

2014-005833

Klamath County, Oregon



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06/03/2014 08:15:08 AM

Fee: \$77.00

**MATERIALS SOURCE EASEMENT DEED**

THIS DEED, made this 12<sup>th</sup> day of MAY, 2014, by and between The **UNITED STATES OF AMERICA**, acting by and through the **DEPARTMENT OF TRANSPORTATION, Federal Highway Administration**, hereinafter referred to as "Department", and the **STATE OF OREGON**, by and through its **DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as "Grantee":

**WITNESSETH:**

WHEREAS, Grantee has filed application under the provisions of the Act of Congress of August 27, 1958, as amended (23 U.S.C. Section 317) for use as a materials source of certain Federal land under the jurisdiction of the Department of the Interior - Bureau of Land Management (Federal Land Management Agency) in the State of Oregon, which land has been appropriated by the Department, and

WHEREAS, the Federal Highway Administrator, pursuant to delegation of authority from the Secretary of Transportation, has determined that an easement over the land covered by the application is reasonably necessary for a materials source to be used in connection with the construction and reconstruction of the Klamath Falls - Lakeview Highway, Dairy Bonanza Highway, Klamath Falls - Malin Highway, Midland Highway, and the South Klamath Falls Highway Corridors; and

WHEREAS, the Department of the Interior, acting by and through the Bureau of Land Management, in its consent to the appropriation of the Federal land, has agreed to the transfer by the Department of an easement on, over, across, in, and upon the land to Grantee;

NOW THEREFORE, the Department, as authorized by law, and in compliance with all requirements imposed by or pursuant to Title 49 CFR, Department of Transportation, Subtitle A, Office of Secretary, Part 21, nondiscrimination in federally-assisted programs of the Department of Transportation (45 CFR 21.2 - 21.23) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby grant to the Grantee an easement for a materials source on, over, across, in, and upon the following described **23** acres, more or less, Federal land within the County of Klamath, State of Oregon as shown on two (2) sheets of Right of Way Plat dated **December 2013**, and labeled Dairy Quarry Site (the "Site"), marked Exhibit A attached hereto and made part hereof, subject, however, to the following terms and conditions:

RETURN TO  
OREGON DEPARTMENT OF  
TRANSPORTATION  
RIGHT OF WAY SECTION  
4040 FAIRVIEW INDUSTRIAL DR SE, MS#2  
SALEM OR 97302-1142

- (1) The Grantee, in consideration of the conveyance of said land, does hereby covenant and agree as a covenant running with the land, for itself, its successors and assigns, that:

(a) No person shall, on the grounds of race, color, sex, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed.

(b) The GRANTEE shall use said easement and right-of-way so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted programs of the Department of Transportation, effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

In the event of breach of any of the above-mentioned nondiscrimination conditions, the Department shall have the right to re-enter said right-of-way and any facilities thereon and the above-described land and facilities shall thereupon revert to and vest in and become the absolute property of the Department of Transportation and its successors and assigns, as such interest existed prior to this instrument.

- (2) Retention of rights by Federal Land Management Agency to use, or authorize use on any portion of the Dairy Quarry Site for other purposes provided such use would not interfere with or impair the full use and safety of material source area, or be inconsistent with the provisions of Title 23 of the United States Code and in the Federal Highway Administration regulations pursuant thereto. Grantee shall be consulted prior to exercising such rights.
- (3) Operations shall be conducted in a manner consistent with applicable land use plans and Federal, State and local laws with respect to:
- (1) Air and water quality
  - (2) Noise
  - (3) Solid and liquid waste disposal
  - (4) Fisheries, wildlife, and plant habitat
  - (5) Cultural and paleontological resources
- (4) The easement herein authorized shall terminate ten years or sooner, if agreed upon, from the date of the execution of the transfer document by Department to Grantee in the event construction of a highway or use of the material site for highway related purposes has not been initiated during such period.

- (5) The easement is limited to the described area as depicted on the attached Exhibit A plat, dated December 2013 and further identified as File No. 6008108.
- (6) This easement is subject to outstanding valid claims, if any, existing on the date of the execution of this deed by the Department, and the Grantee shall obtain such permission as may be necessary on account of any such claims.
- (7) The Authorized Officer for this easement is the Federal Land Management Agency's Klamath Falls Resource Area Manager.
- (8) Access is limited to use of the existing roads.
- (9) Grantee is responsible for clean-up and proper disposal of all trash and debris dumped on the Site during the term of the easement.
- (10) Grantee shall control noxious weeds within the limits of the Site. Grantee is responsible for consultation with the Authorized Officer and/or local authorities for acceptable weed control methods.
- (11) Use of pesticides shall comply with the applicable Federal and State laws. Pesticides shall only be used in accordance with their registered uses. Prior to the use of pesticides, Grantee shall obtain from the Authorized Officer written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal containers, and any other information deemed necessary by the Authorized Officer prior to such use.
- (12) Reclamation of abandoned excavated areas will occur as mineral materials are removed. Topsoil, removed and stockpiled, and crusher reject and over sized material developed from the active quarrying operation will be used to reclaim the exhausted and abandoned portions of the quarry. Crusher reject and oversize material will be placed in the bottom of the pit, graded and then the pit floor and abandoned cut slopes covered with top soil and seeded with a sterile wheatgrass hybrid.
- (13) When crushing contracts extend to more than one year, all productive topsoil (usually the top 12-18 inches) from all excavations will be stripped, stockpiled, and protected from erosion for use in future reclamation. Do not mix topsoil and sub-soil. Control erosion of stockpiles through appropriate construction design with mulching (using weed free mulch) and/or re-vegetation with a sterile wheatgrass hybrid to facilitate the establishment of native species. Whenever possible do not store topsoil for extended periods (over two years).
- (14) For public safety, no high, steep banks conducive to cave in will be left in the pit area after any gravel removal operation.

- (15) If subsurface cultural resources are unearthed during operations, activity in the vicinity of the cultural resource will cease and the Authorized Officer notified immediately. Pursuant to 43 C.F.R. 10.4, Grantee must notify the Authorized Officer, by telephone, with written confirmation, immediately upon the discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, Grantee must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the Authorized Officer. Grantee will be responsible for the cost of evaluation and any decision as to proper mitigation measures that are made by the Authorized Officer (Federal Land Management Agency).
- (16) Grantee is responsible for informing all persons associated with the project that they will be subject to prosecution for knowingly disturbing Native American Indian shrines, historic and prehistoric archaeology sites, or for collecting artifacts of any kind, including historic items and /or arrowheads from Federal lands pursuant to the 1906 American Antiquities Act (P.L. 59-209; 34 Stat. 225, 16 U.S.C. 432-433), the Archaeological Resources Protection Act of 1979 (P.L. 96-95; 93 Stat. 721, 16 U.S.C. 470ee as amended), and/or other federal laws.
- (17) Excavation shall take place no closer than 20 feet to any fence or boundary line in the area or 50 feet to any power-line or road.
- (18) All highwalls, benches, and other cuts shall conform to the requirements of Oregon Department of Geology and Minerals Industries, and the U.S. Mine safety and Health Administration.
- (19) All materials removed under the authority of this easement must be used on federal aid highways.
- (20) Federal Land Management Agency reserves the right to issue free use minerals materials permits to third parties for removal of mineral materials from the Site when the Federal Land Management Agency determines: 1) the third party will not interfere with the Grantee's use of the Site and 2) the material removed under the free use permit is not used on federal aid highways. At a minimum, any third party issued a permit for the Dairy Quarry site shall be subject to the same stipulations contained herein. Grantee shall be consulted prior to exercising such rights.
- (21) Grantee shall maintain the easement and highway facilities to acceptable standards of repair, orderliness, neatness, sanitation, and safety.
- (22) When the need for the easement herein granted shall no longer exist and the area has been reasonably rehabilitated to protect the public and the environment, Grantee shall give notice of that fact to the Department and the rights herein granted shall terminate and the land shall immediately revert to the full control of the Secretary of the Department of the Interior or its assigns.

- (23) In the event of a reversion, the Grantee shall be responsible for the protection and maintenance of the Site until such time as the Grantee executes and records a quitclaim deed documenting the termination of the easement and the reversion of title in the United States of America.
- (24) Grantee's obligations under this document are subject to the limitations of Article XI, Section 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300).

IN WITNESS WHEREOF, I, Phillip A. Ditzler, Division Administrator, pursuant to delegations of authority from the Secretary of Transportation and the Federal Highway Administrator, by virtue of authority in me vested by law, have hereunto subscribed my name as of the day and year first above written.

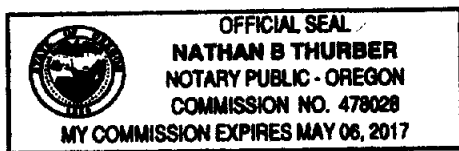
UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

By Phillip A. Ditzler  
Phillip A. Ditzler, Division Administrator

STATE OF OREGON )  
COUNTY OF MARION )

I, Nathan B Thurber, a Notary Public in and for the State of Oregon, do hereby certify that on this 17 day of May, 2014, before me personally appeared Phillip A. Ditzler, Division Administrator, Federal Highway Administration, and acknowledged that the foregoing instrument bearing date of 12 May, 2014, was executed by him in his official capacity and by authority in him vested by law, for the purposes and intents in said instrument described and set forth, and acknowledged the same to be his free act and deed as Division Administrator, Federal Highway Administration.

Witness my hand and seal this 17 day of May, 2014.



Nathan B Thurber  
Notary Public for Oregon

My Commission expires May 06, 2017

Under 23 CFR 710.601(f), this document is legally sufficient to transfer a real property interest to Grantee.

[Signature]  
Assistant Attorney General

Date 5-6-2014

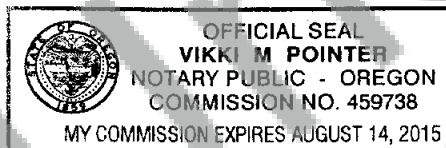
In compliance with the conditions set forth in the foregoing deed, the Grantee certifies, and by the acceptance of this deed, accepts the easement over certain land herein described and agrees for itself, its successors and assigns, forever to abide by the conditions set forth in said deed.

STATE OF OREGON, by and through its  
DEPARTMENT OF TRANSPORTATION

By *PKCg*  
Rick Crager, State Right of Way Manager

STATE OF OREGON )  
COUNTY OF MARION )

May 9, 2014. Personally appeared Rick Crager, who being sworn,  
stated that he is the State Right of Way Manager for the State of Oregon, Department of Transportation,  
and that this document was voluntarily signed on behalf of the State of Oregon by authority delegated to  
him. Before me:



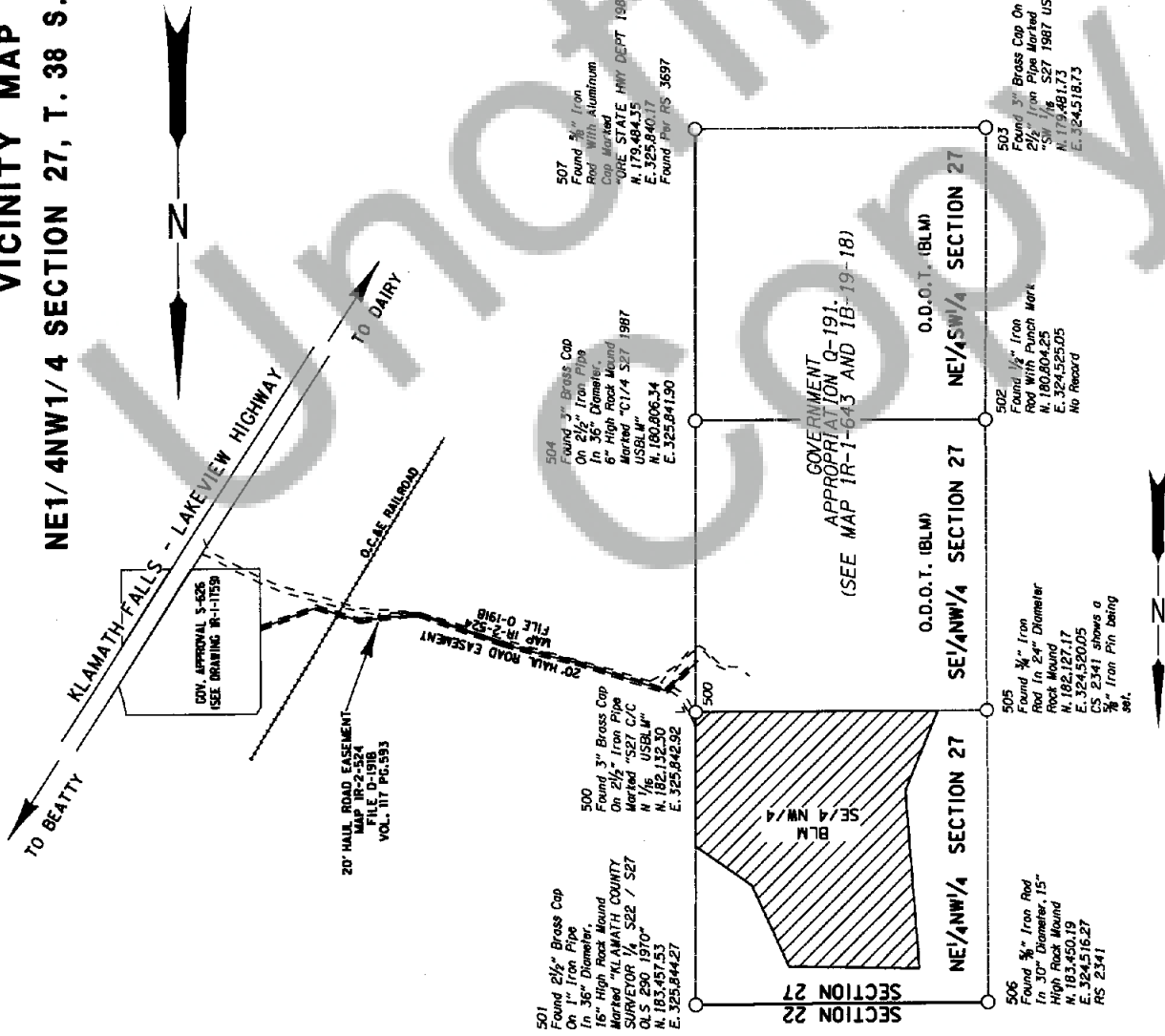
*Vikki M. Pointer*  
Notary Public for Oregon

My Commission expires 8/14/15



# VICINITY MAP

NE1/4NW1/4 SECTION 27, T. 38 S., R. 11 1/2 E., W.M.



I, Tom Lauer, P.E., state that I am Chief Engineer for the Oregon State Department of Transportation, hereinafter designated the "applicant"; that the survey of the right of way of the Dairy Quarry Site Section of the Klamath Falls-Lakeview Highway, was made under the Department's authority; and that the survey is accurately represented on this map.

DEPARTMENT OF TRANSPORTATION  
Applicant

By Tom Lauer, P.E.  
Chief Engineer

I, Rick Crager, do hereby certify that I am the State Right of Way Manager for the Oregon State Department of Transportation, hereinafter designated the "applicant"; that Tom Lauer who subscribed the foregoing affidavit is the Chief Engineer, for the applicant; that the survey of the right of way for the Dairy Quarry Site, a portion of which is represented on this map, was made under the authority of the applicant as the approximate final location of the right of way of the Dairy Quarry Site Section; and that this map has been prepared to be filed for the approval of the Secretary of the Interior, in order that applicant may obtain the benefits of Section 317 Public Law 85-767 (72 Stat. 885-916) approved August 27, 1958.

DEPARTMENT OF TRANSPORTATION

By Rick Crager  
State Right of Way Manager

Accepted By: B.L.M. SUPERVISOR

Date: \_\_\_\_\_

OREGON DEPARTMENT OF TRANSPORTATION

REGION 4, SURVEY AND  
RIGHT OF WAY SECTION

DAIRY QUARRY SITE

KLAMATH FALLS - LAKEVIEW HIGHWAY

KLAMATH COUNTY, OREGON

SEE DRAWINGS IR-4-1190, IR-1-643 AND IR-19-18

DECEMBER 2013

FILE NO. 6008108

BUREAU OF LAND MANAGEMENT

RIGHT OF WAY GRANT

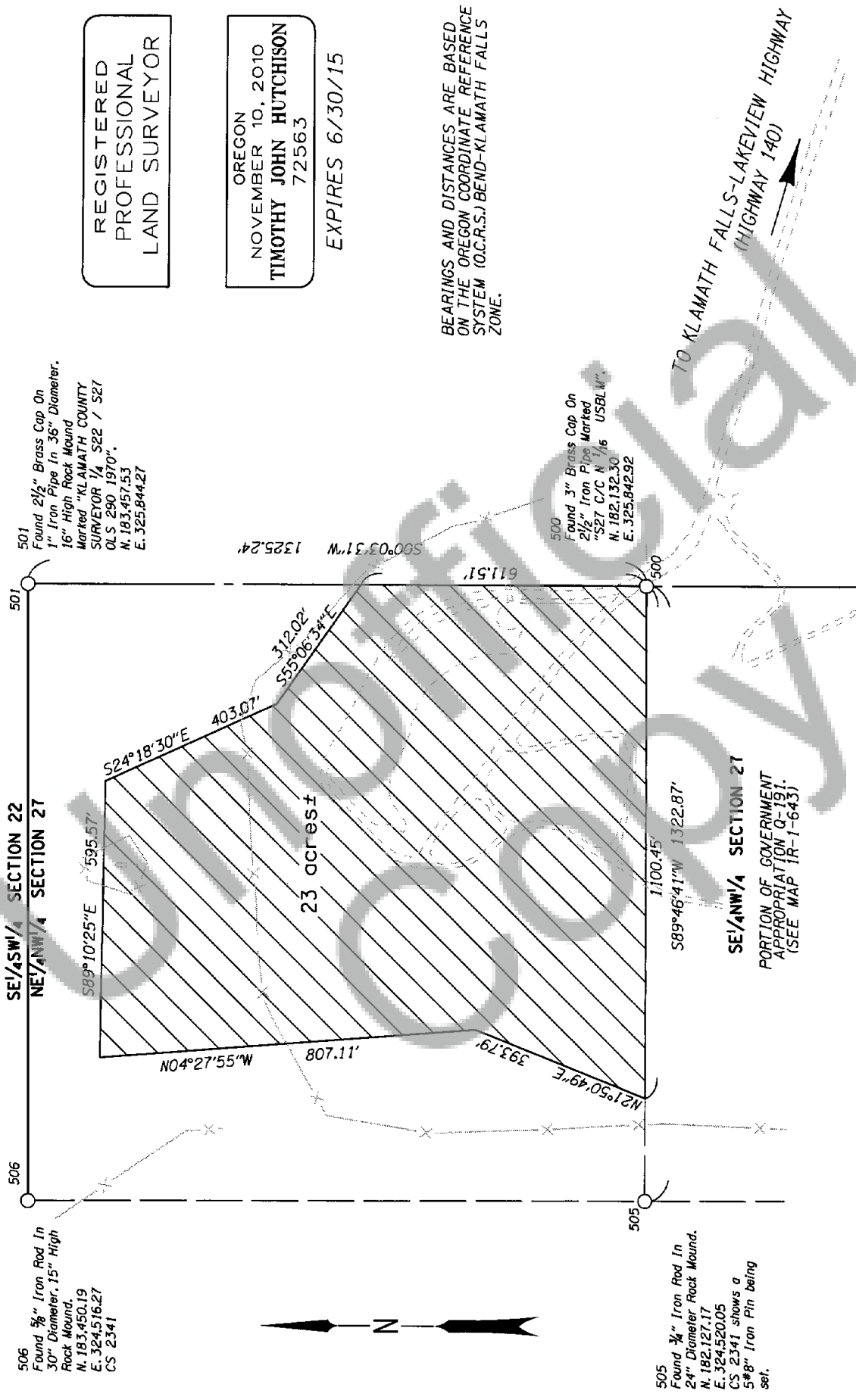
TO BE ACQUIRED  
23 Acres±

SCALE 1" = 800'

800 400 0 800  
FEET

EXHIBIT A SHEET 1 OF 2

NE1/4NW1/4 SECTION 27, T. 38 S., R. 11 1/2 E., W.M.



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
NOVEMBER 10, 2010  
TIMOTHY JOHN HUTCHISON  
72563  
EXPIRES 6/30/15

BEARINGS AND DISTANCES ARE BASED  
ON THE OREGON COORDINATE REFERENCE  
SYSTEM (O.C.R.S.) BEND-KLAMATH FALLS  
ZONE.


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|---|---|--|---|--|
| <br>OREGON DEPARTMENT OF TRANSPORTATION<br>REGION 4, SURVEY AND<br>RIGHT OF WAY SECTION<br>RIGHT OF WAY PLAT | DAIRY QUARRY SITE<br>KLAMATH FALLS - LAKEVIEW HIGHWAY<br>KLAMATH COUNTY, OREGON |  | BUREAU OF LAND MANAGEMENT<br>RIGHT OF WAY GRANT                     |  |
|   | SEE DRAWINGS IR-4-1190, IR-1-643 AND IR-19-18<br>DECEMBER 2013                  |  | TO BE ACQUIRED<br>23 Acres<br>SCALE 1" = 300'<br>300 150 0 300 FEET |  |

EXHIBIT A SHEET 2 OF 2