

2015-013862

Klamath County, Oregon

12/29/2015 09:48:42 AM

Fee: \$102.00

After Recording Mail To:

Weyerhaeuser NR Company  
Land Title – CH1-F23  
P.O. Box 9777  
Federal Way, WA 98063-9777

Filed for Record at the Request of:  
PacifiCorp  
Real Estate Management  
825 NE Multnomah Street, Suite 1700  
Portland OR 97232

No change to Tax Statement  
Account No. R365045

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## RIGHT OF WAY EASEMENT AGREEMENT

This Right of Way Easement Agreement (this “**Agreement**”), is made and entered into as of the 1st day of December, 2015, by and between **WEYERHAEUSER NR COMPANY**, a Washington corporation (“**Grantor**”), and **PACIFICORP**, an Oregon corporation, its successors and assigns, (“**Grantee**”). Grantor and Grantee are sometimes referred to herein individually as a “**Party**”, and collectively as, the “**Parties**”.

### RECITALS

Grantor owns certain real property located in Klamath County, Oregon, and described in the attached Exhibit A (the “**Grantor Property**”).

Grantee has certain easement rights located in Klamath County, Oregon, and described in the attached Exhibit B (“**Grantee’s Property**”).

Grantee desires to obtain from Grantor, and Grantor desires to grant to Grantee, a perpetual, non-exclusive easement over an existing road located on a portion of the Grantor Property that provides access to Grantee’s Property pursuant to the terms and conditions contained in this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of TEN and NO/100 DOLLARS, and the mutual covenants of the Parties set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. **Grant of Easement.** Subject to the terms hereof, Grantor, for and in consideration of the terms and conditions set forth in this Agreement, hereby grants to Grantee a perpetual, non-exclusive right of way easement thirty (30.00) feet in width, and being fifteen (15.00) feet on each side of the center line of an existing road (the “Road”) located on the Grantor Property approximately as shown on the attached Exhibit C (the “Easement Area”).
2. **Purpose.** The rights granted hereunder are conveyed by Grantor for the purpose of providing Grantee ingress and egress to and from Grantee’s Property solely for purposes of: construction, reconstruction, use, repair, replacement or maintenance of the improvements and equipment located on Grantee’s Property, and no other purposes.
3. **Permittees.** Grantor, it’s subsidiaries, and affiliates and all others, and it’s employees, agents, contractors, licensees, lessees, invitees, and assigns are sometimes referred to herein collectively as the “Grantor Permittees”. Grantee’s employees, agents, contractors, licensees, lessees, invitees, and assigns are sometimes referred to herein collectively as the “Grantee Permittees”.
4. **Reservation of Rights.** Grantor reserves for itself and the Grantor Permittees, the right at all times for any purpose, to use, cross, recross, maintain, patrol and repair the Road in any manner that will not unreasonably interfere with the rights of Grantee.
5. **Non-Exclusive Easement; Third Parties.** Grantor may grant to third parties, including without limitation the Grantor Permittees, upon such terms as it chooses, any or all of the rights reserved by it herein; provided, that use by such party shall be subject to the terms and conditions of this Agreement and shall not unreasonably interfere with the rights granted Grantee hereunder.
6. **Assumption of Risk.** Grantor Property is used for logging, forestry and industrial operations and maintained only to standards required for such use. Grantor makes no representations as to the present or future condition of Grantor Property or the nature or condition of, or traffic on, any roads or trails.
7. **Grantee’s Responsibilities.** Grantee shall:
  - a. Take all reasonable precaution to prevent unauthorized persons from using the Road;
  - b. Keep all existing gates, and any that may be installed on the Road in the future, closed and locked; provided, however, that the Parties may, from time to time leave gates (if any) on the Road open for reasonable extended periods during regular business hours in order to facilitate active timber harvest and other commercial operations of the Parties;
  - c. Not drive with excessive speed upon the Roads;
  - d. Report to Grantor any dangerous or defective condition with respect to any portion of the Road;

- e. Ensure that the Grantee Permittees and their employees, invitees, licensees, and contractors comply with all applicable local, state and federal laws, rules and regulations (collectively, "**Applicable Laws**") with respect to the use of the Road and the Easement Area, as well as all rules and responsibilities set forth herein; and
- f. Ensure that any exercise of rights under this Agreement by Grantee or Grantee Permittees shall not unreasonably obstruct, interfere with or prevent the use and enjoyment of Grantor Property (including but not limited to the Easement Area) by Grantor or Grantor Permittees.
- g. Comply, and ensure that the Grantee Permittees comply, with all reasonable road rules, regulations and restrictions that Grantor may, from time to time, promulgate in its sole and absolute discretion, including (without limitation) restrictions on weight, speed and use during adverse weather or fire conditions reasonably necessary to protect the Road.

8. **Indemnity.** Grantee shall defend, indemnify, and hold harmless Grantor, the Grantor Permittees, and their respective subsidiaries, and affiliates, and all of their directors, officers, employees, and agents for, from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities or losses including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "claims") arising from any negligent or willful act or omission of Grantee or the Grantee Permittees arising in connection with activities on or around the Easement Area, except to the extent such claims are caused by Grantor's negligence. This includes, without limitation, any claims for: injury to or death of persons; damage to property; timber trespass; nuisance; mechanics' and materialmen's liens; workers' compensation and unemployment taxes; fines and penalties; release of hazardous substances including, without limitation, petroleum products and chlorinated solvents, and claims arising from Grantee's or the Grantee Permittees' activities hereunder. Grantee shall take all steps needed to keep the Grantor Property free of liens arising from Grantee's activities, and promptly obtain or bond the release of any such liens that may be filed.

9. **Insurance.** Without limiting any liabilities or any other obligations of Grantee, Grantee must procure and continuously carry, with insurers having an A.M. Best's rating of A-VII or better, insurance against claims for injury to persons or damage to property which may arise from or in connection with this Agreement or Grantee's use or occupancy of the Easement Area as follows:

a. **Employers' Liability.** Insurance with a minimum single limit of \$1,000,000 each accident, \$1,000,000 disease each employee, and \$1,000,000 disease policy limit.

b. **Commercial General Liability.** The most recently approved ISO (Insurance Services Office) policy, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate (on a per location and/or per job basis) to protect

against and from any and all loss by reason of bodily injury or property damage on or about the Premises, including the following coverages:

1. Premises and operations coverage;
2. Independent contractors' coverage
3. Contractual liability
4. Broad form property damage liability
5. Personal and advertising injury liability, with the contractual exclusion removed

c. **Business Automobile Liability.** The most recently approved ISO policy, or its equivalent, with a minimum single limit of \$1,000,000 for bodily injury and property damage including sudden and accidental pollution liability, with respect to Grantee's vehicles whether owned, hired or non-owned, assigned to or used in any way on the Premises.

d. **Umbrella Liability.** Insurance with a minimum limit of \$5,000,000 each occurrence/aggregate where applicable to the excess of the coverages and limits required in Employers' Liability, Commercial General Liability, and Business Automobile Liability insurance referenced above. Such insurance policies must be maintained to cover any liability arising from Grantee's use of the Easement Area and indemnification as identified in this Agreement.

Except for workers' compensation, the policies required herein shall include provisions or endorsements naming Grantor, its parent, divisions, affiliates, subsidiary companies, co-lessees, co-venturers, officers, directors, agents, employees, servants and insurers as additional insureds or loss payees, as applicable to specific insurance coverage. The commercial general liability additional insured endorsement shall be ISO Form CG 20 10 and ISO Form CG 20 37, or their equivalents.

To the extent of Grantee's negligent acts or omissions, all policies required by this Agreement shall include: (i) provisions that such insurance is primary insurance with respect to the interests of Grantor and that any other insurance maintained by Grantor (including self-insurance) is excess and not contributory insurance with the insurance required hereunder; and (ii) provisions that the policy contain a cross liability or severability of interest clause or endorsement in the commercial general liability and automobile liability coverage. Unless prohibited by applicable law, all required insurance policies shall contain provisions that the insurer will have no right of recovery or subrogation against Grantor, its parent, divisions, affiliates, subsidiary companies, co-lessees or co-venturers, agents, directors, officers, employees, servants, and insurers, it being the intention of the parties that the insurance as effected shall protect all of the above-referenced entities evidenced by waiver of subrogation wording.

Grantee shall provide letter of self-insurance evidencing the coverages described herein. The policies required under this Section 9 shall not be terminated, reduced or changed without Grantee providing at least thirty (30) days prior written notice to Grantor.

10. **Assignment.** This Agreement shall be freely assignable by Grantor in its sole and absolute discretion. Grantee shall not assign or transfer (except by merger, sale or transfer of substantially all of Grantee's assets or operation of law), any of its rights under this Agreement without the prior written consent of Grantor, which consent shall not be unreasonably withheld, conditioned, or delayed.

11. **Liability for Loss or Damage.** Grantee shall be liable to Grantor for, and hereby covenants to pay for, all loss or damage to any Grantor property, real, personal, or otherwise, to the extent such loss or damage is caused by or results from Grantee's or the Grantee Permittees' exercise of rights hereunder.

12. **Title.** Grantor does not warrant the title to the land traversed by the Easement and shall have no liability of any kind or nature to Grantee in the event of failure of said title.

13. **Environmental Matters.** Grantee shall not cause nor permit any filling activity to occur in or on the Easement Area except by prior written approval of Grantor. Grantee shall not deposit refuse, garbage, or other waste matter, or use, store, generate, process, transport, handle, release, or dispose of any hazardous substance, or other pollutants in or on the Grantor Property or the Easement Area except in accordance with all applicable laws. Grantee shall immediately notify Grantor if Grantee becomes aware of any release or threatened release of hazardous substance on the Easement Area or adjoining property. If a release of hazardous substance occurs in, on, around, under, above or from the Grantor Property or the Easement Area arising out of any action of the Grantee or the grantee Permittees, Grantee shall, at its sole expense, promptly take all actions necessary or advisable to clean up, contain, and remove the hazardous substance in accordance with applicable laws.

14. **Improvements.** Grantee shall not make any improvements to the Easement Area or the Road without the prior written consent of Grantor, which consent shall not be unreasonably withheld, conditioned or delayed. Furthermore, unless the Parties agree in writing to share the cost of improvements to the Easement Area or the Road, such improvements shall be made at the sole cost and expense of the improver.

15. **Fire Suppression and Control.** Grantee shall comply with all laws and regulations pertaining to fire protection and suppression, and take every reasonable precaution to prevent fires from igniting on the Grantor Property or spreading onto other Grantor lands. In case of fire, Grantee shall immediately notify Grantor, government agencies, and shall make every effort to suppress or contain the fire.

16. **Successors and Assigns.** The rights and obligations herein shall inure to the benefit of and be binding upon the respective heirs, devisees, successors and assigns of the Parties.

17. **Prior Rights.** This grant and all rights hereunder are subject to all liens, easements, servitudes, rights of way, oil, gas, and mineral leases, and all other grants or reservations either of record or on the ground affecting the Grantor Property. By this grant, Grantor grants no greater rights than it is permitted to grant in view of such encumbrances.

18. **Termination.** If for a period of two (2) years Grantee shall cease to use, or preserve for prospective future use, the Road or any portion thereof, for the purposes herein granted, this Agreement shall terminate upon written notice from Grantor to Grantee. Grantor may also terminate this Agreement for a material breach by Grantee of any terms or obligations contained in this Agreement or, in its discretion, suspend all rights of Grantee under this Agreement until the breach has been cured. In the event of a termination, Grantee covenants that it will execute a statement in recordable form evidencing such termination that can be recorded by Grantor.

19. **Severability; Relation to Existing Law.** If any provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to either Party. Upon any such determination, the Parties shall negotiate in good faith to modify this Agreement so as to affect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible. Notwithstanding any other provision of this Agreement, the invalidation of any provision herein relating to the Parties' remedies shall not be interpreted to prevent an injured Party from seeking actual damages. If subsequent to the date of this Agreement valid State or Federal laws or regulations governing the relationship between Grantor and Grantee take effect, this Agreement shall be considered to incorporate such laws or regulations so long as they shall be effective, and any provision of this Agreement in conflict therewith shall during such period be void.

20. **Waiver.** No failure of either Party to exercise any power given hereunder or to insist upon strict compliance with any obligations specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of any Party's right to demand strict compliance with the terms hereof; provided, however, that any Party may, at its sole option, waive any requirement, covenant or condition herein established for the benefit of such Party without affecting any of the other provisions of this Agreement.

21. **Subordination.** Any mortgage or deed of trust affecting any portion of the Easement Area shall at all times be subject and subordinate to the terms and conditions of this Agreement, and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee's sale, shall acquire title subject to all the terms and conditions of this Agreement.

22. **Entire Agreement; Construction.** This Agreement sets forth the entire and complete agreement between the Parties with respect to the subject matter hereof. Any prior agreements,

commitments, or representations, express or implied, between the Parties are superseded by this Agreement. This Agreement may be altered, amended, or repealed only by a written instrument executed by both Parties. No provisions of this Agreement shall be construed against or interpreted to the disadvantage of any Party hereto by any court or governmental or jurisdictional authority by reason of such Party having been deemed to have structured, written, drafted or dictated such provisions. The Recitals to this Agreement and the Exhibits attached to this Agreement are incorporated herein by this reference. The captions and headings of this Agreement are for convenience only and shall not define, limit, or describe the applicability, scope, meaning, or intent of any provision of this Agreement. Capitalized terms which are defined in the recitals hereof shall have the meaning given.

23. **Attorneys' Fees.** In the event any arbitration, action, suit or legal proceeding is instituted by either Party to this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing Party both reasonable attorney fees and reasonable expert witness fees as determined by the court or arbitration panel, both at trial and on appeal or review and in bankruptcy, whether or not the matter in dispute involves an issue peculiar to federal bankruptcy law. Attorney fees and expert witness fees shall be in addition to other costs and disbursements allowed by law. "**Prevailing Party**" shall be determined by the arbitrator, or any court, as the true prevailing party (not statutorily prevailing party) after taking into consideration any settlement offers made by the Parties and the number and importance of issues to be determined.

24. **Disputes.** If disputes arise under this Agreement, the Parties will first attempt to negotiate a solution through this process: (a) the initiating party will present a written explanation of the dispute and the remedy requested; (b) within 14 business days after receiving such a statement, the other party will respond by either agreeing to the requested remedy, counter-proposing a different remedy, or explaining why the issue does not justify any remedy; and (c) if the matter is not settled within 10 days after the response is received by the initiating party, the dispute shall be settled by binding arbitration. If the Parties are not able to promptly agree on an arbitrator and the arbitration rules to be used, the initiating party may offer a list of at least 5 candidates for arbitrator and the arbitration rules each candidate would use if selected, and the responding party will chose the arbitrator from that list. Each candidate must have at least 15 years of commercial law experience and special training or experience in arbitration of business disputes. The arbitral award shall be final and binding on the parties and judgment on any award may be enforced in any court having jurisdiction thereof.

25. **Notices.** All notices required or permitted to be given hereunder, or given in regard to this Agreement by one Party to the other, shall be in writing and the same shall be given and be deemed to have been served, given and received (i) if delivered by hand, when delivered in person, (ii) if sent by reputable overnight courier, the next business day following the date on which the notice was sent, or (iii) if mailed, when placed in the United States mail, postage pre-paid, by certified mail, return receipt requested, addressed to the Party at the address hereinafter specified. Any Party may change its address for notices by giving five days advance written notice to the other Party hereto in the manner provided for herein. Until changed in the manner provided herein, the Parties' respective addresses are as follows:

If to Grantor: Weyerhaeuser NR Company  
Attention: Real Estate Services – CH 1L32  
P. O. Box 9777  
Federal Way, WA 98063-9777

With a copy to: Weyerhaeuser NR Company  
Attention: Law Department  
P. O. Box 9777  
Federal Way, WA 98063

If to Grantee: PacifiCorp, an Oregon corporation  
Attention: Property Management  
825 NE Multnomah Street, Suite 1700  
Portland, OR 97232

With a copy to: PacifiCorp, an Oregon corporation  
Attention: Legal  
825 NE Multnomah Street, Suite 1800  
Portland, OR 97232

**26. Governing Law; Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Oregon. In addition, the Parties agree that in the event of any dispute concerning this Agreement, venue for any cause of action arising out of, or having to do with, this Agreement shall be, and is, in State or Federal Court in the county in which the Easement Area is located.

*[Signatures on following page]*



IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written.

**GRANTOR: WEYERHAEUSER NR COMPANY**



By: [Signature]  
Its: SVP, General Counsel

By: [Signature]  
Its: Assistant Corporate Secretary

AGREED AND ACCEPTED by Grantee in the presence of the undersigned Notary Public, on this the 18<sup>th</sup> day of November, 2015, after due reading of the whole.

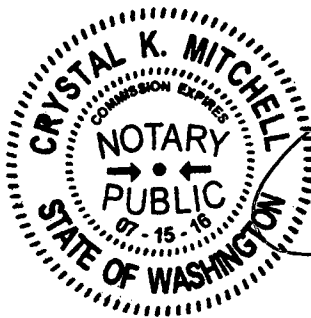
**GRANTEE: PACIFICORP**

By: [Signature]  
Title: Director of Real Estate Management

STATE OF WASHINGTON )  
 )  
COUNTY OF KING )

On this 1<sup>st</sup> day of December, 2015, before me personally appeared Devin W. Stackfish and Peggy DeBlithwaite to me known to be the Senior Vice President and Assistant Corporate Secretary, respectively, of **WEYERHAEUSER NR COMPANY**, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above mentioned.

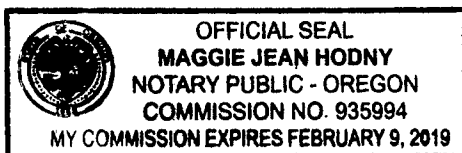


[Signature]  
Notary Public in and for the State of Washington  
My appointment expires: 7/15/2016

**REPRESENTATIVE ACKNOWLEDGEMENT**

STATE OF OREGON )  
 ) SS.  
COUNTY OF MULTNOMAH )

This instrument was acknowledged before me on the 18<sup>th</sup> day of November, 2015, by JANA LEE MEJDELL as DIRECTOR OF REAL ESTATE MANAGEMENT of PacifiCorp, an Oregon corporation.



[Signature]  
Notary Public in and for the State of Oregon  
My commission expires: 02/09/2019

**EXHIBIT A**  
Grantor Property

**KLAMATH COUNTY, OREGON**

**TOWNSHIP 36 SOUTH, RANGE 14 EAST OF THE WILLAMETTE MERIDIAN**

**Section 34:** An easement and right of way, 30.00 feet in width, being 15.00 feet on each side of its centerline, over and across the existing Road located in that portion of the following described property in the NW¼SE¼:

Beginning at a point on the East line of said Section 34, which lies North 1°48' East a distance of 33 feet from the Southeast corner of said Section 34 and which point is the intersection of the northerly right of way line of the County Road and the said East section line;

thence North 89°51' West, along the said northerly right of way line of the County Road, a distance of 606 feet, more or less, to the point of intersection of said northerly right of way line of the County Road and the easterly right of way line of the Oregon California and Eastern Railroad, which point of intersection lies 76 feet easterly and at right angles from Station 1395+39 of said railroad centerline;

thence North 28°57' West, along the said easterly right of way line of the Oregon California and Eastern Railroad, a distance of 2364 feet, more or less, to a point on said easterly right of way line 76 feet easterly and at right angles from Station 1371+75 of the Oregon California and Eastern Railroad centerline;

thence South 49°19' East a distance of 157 feet, more or less, to a point;

thence, following the arc of a 7°29' curve to the right a distance of 272.2 feet to a point;

thence South 28°57' East a distance of 1498 feet, more or less, to a point;

thence following the arc of a 8°36' curve to the left a distance of 688.95 feet to a point;

thence South 88°12' East a distance of 180 feet, more or less, to a point on the East Section line of said Section 34 above mentioned;

thence South 1°48' West, along said Section line, a distance of 99 feet, more or less, to the point of beginning.

## **EXHIBIT B**

### **Grantee's Real Property Rights Klamath County, Oregon**

Grantee's Real Property Rights located over a portion of the property knowns as Assessor's Map No. 36 14 34 Parcel No. 200 --R-3614-03400-00200-000

#### **Descriptions of the real property right:**

A Parcel of land situated in SW1/4 of the NE1/4 of Section 34, Township 36 South, Range 14 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Commencing at the Southeast Corner of Parcel 1 of Land Partition 05-10, as recorded at the Klamath County Clerk's office as V2010, P9053, Thence North 82°41'12" West, 197.68 feet to the TRUE POINT OF BEGINNING: Thence North 89°57'46" West, 57.00 feet; Thence North 00°02'14" East, 42.00 feet; Thence South 89°57'46" East, 57.00 feet; Thence South 00°02'14" West, 42.00 feet to the point of Beginning.

Containing 2394 square feet (0.055 Acres), more or less.

## EXHIBIT C

### Map of the Easement Area and the Road

Klamath County, Oregon

Township 36 South, Range 14 East of the Willamette Meridian

Section 34: An easement and right of way, 30.00 feet in width, being 15.00 feet on each side of its centerline, over and across the existing Road NW $\frac{1}{4}$ SE $\frac{1}{4}$ :

