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HIGHWAY EASEMENT DEED

THIS DEED, made this 20th day of February, 2015, 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, the 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 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 right-of-way for the Klamath Falls - Lakeview Highway; 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 over 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 right-of-way, for the construction, 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 Federal land within the County of Klamath, State of Oregon as shown on three (3) sheets of right-of-way plats, dated November 2011 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) Construction of the highway facility is to be undertaken by the Grantee in compliance with the Act entitled "An Act for the Preservation of American antiquities" approved June 8, 1906 (34 Stat. 225, 16 U.S.C. 432-433), and State laws where applicable.
- 3) This easement granted herein shall terminate ten (10) years from the date of the execution of this document by the Department in the event construction of a highway on the right-of-way is not started during such ten (10) year period.
- 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, 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 Bureau of Land Management 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 Bureau of Land Management from locating Department of the Interior information signs on the portions of the right-of-way outside of construction clearing limits.
- 5) The design and reconstruction of the highway project situated on this right-of-way will be in accord with the provisions of Title 23, United States Code – Highways, and amendments; the provisions of the Federal-Aid Highway Program Manual issued by the Federal Highway Administration; the construction specifications of the State highway department as approved by the Federal Highway Administration for use on Federal-aid project.
- 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 construction 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. The Grantee shall maintain all terracing, water bars, lead-off 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 construction.
- 7) The Grantee shall establish no borrow, sand, or gravel pits, stone quarry, or permanent storage areas, sites for highway operation and maintenance facilities, camps, supply depot or disposal areas within the right-of-way unless shown on approved construction plans without first obtaining approval.
- 8) The Grantee shall maintain the right-of-way and highway facilities to acceptable standards of repair, orderliness, neatness, sanitation, and safety.

- 9) The Grantee shall maintain the right-of-way clearing by means of chemicals only after written and/or verbal approval has been given by the Department after consultation with the Bureau of Land Management. Application for such approval may be in writing and specify the time, methods, chemicals, and the exact portion of the right-of-way to be chemically treated.
- 10) The Federal Land Management Agency reserves title to all trees, now or hereafter growing, standing or down within the above described easement, subject to the right of Grantee to clear brush and fell any trees within the easement for the construction, operation and maintenance of a road, provided that such clearing and felling shall be done in accordance with the instructions of the authorized officer of the Federal Land Management Agency, including specifications for the bucking and decking of trees of commercial value, the disposal of slash, and the protection of the environment.
- 11) Grantee shall remove all slash and debris from the easement area.
- 12) There shall be no on-site burning of residual slash or debris.
- 13) All equipment shall operate within the clearing limits of road construction and within the easement area.
- 14) All trees designated for cutting are marked above and below stump height with pink paint as follows and per Federal Land Management Agency Contract number ORL04-C-201400003333.
 - a. 62 Merchantable Ponderosa Pine
 - b. 9 Non-Merchantable Ponderosa Pine
 - c. 87 Juniper
 - d. All vegetative resources in the easement area in excess of the quantity listed above are reserved to the Federal Land Management Agency.
- 15) Grantee shall notify Federal Land Management Agency's authorized officer prior to felling timber or commencing ground-disturbing activities.
- 16) Grantee shall be responsible for controlling the spread of noxious weeds that may be introduced to the project area. To preclude the introduction of noxious weeds, all construction equipment shall be thoroughly cleaned, including the undercarriage, prior to moving into the project area. A pressure washer or steam cleaner shall be used to remove mud, soil, grease, and plant material that may contain weed seeds.
- 17) Grantee shall post "no work zones" to protect archaeological resources or wetland and stream resources adjacent to the permitted impact areas. If subsurface cultural resources are unearthed during operations, activity in the vicinity of the cultural resource will cease, and a Federal Land Management Agency representative notified immediately. Pursuant to 43 C.F.R. 10.4, Grantee must notify the Federal Land Management Agency authorized officer, by telephone, with written confirmation, immediately upon the discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, the project leader/operator/permittee/etc., must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the authorized officer. The Grantee will be responsible for the cost of evaluation and any decision as to proper mitigation measures that are made by the Federal Land Management Agency authorized officer.

- 18) Grantee shall be responsible for informing all persons associated with this 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 Resource Protection Act of 1979 (P.L. 96-95; 93 Stat. 721; 16 U.S.C. 470ee as amended), and/or other federal laws.
- 19) Grantee shall have Klamath Tribal Monitors on hand during all ground-disturbing activities.
- 20) To the extent practicable, comply with all existing and subsequently enacted, issued, or amended Federal laws and regulations, and state laws and regulations applicable to the authorized use.
- 21) Grantee shall restore, re-vegetate, and curtail erosion or conduct any other rehabilitation measure Federal Land Management Agency determines necessary. Grantee shall remove any noxious weeds before and after re-alignment of Route 140, in the areas of the existing roadsides, the future roadsides, and in any disturbed areas with bare ground. Weeds can be manually, mechanically, or chemically treated, as long as the herbicide chemicals used are within the limits of the BLM Klamath Falls Resource Area Integrated Weed Control Plan EA (July 21, 1993).
- 22) Grantee shall ensure that activities in connection with the easement for right-of-way comply with air and water quality standards or related facility citing standards contained in applicable Federal or state law or regulations.
- 23) Grantee shall control or prevent damage to scenic, aesthetic, cultural, and environmental values, including fish and wildlife habitat; public and private property; and public health and safety.
- 24) Grantee shall implement seasonal restrictions and nest site protection for active/occupied raptor nests from human-caused disturbance during the critical nesting period. These seasonal restrictions would vary by species.
 - a) For Bald Eagles and Golden Eagles – Use the Fish and Wildlife Service Bald Eagle management Guidelines. A seasonal restriction period would occur from January 1 through August 31. These guidelines can be found at the following web site:
<http://www.fws.gov/pacific/eagle/NationalBaldEagleManagmentGuidelines.pdf>
 - b) For Osprey – The seasonal restriction would occur from May 1 through August 1 (KFRA RMP) within 660 feet of the nest site.
 - c) For all other raptors, use the latest information on the critical nesting period for the raptor species and implement seasonal restrictions from human-caused disturbance that may result in nest failure or abandonment.
- 25) When the need for the easement herein granted shall no longer exist and the area has been reasonably rehabilitated to protect the public and environment, the Grantee shall give notice of that fact to the Secretary of Transportation and the rights herein granted shall terminate and land shall immediately revert to the full control of the Secretary of the Department of the Interior or assigns.
- 26) 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 revesting of title in the United States of America.

- 27) 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 Transportation and its successors and assigns, as such interest existed prior to this instrument.

- 28) 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.

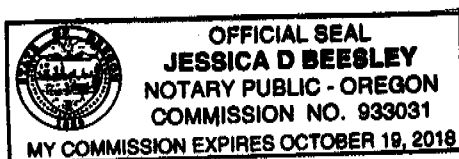
UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

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

STATE OF OREGON)
COUNTY OF MARION)

I, Jessica D. Beesley, a Notary Public in and for the State of Oregon, do hereby certify that on this 20th 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 20, 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.

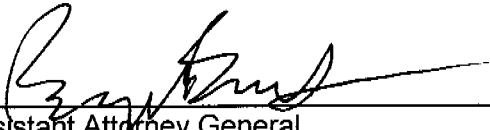
Witness my hand and seal this 20th day of February, 20 15.



Jessica D. Beesley
Notary Public for Oregon Jessica D. Beesley

My Commission expires October 19, 2018

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



Assistant Attorney General
Date 2-4-2015

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**

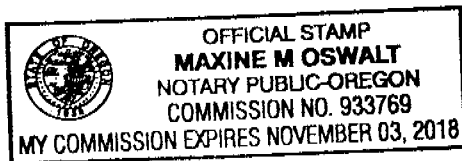
By 


Joseph A. Gray, ~~Interim~~ State Right of Way Manager

STATE OF OREGON)
)
COUNTY OF MARION)

FEBRUARY 11, 2015. Personally appeared Joseph A. Gray, who being sworn, stated
that he is the ~~interim~~ 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:

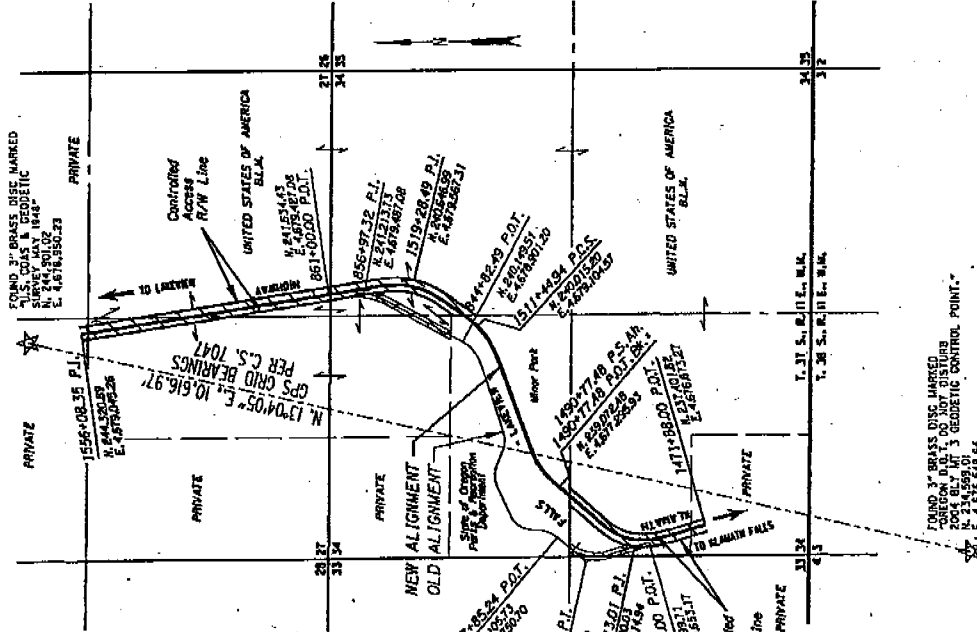




Notary Public for Oregon
My Commission expires Nov. 3, 2018

VICINITY MAP

SEC. 27 AND 34, T. 37 S., R. 11 E., W.M.



Tom Laver
I, Catherine M. Nelson, P.E., state that I am Chief Engineer for the Oregon State Department of Transportation, hereinafter designated the "applicant"; that the survey of the of the Klamath Falls - Lakeview Highway, a distance of XX mile, was made under the Department's authority; and that the survey is accurately represented on this map.

DEPARTMENT OF TRANSPORTATION
Applicant

By **Catherine M. Nelson, P.E.**
Chief Engineer

Rick Crager
I, Catherine M. Nelson, do hereby certify that I am the State Right of Way Manager for the Oregon State Department of Transportation, hereinafter designated the "applicant"; that Catherine M. Nelson who subscribed the foregoing affidavit is the Chief Engineer, for the Applicant; that the survey of the right of way for the Klamath Falls - Lakeview Highway, 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 OR140: Ritter Rd-Deer Run Rd (Bly Mtn) Section, a distance of XX mile; 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 85-167 (72 Stat. 885-916) approved August 27, 1958.

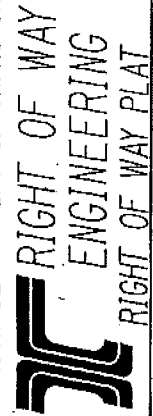
DEPARTMENT OF TRANSPORTATION

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

Accepted By:.....
B.L.M. Supervisor

Date:.....

OREGON DEPARTMENT OF TRANSPORTATION



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

KLAMATH FALLS - LAKEVIEW HIGHWAY
KLAMATH COUNTY, OREGON

SEE DRAWING 3B-26-20 AND 1B-6-6 PART 2 OF 4

NOVEMBER, 2011 FILE NO. 7561068

BUREAU OF LAND MANAGEMENT

RIGHT OF WAY GRANT

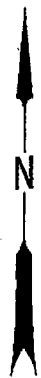
☒ TO BE ACQUIRED 17.61 Acres

☒ VACATED TO B.L.M. 292 Acres

EXHIBIT A SHEET 1 OF 3

NO SCALE

SECTION 27 AND 34, T. 37 S., R. 11 E., W.M.



NE 1/4, NW 1/4 SEC. 34
0.84 Acres± Vacated

SE 1/4, SW 1/4 SEC. 27
0.06 Acres± Acquired

NE 1/4, SW 1/4 SEC. 27
3.07 Acres± Acquired

NW 1/4, NE 1/4 SEC. 34
3.59 Acres± Acquired
1.07 Acres± Vacated

SW 1/4, SE 1/4 SEC. 27
3.67 Acres± Acquired

NW 1/4, SE 1/4 SEC. 27
0.73 Acres± Acquired

N. 89°55'39" W.
OLD ALIGNMENT DIRECTION
FROM STATION 859+94.15 P.T.
TO STATION 861+00.00 P.O.I.

OLD ALIGNMENT

NEW ALIGNMENT

UNITED STATES OF AMERICA
B.L.M.

NOTE: KLAMATH FALLS FOREST ESTATES HIGHWAY 66 UNIT (K. F. F. E. H. U.)

OREGON DEPARTMENT OF TRANSPORTATION

RIGHT OF WAY
ENGINEERING

RIGHT OF WAY PLAT

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

KLAMATH FALLS - LAKEVIEW HIGHWAY

KLAMATH COUNTY, OREGON

SEE DRAWING 38-26-20 AND 118-6-6 PART 2 OF 4

NOVEMBER, 2011

FILE NO. 7561068

BUREAU OF LAND MANAGEMENT

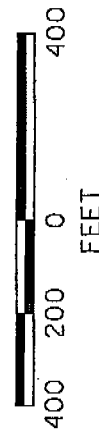
RIGHT OF WAY GRANT

TO BE ACQUIRED 11.12 Acres±

VACATED TO B.L.M. 1.91 Acres±

EXHIBIT A SHEET 3 OF 3

SCALE 1" = 400'



PRIVATE

PRIVATE

97 K. F. F. E. H. U. PLAT NO. 4