Hill report titled *Focused Feasibility Study: Sycan Shop, Beatty, Oregon*, June 2009 and the DEQ *Record of Decision for Weyerhaeuser Sycan Shop Site*, April 2000 and the DEQ *Record of Decision Amendment for Weyerhaeuser, August 2009*.

B. On August 3, 2009 the Director of the Oregon Department of Environmental Quality or delegate selected the remedial action for the Property set forth in the *Record of Decision Amendment for Sycan Shop Site*, August 3, 2009. The remedial action selected requires, among other things, the institutional controls that are set forth in Section 3 of this Easement and Equitable Servitudes.

C. The provisions of this Easement and Equitable Servitudes are intended to further the implementation of the selected remedial action and thereby protect human health and the environment.

Easement and Equitable Servitudes
[Steven H. Killian and Rozalia M. Killian]
SM

Page 1 of 13

AMERITITLE has recorded this instrument by request as an accommodation only, and has not examined it for regularity and sufficiency or as to its effect upon the title to any real property that may be described therein.

97AMT

1. DEFINITIONS

- 1.1 "Acceptable risk level" has the meaning set forth in Oregon Revised Statute (ORS) 465.315 and Oregon Administrative Rule (OAR) 340-122-0115.
- 1.2 "Area of control" means the southeast portion of the Property as described in Exhibit B wherein the restrictions defined by this Easement and Equitable Servitudes are to be applied and enforced.
- 1.3 "Beneficial use" has the meaning set forth in OAR 340-122-0115.
- 1.4 "DEQ" means the Oregon Department of Environmental Quality, and its employees, agents, and authorized representatives. "DEQ" also means any successor or assign of DEQ under the laws of Oregon, including but not limited to any entity or instrumentality of the State of Oregon authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by DEQ.
- 1.5 "Ecological receptor" has the meaning set forth in OAR 340-122-0115.
- 1.6 "Engineering control" has the meaning set forth in OAR 340-122-0115.
- 1.7 "Hazardous substance" has the meaning set forth in ORS 465.200
- 1.8 "Owner" means any person or entity, including Grantor, who at any time owns, occupies, or acquires any right, title, or interest in or to any portion of the Property or a vendee's interest of record to any portion of the Property, including any successor, heir, assign or holder of title or a vendee's interest of record to any portion of the Property, excluding any entity or person who holds such interest solely for the security for the payment of an obligation and does not possess or control use of the Property.
- 1.9 "Property" means the real property described in Exhibit A to this Easement and Equitable Servitudes.

2. GENERAL DECLARATION

Grantor, in consideration of Grantee's issuance of a no further action letter and approval of the Agreement described above, grants to DEQ an Easement for access and accepts the Equitable Servitudes described in this instrument and, in so doing, declares that the Property described in Attachment A to this Easement and Equitable Servitudes, is now subject to and shall in future be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this Easement and Equitable Servitudes. Each condition and restriction set forth in this Easement and Equitable Servitudes touches and concerns the Property and the equitable servitudes granted in paragraph 3 and easement granted in paragraph 4 below, shall run with the land for all purposes, shall be binding upon all current and future owners of the Property as set forth in this Easement and Equitable Servitudes, and shall inure to the benefit of the State of Oregon. Grantor further conveys to DEQ the perpetual right to enforce the conditions and restrictions set forth in this Easement and Equitable Servitudes.

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3. EQUITABLE SERVITUDES (RESTRICTIONS ON USE)

3.1 **Groundwater Use Restrictions:** Owner shall not extract through wells or by other means or use the groundwater within the Area of Control as described in Exhibit B for consumption or other beneficial use, as long as the hazardous substance concentrations exceed the acceptable risk level for such use. This prohibition shall not apply to extraction of groundwater associated with groundwater treatment or monitoring activities approved by DEQ or to temporary dewatering activities related to construction, development, or the installation of sewer or utilities within the Area of Control. Owner shall conduct a waste determination on any groundwater that is extracted during such monitoring, treatment, or dewatering activities and handle, store and manage waste water according to applicable laws.

3.2 **Notice of Transfer.** Owner shall notify DEQ at least ten (10) days before the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of Owner's interest in or occupancy of the Property, or the start of any development activities or change in use of the Property that might expose human or ecological receptors to hazardous substances at the Property. Notwithstanding the foregoing, Owner shall not commence any development inconsistent with the conditions or restrictions in this Paragraph 3 without prior written approval from DEQ as provided in Paragraph 3.2 or removal of the condition or restriction as provided in Paragraph 5.1 below.

4. EASEMENT (RIGHT OF ENTRY)

During reasonable hours and subject to reasonable security requirements, DEQ shall have the right to enter upon and inspect any portion of the Area of Control to determine whether the requirements of this Easement and Equitable Servitudes have been or are being complied with. DEQ shall have the right, privilege, and license to enter upon the Area of Control at any time to abate, mitigate, or cure at the expense of the Owner the violation of any condition or restriction contained in this Easement and Equitable Servitudes, provided DEQ first gives written notice of the violation to Owner describing what is necessary to correct the violation and Owner fails to cure the violation within the time specified in such notice. Any such entry by DEQ shall not be deemed a trespass, and DEQ shall not be subject to liability to Owner for such entry and any action taken to abate, mitigate, or cure a violation.

5. GENERAL PROVISIONS

5.1 Each condition and restriction contained in this Easement and Equitable Servitudes shall be recited in any deed conveying the Property or any portion of the Property, and shall run with the land so burdened until such time as the condition or restriction is removed by written certification from DEQ, recorded in the Deed Records of the County in which the Property is located, certifying that the condition or restriction is no longer required in order to protect human health or the environment.

5.2 Upon the recording of this Easement and Equitable Servitudes, all future Owners, as defined in Paragraph 1.8 above, shall be conclusively deemed to have consented and agreed to every condition and restriction contained in this Easement and Equitable Servitudes, whether or not any reference to this Easement and Equitable Servitudes is contained in an instrument by which such person or entity occupies or acquires an interest in the Property.

5.3 Upon any violation of any condition or restriction contained in this Easement and Equitable Servitudes, DEQ, in addition to the remedies described in Paragraph 4 above, may enforce this Easement and Equitable Servitudes as provided in the *Record of Decision for Weyerhaeuser Syscan Shop Site*, or may seek any other available legal or equitable remedy to enforce this Easement and Equitable Servitudes.

IN WITNESS WHEREOF Grantor and Grantee have executed this Easement and Equitable Servitudes as of the date and year first set forth above.

GRANTOR:[NAME OF GRANTOR]

By: Steven H. Killian Date: 9-14-2008

Steven H. Killian

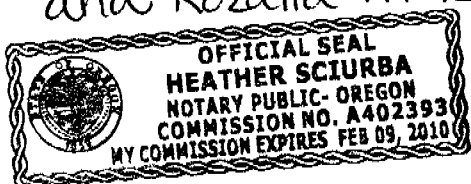
By: Rozalia M. Killian Date: 9-14-09

Rozalia M. Killian

STATE OF OREGON)

County of Klamath) ss.

Sept. 2009, The foregoing instrument is acknowledged before me this 14th day of Sept., by [NAME] of [COMPANY], on its behalf. Steven H. Killian
and Rozalia M. Killian.



Heather Sciorba

NOTARY PUBLIC FOR OREGON

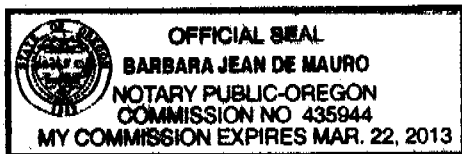
My commission expires: Feb. 9, 2010

GRANTEE: State of Oregon, Department of Environmental Quality

By: D. Mitchell W. Lyons Date: 21 SEP 09
[NAME], Administrator, [Eastern/Northwest/Western] Region

STATE OF OREGON)
) ss.
County of UMATILLA)

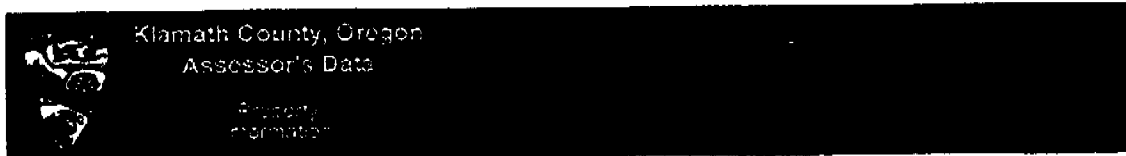
The foregoing instrument is acknowledged before me this 21st day of
SEPT, 2009, by MITCH W. LYONS of the Oregon Department of Environmental
Quality, on its behalf.



Barbara Jean De Mauro
NOTARY PUBLIC FOR OREGON
My commission expires: MARCH 22, 2013

ATTACHMENT A

Legal Description of the Property



Property Information Tax Summary Assessment History Improvement Information New Search Search Results Log Off Printable Summary

Search Results for R352326

Owner Name	Property ID Number
KILLIAN STEVE H & ROZALIA M	R352326
Owner Address	Situs Address
3815 BISBEE ST	25750 RAILROAD AVE
KLAMATH FALLS, OR 97603	BEATTY, OR 97621
Alternate Account Number	Neighborhood
	6K80 - OUTSIDE BLY - SPRAGUE RIVER AREAS

Map Tax Lot	<u>Previous</u>	<u>Next</u>	Levy Code Area	Tax Rate
R-3612-00000-05000-000			008	7.628

Property Description

Property Class	Zoning
551K (FARM USE EFU IMPROVED)	EFU-CG
Property Code	Miscellaneous Code
Related Accounts by Map Tax Lot	Linked Accounts

Mortgage Agent-Lender

Mortgage Account Number

Exemption

Expiration Date

Tax Roll Description

TWP 36 RNGE 12, BLOCK SEC 12, TRACT E2SW4, ACRES 80.00, POTENTIAL ADDITIONAL TAX LIABILITY

Year Built

Acreage

80.00

Split/Sub Account

Split/Sub Account Message

Special Account Information - Last Certified Year (2008)

2008 - (F) FARM USE
2008 - (F) FARM USE

Sales Information

#	Buyer (Name & Address)	Seller (Name & Address)	Sales Info	Deed Info
1	KILLIAN STEVE H & ROZALIA M 3815 BISBEE ST KLAMATH FALLS, OR 97603	KILLIAN STEVE H 3815 BISBEE KLAMATH FALLS, OR 97603	\$0	05/27/03 M03-35776 01
2	KILLIAN STEVE H 3815 BISBEE KLAMATH FALLS, OR 97603	KILLIAN FRANCES 1920 ARTHUR ST #2 KLAMATH FALLS, OR 97603	\$0	05/20/03 M03-34177 09

700' Square

3	KILLIAN FRANCES 1920 ARTHUR ST #2 KLAMATH FALLS, OR 97603	KILLIAN WALTER C & FRANCES P O BOX 35 BEATTY, OR 97621	04/26/93 \$0	04/26/93 M93-15022 11
4	KILLIAN WALTER C & FRANCES P O BOX 35 BEATTY, OR 97621	Missing Owner Information	\$0	295-347

2009 Land Information (Unedited and Uncertified)

ID	Type	Acres	Sq Ft	Market Value
L1	HMS - HOMESITE	1.00		\$7,690
L2	80U551 - 80U551 [FARM USE]	79		\$96,110
L3	ONS - ONSITE LAND [FARM USE]			\$14,390
TOTAL				\$118,190

Permits

#	Permit Number	Type	Issue Date	Appraiser	Check Date	% Complete	Active
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INFORMATION SUBJECT TO DISCLAIMERS

If you have questions, comments, or suggestions regarding this site, please send e-mail to the Assessor.

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GRANTOR'S NAME AND ADDRESS:

Steve H. Killian
3815 Bishop Street
Klamath Falls, OR 97603Grantee's NAME AND ADDRESS:
Steve H. & Rozalia M. Killian3815 Bishop Street
Klamath Falls, OR 97603
ATTORNEY RECORDING, RETURN TO:
GranteesUNLESS A CHANGE IS REQUESTED,
SEND TAX STATEMENTS TO:
Grantees

RECAPITULATE AND SALE DEED, STATUTORY FORM

STEVE H. KILLIAN, Grantor, conveys to STEVE H. KILLIAN and ROZALIA M. KILLIAN, Husband and Wife, Grantees, the following described real property, such real property being described on Exhibit A, attached hereto and incorporated by this reference herein as if fully set forth

Subject to encumbrances, contracts and / or liens for irrigation and drainage, reservations, restrictions, easements, rights of way of record and those apparent on the land.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

THE TRUE AND ACTUAL CONSIDERATION paid for this transfer, stated in terms of dollars, is \$-0-. However, the actual consideration consists of or includes other property or value given or promised which is the whole consideration, being for estate planning purposes so as to create a tenancy by the entirety as between the Grantees.

Dated this 27th day of May, 2003.


STATE OF OREGON / County of Klamath) ss.

PERSONALLY APPEARED BEFORE ME the above-named STEVE H. KILLIAN, the 27th day of May, 2003, and acknowledged the foregoing instrument to be his voluntary act and deed.



Vivienne J. Mustard
NOTARY PUBLIC FOR OREGON

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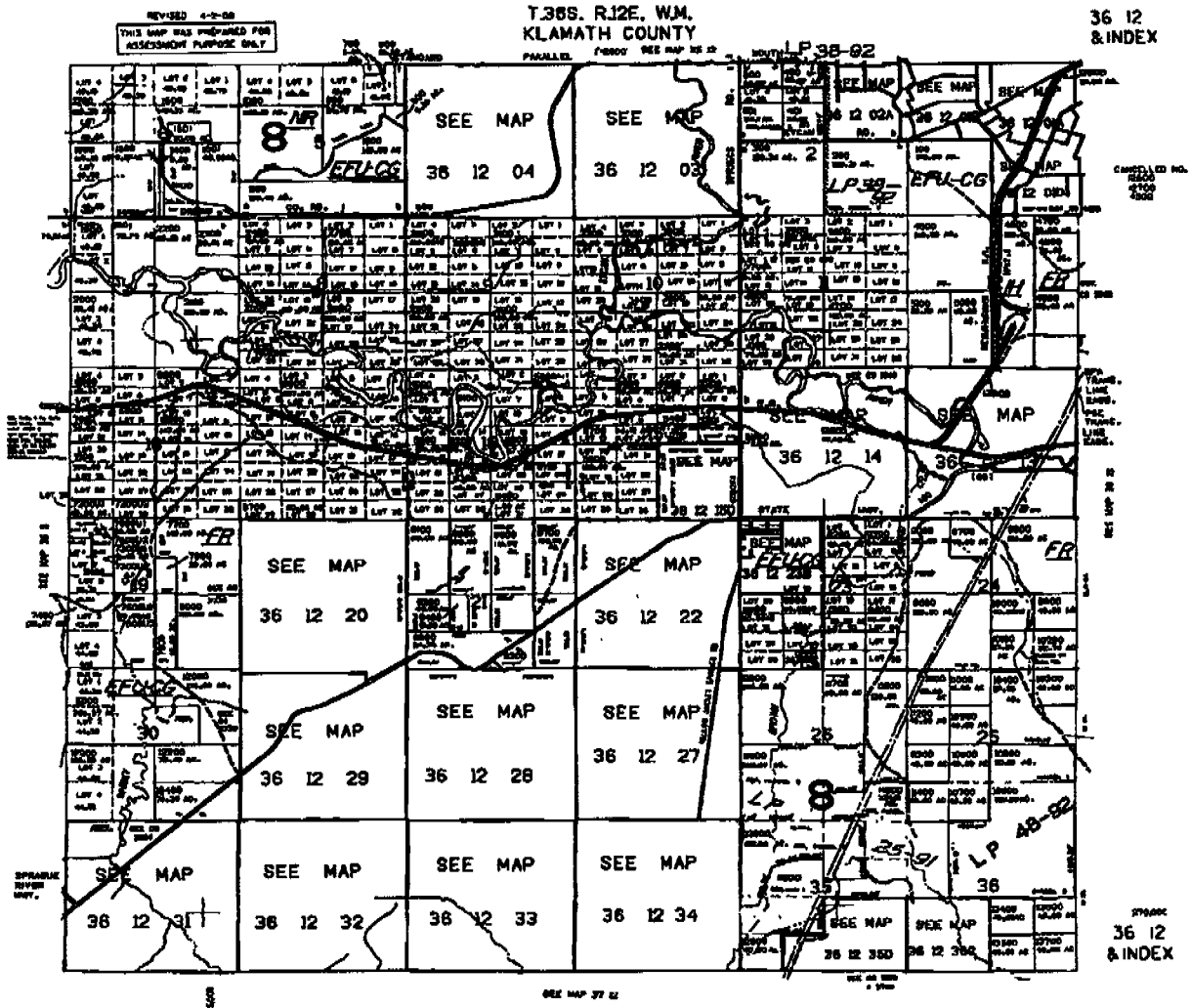
EXHIBIT A

- I. REAL PROPERTY: Certain farmland and improvements located near Beatty, Oregon, and legally described as follows, to-wit:

Township 36 South, Range 12 East of the Willamette Meridian,
Section 12: SW¼

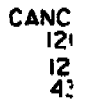
TOGETHER WITH all pumps, motors and other irrigation equipment
now hereafter used with said property, which are hereby
declared appurtenant thereto

TOGETHER WITH all rights granted by that certain EASEMENT AGREEMENT
dated the 10th day of January, 1966, and recorded January 11, 1966,
in Volume 66 at page 241, Deed Records of Klamath County, Oregon.



AmeriTitle

THIS SKETCH IS MADE SOLELY FOR THE
PURPOSE OF ASSISTING IN LOCATING
CERTAIN PREMISES AND NO LIABILITY IS
ASSUMED FOR VARIATIONS IF ANY, IN
DIMENSIONS AND LOCATIONS ASCERTAINED
BY ACTUAL SURVEY



ATTACHMENT B

Legal Description of the Area of Control within the Property

JOHN HEATON P.L.S.


TRU SURVEYING, INC. LINE
2333 SUMMERS LANE
KLAMATH FALLS, OREGON 97603
PHONE: (541) 884-8691

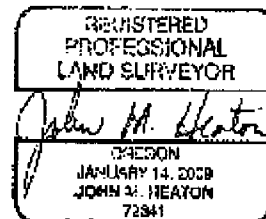


JULY 20, 2009
LEGAL DESCRIPTION

LEGAL DESCRIPTION OF A PORTION OF THE SW1/4 OF SECTION 12, T36S, R12EWM,
KLAMATH COUNTY OREGON; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING THE EASTERLY 700 FEET OF THE SOUTHERLY 700 FEET OF THE SW1/4 OF SAID
SECTION 12, T36S, R12EWM, KLAMATH COUNTY, OREGON.


JOHN M. HEATON P.L.S. 72841



RENEWAL DATE: 6-30-11

Tru-Line Surveying, Inc. • 2333 Summers Lane, Klamath Falls, OR, 97603
Fax: (541) 882-3790
www.trulinesurvey.com