

2015-001441

Klamath County, Oregon



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02/18/2015 11:55:17 AM

Fee: \$87.00

HIGHWAY EASEMENT DEED

THIS DEED, made this 2nd day of February, 20 15, 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 the right-of-way of a highway over certain land owned by the United States in the State of Oregon, which is under the jurisdiction of the Department of Agriculture - Forest Service (Federal Land Management Agency); and,

WHEREAS, this transfer is further authorized under the provisions of the Act of Congress approved October 15, 1966 [80 Stat. 931, 937, Section 6 (a)(1)(A)]; 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 right-of-way for the **Klamath Falls - Lakeview** Highway; and,

WHEREAS, the Department of Agriculture, acting by and through the Forest Service, has agreed to the transfer by the Department of an easement over the land to the Grantee.

NOW THEREFORE, the Department as authorized by law, does hereby grant to the Grantee a nonexclusive easement for right-of-way for the construction, reconstruction, operation and maintenance of a highway, and use of the space above and below the established grade line of the highway pavement for highway purposes on, over, across, in, and upon the following described land of the United States within the **Fremont-Winema National Forest**, County of Klamath, State of Oregon as shown on four (4) sheets of right-of-way plats, dated February 2012, marked Exhibit A, attached hereto and made a 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) This easement is subject to outstanding valid claims, if any, existing on the date of the execution of this document by the Department, and the Grantee shall obtain such permission as may be necessary on account of any such claims.
- (2) The easement shall be nonexclusive with the Forest Service retaining all rights to issue authorizations for uses not inconsistent or incompatible with highway use. The Forest Service shall consult with the Grantee on appropriate stipulations to protect the roadway facility prior to the issuance of such authorization.
- (3) The Grantee and the Forest Supervisor shall make determination as to the necessity for archeological and paleontological reconnaissance and salvage within the right-of-way, and such reconnaissance and salvage to the extent determined necessary because of construction of the highway facility is to be undertaken by Grantee in compliance with the acts entitled An Act for the Preservation of American Antiquities, approved June 8, 1906, (34 Stat. 225, 16 U.S.C. 432-433), the Archaeological Resources Protection Act of 1979 as amended (93 Stat. 721, 16 U.S.C. 470aa-470mm), the "Native American Graves Protection and Repatriation Act" as amended (104 Stat.3048, 75 U.S.C. 3001-3013), and State laws where applicable.
- (4) The easement herein granted is limited to use of the described right-of-way and the space above and below the established grade line of the highway pavement for the purpose of construction, reconstruction, operation, and maintenance of a highway, and does not include the grant of any rights for non-highway purposes or facilities: Provided, That the right of the Forest Service to use or authorize the use of any portion of the right-of-way for non-highway purposes shall not be exercised when such use would be inconsistent with the provisions of Title 23 of the United States Code and of the Federal Highway Administration regulations issued pursuant thereto or would interfere with the free flow of traffic or impair the full use and safety of the highway, and, in any case, the Grantee and the Federal Highway Administration shall be consulted prior to the exercise of such rights; and Provided Further, that nothing herein shall preclude the Forest Service from locating National Forest and other Department of Agriculture information signs on the portions of the right-of-way outside of maintained clearing limits.
- (5) The design and construction of the highway project situated on this right-of-way will be in accordance with the provision of Title 23, United States Code – Highway, and amendments; the Regulations for the Administration of Federal Aid for Highways, effective May 11, 1960, and amendments; and established procedures for Federal-Aid projects, including the requirements of Title 23, Code of Federal Regulations, Part 771, and the construction specifications of the State Highway Department as approved by the Federal Highway Administration for use on Federal-Aid Projects.

The Forest Supervisor will be provided an opportunity to review plans relative to effects, if any, that the project work as planned will have upon adequate protection and utilization of the land traversed by the right-of-way and adjoining land under the administration of the Forest Service for the purposes for which such land is being administered. Those features of design, construction, and maintenance of the highway facility and of use of the right-of-way that would have effect on the protection and utilization of the land under the administration of the Forest Service are to be mutually agreed upon by the Forest Supervisor and the Grantee by conference or other communication during the preparation of the plans and specification for each project, and the plans shall be revised, modified, or supplemented to meet the approval of the Forest Supervisor, or when deemed appropriate, supplemented by written stipulation between the Forest Supervisor and Grantee, prior to start of construction.

The final design and the construction specifications for any highway construction project on the right-of-way will be presented to the Forest Supervisor for approval; construction shall not begin until such approval is given. Provided, That if it is subsequently deemed necessary that the approved plans, specifications, or stipulation be amended or supplemented, any amendment or supplement shall be approved by the Forest Supervisor and the Grantee before being placed into effect.

- (6) Consistent with highway safety standards, the Grantee shall:
- (a) Protect and preserve soil and vegetative cover and scenic and esthetic values on the right-of-way outside of reconstruction limits.
 - (b) Provide for the prevention and control of soil erosion within the right-of-way and adjacent lands that might be affected by the construction, operation, or maintenance of the highway, and shall vegetate and keep vegetated with suitable species all earth cut or fill slopes feasible for revegetation or other areas on which ground cover is destroyed where it is deemed necessary during a joint review between the Forest Supervisor and the Grantee prior to completion of the highway and the Grantee shall maintain all terracing, water bars, leadoff ditches, or other preventive works that may be required to accomplish this objective. This provision shall also apply to slopes that are reshaped following slides which occur during or after reconstruction.
- (7) The Grantee shall establish no borrow, sand, or gravel pits; stone quarries, permanent storage areas; sites for highway operation and maintenance facilities, camps, supply depots, or disposal areas within the right-of-way, without first obtaining approval of the Forest Supervisor.
- (8) The Grantee shall maintain the right-of-way free of noxious weeds that have been identified in Federal, State, County, or local laws, regulations or orders. The Grantee shall control noxious weeds or other vegetation by means of chemicals only after consultation with the Forest Service. Consultation must address the time, method, chemicals, and the exact portion of the right-of-way to be chemically treated.

- (9) The Forest Service retains the right to any merchantable timber and all other resource materials not specifically appropriated, within the boundaries of the appropriation. The Grantee will notify the Forest Service which timber or other resource materials within the appropriation are scheduled to be removed and the Forest Service will determine whether a timber sale or other authorization for removal is appropriate.
- (10) The Grantee shall be responsible for the removal and cleanup of hazardous spills originating on the highway right-of-way, including those that extend beyond the boundaries of the appropriated right-of-way to adjacent National Forest System lands and resources.
- (11) The Grantee will notify the Forest Service if the need for the highway easement no longer exists. Upon notification the Forest Service will either (1) accept the land as is, or (2) if a roadway or other improvements are in place and are to be removed, identify rehabilitation standards that the Grantee must complete. Upon notice of Forest Service's intent to accept the land as-is, or upon completion of the rehabilitation and acceptance of same by the Forest Service, the Grantee will notify the Department, in writing, of the relinquishment. Upon receipt of this notice of relinquishment by the Department, the lands appropriated will immediately revert to the Forest Service and a formal relinquishing document will be prepared.
- (12) In the event of a reversion, the Grantee shall be responsible for the protection and maintenance of the easement of right-of-way 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.
- (13) The Grantee, in consideration of the grant of this easement, 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 Agriculture and its successors and assigns, as such interest existed prior to this instrument.
- (14) 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.

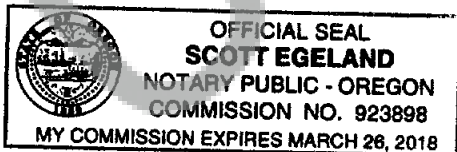
UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

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

STATE OF OREGON)
)
COUNTY OF MARION)

I, Scott Egeland, a Notary Public in and for the State of Oregon, do hereby certify that on this 2nd day of February, 20 15, before me personally appeared Phillip A. Ditzler, Division Administrator, Federal Highway Administration, and acknowledged that the foregoing instrument bearing date of February 2, 20 15, 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 2nd day of February, 20 15.



Scott Egeland
Notary Public for Oregon

My Commission expires 3/28/2018

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

[Signature]
Assistant Attorney General

Date 12-24-2014

In compliance with the conditions set forth in the foregoing deed, the Grantee certifies, and by the acceptance of this deed, accepts the right-of-way 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 Joseph A. Gray
Joseph A. Gray, State Right of Way Manager

STATE OF OREGON)
)
COUNTY OF MARION)

January 9, 2015. Personally appeared Joseph A. Gray, 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:

[Signature]

Notary Public for Oregon

My Commission expires Nov. 3, 2018

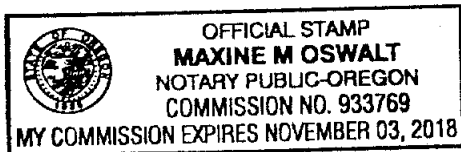


EXHIBIT A
RIGHT OF WAY GRANT

OREGON DEPARTMENT OF TRANSPORTATION
LOCATED LINE

OR140: RITTER RD - DEER RUN RD (BLY MTN) SEC.

KLAMATH FALLS - LAKEVIEW HIGHWAY
FILE NO. 7561128

KLAMATH COUNTY, OREGON

FEBRUARY, 2012

RIGHT OF WAY PLATS

U.S.D.A.
FOREST SERVICE
PACIFIC NORTHWEST REGION
FREMONT-WINEMA NATIONAL FORESTS
NATIONAL FOREST SYSTEM LANDS

T. 37 S., R. 11 E., W.M.

SE 1/4 NE 1/4 SECTION 2 : 0.55 Acres±
NE 1/4 SE 1/4 SECTION 2 : 6.42 Acres±
SE 1/4 SE 1/4 SECTION 2 : 4.51 Acres±
SW 1/4 SE 1/4 SECTION 2 : 1.08 Acres±
NE 1/4 NE 1/4 SECTION 11 : 3.33 Acres±
NW 1/4 NE 1/4 SECTION 11 : 4.18 Acres±
SW 1/4 NE 1/4 SECTION 11 : 6.76 Acres±
NW 1/4 SE 1/4 SECTION 11 : 0.74 Acres±
NE 1/4 SW 1/4 SECTION 11 : 3.18 Acres±
SE 1/4 SW 1/4 SECTION 11 : 6.66 Acres±
SW 1/4 SW 1/4 SECTION 11 : 4.22 Acres±

TOTAL RIGHT OF WAY : 41.63 Acres±

COORDINATES, VERTICAL DATUM, HORIZONTAL DATUM
AND BEARINGS ARE BASED ON KLAMATH COUNTY
SURVEY NUMBER 7047 DATED DECEMBER 2, 2004.

RIGHT OF WAY EXTENDS FROM AND
TERMINATES AT TRUE PROPERTY LINE

RIGHT OF WAY WIDTHS ARE VARIABLE

LEGEND

- Township or Range Line
- Section Line
- Quarter Section Line
- Sixteenth Section Line
- Existing Property Line
- Proposed Right of Way and Access Control Line
- ☆ Found GPS Station As Noted
- Found Monument As Noted
- ▨ Right of Way Grant Area

Accepted By:
Forest Engineer
Dennis J. Scott

Signature

Date

SHEET 1 OF 4

Reviewed By:
Rodney F. Callaghan
Forest Land Surveyor

Signature

Date

Reviewed By:
Amanda Warner-Thorpe
Assistant Forest Engineer

Signature

Date

SECTION 11, T. 37 S., R. 11 E., W.M.

NATIONAL FOREST SYSTEM LANDS
FREMONT - WINEMA NATIONAL FORESTS

NE 1/4 SW 1/4, SEC. 11
3.18 Acres

SW 1/4 SW 1/4, SEC. 11
4.22 Acres

NW 1/4 SE 1/4, SEC. 11
0.74 Acres

SE 1/4 SW 1/4, SEC. 11
6.66 Acres

FREMONT - WINEMA NATIONAL FORESTS

NOTE: OLD RIGHT OF WAY GRANT LIES WITHIN NEW RIGHT OF WAY GRANT.

OR140: RITTER RD - DEER RUN RD (BLY MTN) SEC.

KLAMATH FALLS - LAKEVIEW HIGHWAY
KLAMATH COUNTY, OREGON

SEE DRAWING IIB-6-6, PART 3 OF 4 AND 4 OF 4

FEBRUARY, 2012

RIGHT OF WAY PLAT
Description of Land:

NW 1/4 SEC. 11, T. 37 S., R. 11 E., W.M., 0.74 Acres ±
SW 1/4 SEC. 11, T. 37 S., R. 11 E., W.M., 3.18 Acres ±
NE 1/4 SEC. 11, T. 37 S., R. 11 E., W.M., 1.66 Acres ±
SE 1/4 SEC. 11, T. 37 S., R. 11 E., W.M., 4.22 Acres ±

RIGHT OF WAY GRANT AREA: 14.80 Acres

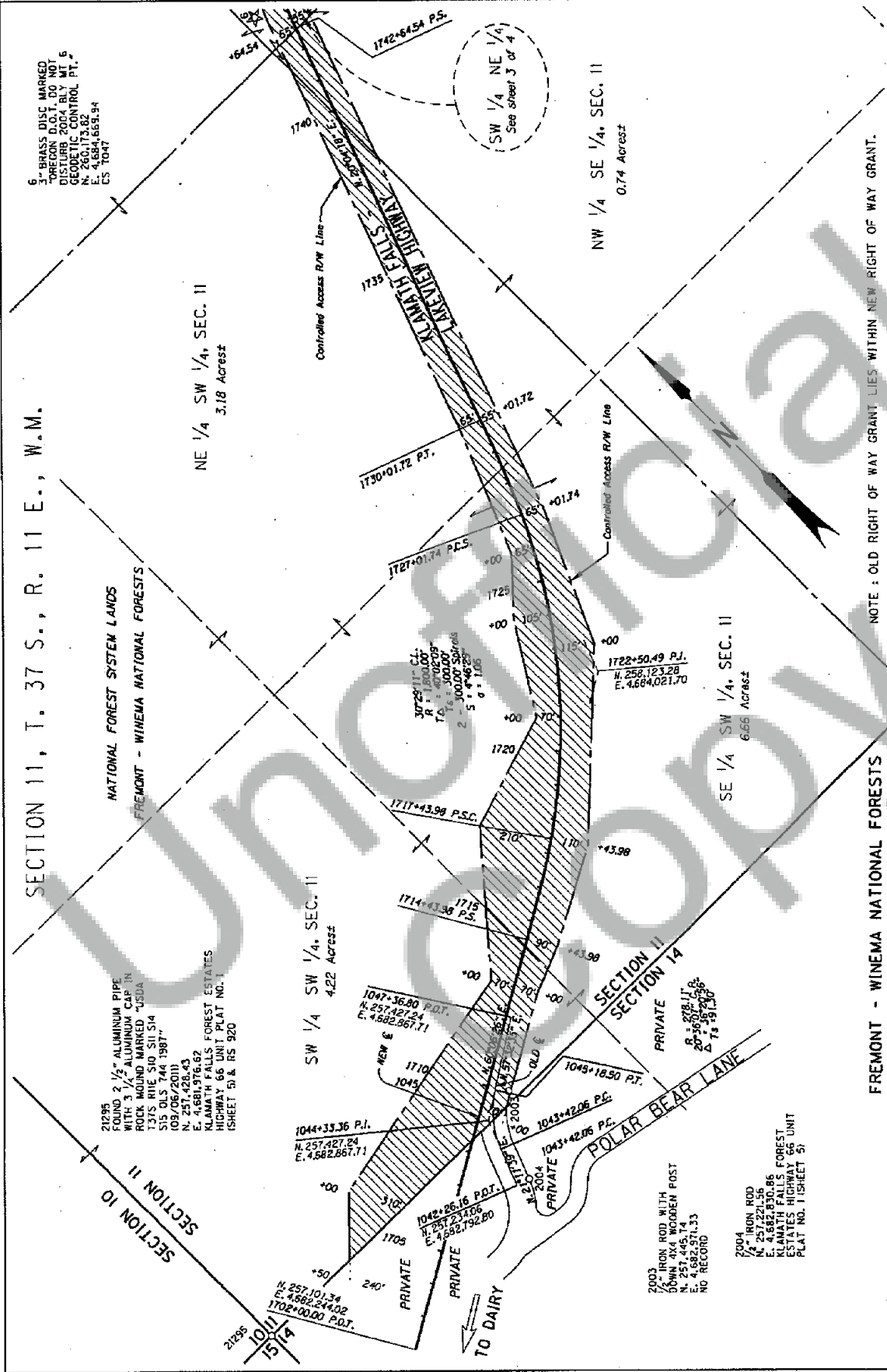
RIGHT OF WAY GRANT

TOTAL RIGHT OF WAY: 41.63 Acres ±

AREA TO BE ACQUIRED
EXHIBIT A

SHEET 2 OF 4

SCALE 1" = 400'



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N. 260.247.86
E. 4,684.140.79
R.P. TO THE P.I.
FOR OLD ALIGNMENT
OREGON DEPARTMENT OF
TRANSPORTATION FIELD BOOK 990

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FOR OLD ALIGNMENT
OREGON DEPARTMENT OF
TRANSPORTATION FIELD BOOK 990

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FREMONT - WINEMA NATIONAL FORESTS

NOTE : OLD RIGHT OF WAY GRANT LIES WITHIN NEW RIGHT OF WAY GRANT.

OR140: RITTER RD - DEER RUN RD (BLY MTN) SEC.

KLAMATH FALLS - LAKEVIEW HIGHWAY
KLAMATH COUNTY, OREGON

SEE DRAWING IIB-6-6, PART 3 OF 4 AND 4 OF 4

FEBRUARY, 2012

RIGHT OF WAY PLAT
Description of Land:

SE	1/4	SEC. 2, T. 37 S., R. 11 E., W.M.; 4.51 Acres ±
SW	1/4	SEC. 2, T. 37 S., R. 11 E., W.M.; 1.08 Acres ±
NE	1/4	SEC. 11, T. 37 S., R. 11 E., W.M.; 3.33 Acres ±
NW	1/4	SEC. 11, T. 37 S., R. 11 E., W.M.; 4.18 Acres ±
SE	1/4	SEC. 11, T. 37 S., R. 11 E., W.M.; 5.76 Acres ±
SW	1/4	SEC. 11, T. 37 S., R. 11 E., W.M.; 5.76 Acres ±
NE	1/4	SEC. 11, T. 37 S., R. 11 E., W.M.; 5.76 Acres ±
NW	1/4	SEC. 11, T. 37 S., R. 11 E., W.M.; 5.76 Acres ±

RIGHT OF WAY GRANT AREA: 19.86 Acres ±

RIGHT OF WAY GRANT

TOTAL RIGHT OF WAY: 41.63 Acres ±

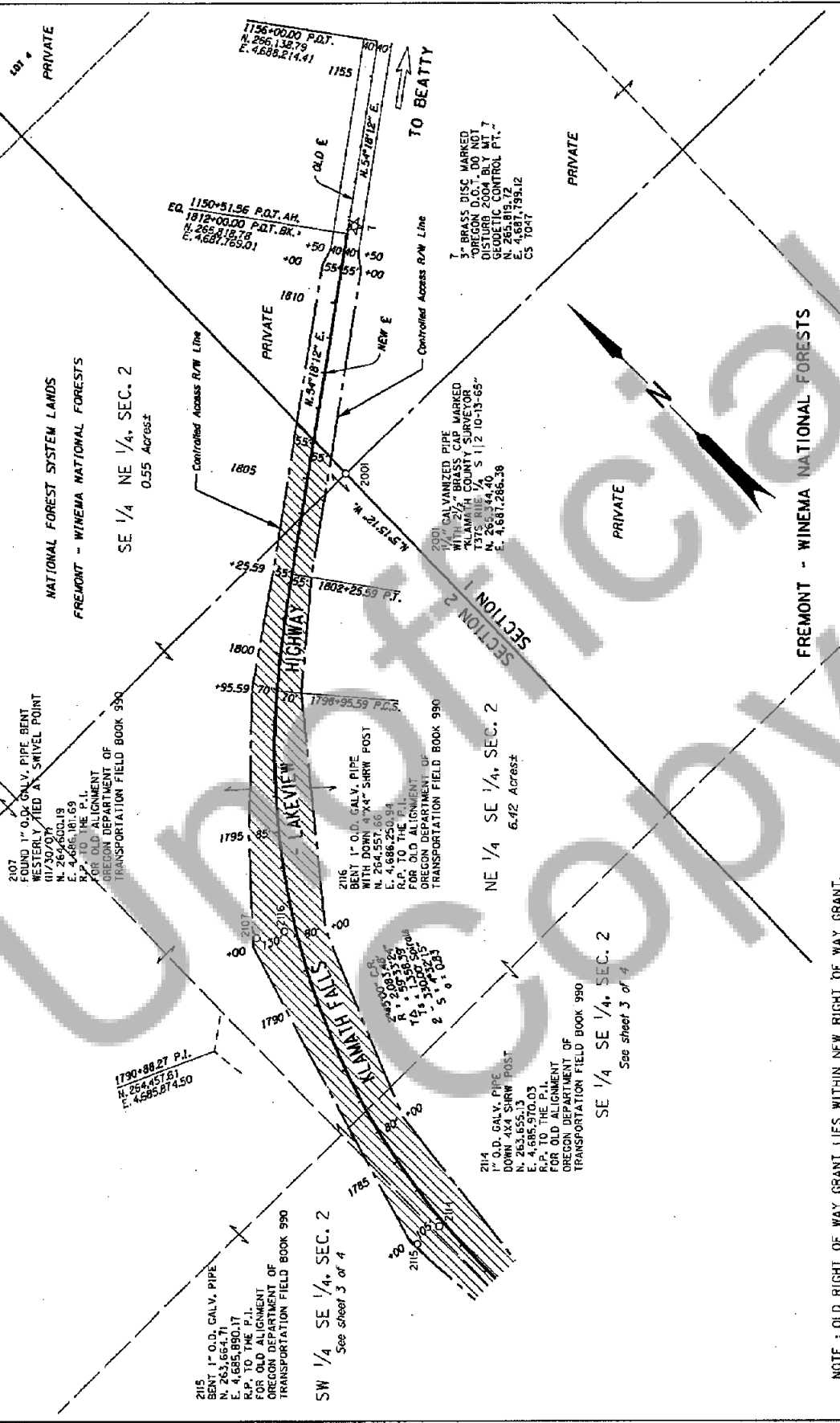
AREA TO BE ACQUIRED
EXHIBIT A

SHEET 3 OF 4

SCALE 1" = 400'



SECTION 2, T. 37 S., R. 11 E., W.M.



NOTE : OLD RIGHT OF WAY GRANT LIES WITHIN NEW RIGHT OF WAY GRANT.

OR140: RITTER RD - DEER RUN RD (BLY MTN) SEC.

KLAMATH FALLS - LAKEVIEW HIGHWAY
KLAMATH COUNTY, OREGON

SEE DRAWING 11B-6-6, PART 3 OF 4 AND 4 OF 4

FEBRUARY, 2012

RIGHT OF WAY PLAT
Description of Land:

SE 1/4 NE 1/4 SEC. 2, T. 37 S., R. 11 E., W.M., 0.55 Acres ±
NE 1/4 SE 1/4 SEC. 2, T. 37 S., R. 11 E., W.M., 6.92 Acres ±

RIGHT OF WAY GRANT AREA: 6.92 Acres ±

RIGHT OF WAY GRANT
TOTAL RIGHT OF WAY: 47.63 Acres ±

AREA TO BE ACQUIRED
EXHIBIT A
SHEET 4 OF 4

SCALE 1" = 400'

