

2020-000081

Klamath County, Oregon



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01/03/2020 11:23:09 AM

Fee: \$137.00

RECORDING COVER SHEET (Please Print or Type)

The information on this sheet is a reflection of the attached instrument for the purpose of meeting first page recording requirements, ORS 205.234.

If this cover page is included with your document, please add \$5.00 to the total recording fees.

Returned at Counter

AFTER RECORDING RETURN TO:

Andrew C. Brandsness

Brandsness, Brandsness & Rudd, P.C.

411 Pine Street

Klamath Falls, OR 97601

1) TITLE(S) OF THE TRANSACTION(S) ORS 205.234(a)

Agreement Pertaining to the use of the OC&E Woods Line State Trail

2) DIRECT PARTY / GRANTOR(S) ORS 205.125(1)(b) and 205.160

State of Oregon, by and through its Parks and Recreation Department

3) INDIRECT PARTY / GRANTEE(S) ORS 205.125(1)(a) and 205.160

Melvin L. Stewart

4) TRUE AND ACTUAL CONSIDERATION

ORS 93.030(5) – Amount in dollars or other

\$ _____ ☒ Other

5) SEND TAX STATEMENTS TO:**6) SATISFACTION of ORDER or WARRANT**

ORS 205.125(1)(e)

CHECK ONE: ☐ FULL
(If applicable) ☐ PARTIAL

7) The amount of the monetary obligation imposed by the order or warrant. ORS 205.125(1)(c)

\$ _____

8) If this instrument is being Re-Recorded, complete the following statement, in accordance with ORS 205.244: "RERECORDED TO CORRECT

PREVIOUSLY RECORDED IN
BOOK _____ AND PAGE _____, OR AS FEE NUMBER _____."

AGREEMENT PERTAINING TO THE USE OF THE OC & E WOODS LINE STATE TRAIL

This Agreement (the "Agreement") is between the State of Oregon, by and through its Parks and Recreation Department (the "Department") and Melvin L. Stewart (the "Licensee"). This Agreement is effective as of the date it is fully executed by the Department.

RECITALS

- A. The Department is the record owner of real property known as the O C & E Woods Line State Trail in Klamath and Lake Counties, State of Oregon, (the "Property").
- B. The Department received the Property from the Oregon, California and Eastern Railway Company ("OC & E"), a Nevada corporation and a subsidiary of Weyerhaeuser Company, subject to an Interim Trail Use and Rail Banking Agreement with attachments including two ICC orders (collectively, "the OC & E Agreement") dated July 9, 1992, and recorded July 13, 1992 in Klamath County Real Property Records, Volume 92 beginning at page 15208 (insert reel and page or document recording number). In the OC & E Agreement, OC&E "banked" with the Department its right of way in a line of railroad area from Klamath falls to Bly, Oregon until such time as the right of way may again be needed to construct, operate and maintain future railway tracks and facilities, and OC & E and Department agreed to make the right of way available in the interim to the public as a recreation trail (the "Trail"), all as contemplated and authorized by Section 8(d) of the National Trails System Act , 16 U.S.C. § 1247(d), 49 USC § 10906 and 49 C.F.R. § 1152.29.

NOW, THEREFORE, in consideration of the mutual covenants and agreements between them, the parties agree as follows:

- 1. **Grant of License.** The State of Oregon, by and through its Parks and Recreation Department (the "Department"), grants to Licensee for the uses specified in this Agreement and subject to the terms and conditions of this Agreement, a non-exclusive license (the "License") upon, over, under and across the Property described in Page 8 and as shown on Page 9.
- 2. **Consideration.** There are no monetary fees associated with this License – For consideration, See Section 4.2.b, the required conditions that this License is issued upon.
- 3. **Term of License.** This License commences when this Agreement is executed by the Department and Licensee and remains in effect unless revoked or terminated as provided in this Agreement.
- 4. **Limitations on Use; Specifications.**
 - 4.1 Use of the Property by Department and Licensee is subject to the responsibilities described in the OC & E Agreement described above and subject to possible future reconstruction and reactivation of the right of way for rail service.
 - 4.2 Licensee, its agents, employees, guests, permittees and invitees shall use the Property only for the following uses and no other and under the conditions stated below:

- a. To allow for the widening of an existing 12 foot wide easement along the Property to accommodate the need of a 30 foot wide access road to the property identified on the Klamath County Assessor's map 3910-015D as Tax Lot 200. The exact location and description of the 30 foot wide Licensed area is more specifically described on Page 8 of this License and depicted on Page 9;
 - b. As consideration for this License, Licensee agrees to record a "Relinquishment of Easement Rights" releasing interest in a portion of 12 foot wide easement granted by O C & E dated February 4, 1976 for a private roadway. The exact location and description of the portion of the 12 foot wide easement area is more specifically described on Page 10 of this License and depicted on Page 11;
 - c. Licensee to be responsible for road, ground maintenance and weed control within the Licensed area;
 - d. This License is conditioned upon this being a "single residence use only" access road. Should a subdivision of what is now Tax Lot 200 is approved by Klamath County, continued use of the Property for access road purposes to what is now Tax Lot 200 will be limited to a maximum of 3 land owners;
 - e. Should subdivision of Tax Lot 200 occur, Licensee will also insure a road maintenance agreement between all new landowners utilizing this road is put in place stating the Department has no responsibility or liability for the access road;
 - f. Within 180 days of any further transfer of lands within the current Tax Lot 200, Licensee shall install, and continue to maintain, either a rail fence or native plantings along the south line of the licensed area (road) to further distinguish separation between the access road and the remainder of Department lands.
- 4.3 Licensee shall not take or permit any action that is in any way prohibited by the OC & E Agreement or would prejudice the exercise of the right reserved by OC&E to construct , operate and maintain future railway tracks and facilities.
- 4.4 Licensee shall not take or permit any action that would prejudice the development and use of the Property as a public recreation trail as contemplated and authorized by 16 USC § 1247(d), 49 USC § 10906 and the OC & E Agreement, or restrict access to the Property in a manner that unreasonably limits or hinders access to or use of the Property by Department or Department's agents, employees, guests, permittees and invitees.
- 5. Use by the Department.**
- 5.1 The License herein granted does not convey any right or interest in the Property, except for the purpose stated herein.
- 5.2 This License is subject to the terms and conditions of the OC & E Agreement, which reserves to OC & E the right to operate and maintain its present railroad tracks and facilities, and to construct, operate, maintain future railway track and facilities on said premises. Further, the License is subject and subordinate to all easements, conditions, agreements and restrictions affecting the Property and existing as of the date of this Agreement.
- 5.3 The Property must remain open to the public for recreational and other non proprietary uses of the Trail. Licensee shall take all measures reasonably necessary to safely accommodate scheduled public events on the Trail.

- 5.4 Although this License is non-exclusive, Department agrees that it will not allow, permit, or License any other use of the Property that would unreasonably interfere with Licensee's use of the Property as authorized under this Agreement.

6. **Condition and Maintenance of the Property.** In exercise of this License, Licensee shall:

- 6.1. Comply with all local, state and federal, rules, regulations and ordinances applicable to Licensee's use, repair, maintenance or reconstruction of their access road, and not commit or permit any unlawful act within the Property;
- 6.2. Bear the cost of removal, relocation or reconstruction of all right of way fences, utilities, or other facilities of the Department, the removal, relocation or reconstruction of which may be made necessary by reason of Licensee's use of the Property for access road purposes;
- 6.3. Perform work under the Permit at no cost to Department;
- 6.4. Not use Department's adjacent property for the parking of motor vehicles, storing of equipment and materials or as a construction staging area at any time, except with Department's permission, which permission must be sought in advance and may be withheld in Department's sole discretion;
- 6.5. Undertake all construction in a manner that minimizes unreasonable interference with the use and enjoyment of Department's adjacent property by Department and by Department's invitees, including undertaking the work in a manner that does not unreasonably interfere with Department's continuing operations on Department's property and implementing reasonable and appropriate safety measures when conducting such work;
- 6.6. Retain continuing responsibility for addressing the safety issues of the access road abutting the Trail at the Property, which may include an analysis of the need for an over crossing, and other hazard mitigating upgrades that may be required as the Trail develops.

If Licensee fails to perform the obligations required by this License, Department may perform or cause to have performed the obligations and recover all associated costs from Licensee. Licensee shall reimburse Department within 30 days from the date billed.

7. **Compliance with Laws, Regulations and Ordinances.** Licensee shall comply with all laws, ordinances and regulations of the Department and other governmental agencies applicable to the Property or to Licensee's use of the License. Licensee shall use the License only in a manner or for such purposes that assure fair and non-discriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender or national origin.

8. **Limitation of Liability.**

- 8.1. This License is limited to such rights as Department may have in the Property and is granted without warranty, express or implied. Licensee shall recover no damages from Department because of dispossession of the Department or because of failure of, or defect in Department's title.

- 8.2. Licensee acknowledges that it has examined the Property and has satisfied itself as to its condition. Licensee accepts the License in the condition of the Property existing as of the effective date of the License, AS IS, with all defects, if any.
- 8.3. Licensee shall not permit any person to use the Property if it is in other than a safe condition. Licensee is responsible for the work and all associated costs required to keep the Property in a safe condition.
- 8.4. The Department shall not be responsible for any injury or damages to persons or property that may arise from or be incident to use of the Property by Licensee or Licensee's agents, employees, guests or invitees or others who may use the Property at the invitation of any of them.
9. **Indemnification.** To the extent permitted by the Oregon Constitution, and subject to the limitations of the Oregon Tort Claims Act, Licensee shall indemnify and hold the State of Oregon, its boards, commissions, departments, including the Department, and their officers, employees and agents harmless from and against all liability of whatever kind arising from or incident upon use of the Property by Licensee and by Licensee's agents, employees, guests, permittees or invitees or any others who may use the Property, including but not limited to the costs of remediation or clean up of any Hazardous Waste (as defined in ORS 466.005(7)) used or deposited on the Property by Licensee, its agents, employees, permittees, guests or invitees; *provided, however, the Oregon Attorney General must give written authorization to any legal counsel purporting to act in the name of, or represent the interests of, Department or its officers, employees and agents prior to such action or representation. Further, Department, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees and agents, at any time when in Department's sole discretion it determines that: (i) proposed counsel is prohibited from the particular representation contemplated; (ii) counsel is not adequately defending the interests of Department, its officers, employees and/or agents; (iii) important governmental interests are at stake; or (iv) the best interests of Department are served thereby.* Licensee's obligation to pay for all costs and expenses shall include those incurred by Department in assuming its own defense or that of its officers, employees or agents pursuant to (i) and (ii) above.
10. **Restrictions on Assignment of Permit.** The License granted under this Agreement is personal to Licensee. Licensee shall not transfer or assign any rights or privileges granted under this Agreement or the License, nor shall Licensee grant any right or privilege in connection with this Agreement or the License. Any such attempted transfer or assignment shall be void and of no effect.
11. **Reservation of Rights in Property.** Without limiting any other rights it may have, the Department specifically reserves the right to use, and to License others to use the Property, including the Property, for purposes not inconsistent with the License granted in this Agreement.
12. **Events of Default.** The following are events of default under this Agreement (individually, a Default“):

- 12.1. Use of the Property by Licensee, its agents, employees, guests, permittees or invitees for any purpose prohibited under the License including, without limitation, violation of any of the limitations on use identified in this Permit;
 - 12.2. Unreasonable interference by Licensee, its agents, employees, guests, permittees or invitees in the lawful use of the Trail or property by the Department or other authorized users;
 - 12.3. Failure by Licensee to comply with any law, ordinance or regulation applicable to the Property; or
 - 12.4. The attempted transfer or assignment of the License or any rights or privileges granted under the License or the Agreement.
13. **Remedies for Default.** In the event of a Default by Licensee under Section 14, or in the event of any other Default that remains uncured 60 days following delivery of written notice of such Default to Licensee by the Department as described below, the Department may, in its sole discretion, revoke the License granted under this Agreement. In addition, and not in lieu of such revocation, the Department may invoke any remedies available to it at law or in equity against Licensee for injury or damages suffered by the Department arising from Licensee's Default.
14. **Termination of License; Revocation of License.**
- 14.1. Licensee may terminate this License at any time with written notice to the Department.
 - 14.2. The Department may revoke the License, by providing written notice as described below to Licensee of the revocation, upon the occurrence of one or more of the following events:
 - 14.2.1. A Default that remains uncured past the time allowed (if any) for its cure;
 - 14.2.2. Licensee enters into any agreement, memoranda, or plan that purports to modify in any way the rights retained by Department under this License or existing at the time of this grant of License, or Licensee transfers or attempts to transfer, by sale or otherwise, all or any portion of the Property.
 - 14.2.3. A provision of law or ordinance, or a regulation of the Department, is amended or interpreted to prohibit the use contemplated by the License; or
 - 14.2.4. The Department transfers, by sale or otherwise, any portion of the Property or the Department's interest in the Property is involuntarily terminated.

Notice of revocation of the License is effective upon receipt, as specified below. Revocation is without liability to Department for any loss, injury, or damage which Licensee may suffer as a result of termination. Licensee hereby waives any claim for loss, injury or damage of any nature whatsoever in the event this License is revoked.

15. **Notice Requirements.** Any notice required to be given under this Permit must be in writing, and must be delivered by regular mail deposited with the United States Postal Service, postage prepaid and addressed to the Department or Licensee, as the case may be, at the most recent address

provided by the party for such notice. Notice is deemed to have been received as of 5:00 p.m. local time on the third day following the date of mailing. As of the date of execution of this Agreement, the addresses for notices for each party are:

Department:
Collier Memorial State Park Manager
46000 Hwy 97 N
Chiloquin, OR 97624
Office: 541-783-2471 Ext 22

Licensee:
Melvin L. Stewart
5627 North Hills Drive
Klamath Falls, OR 97603
(541) 892-1074
email: premr@aol.com

16. Miscellaneous Provisions

- 16.1. Governing Law; Venue. This Agreement is subject to and is to be governed by the laws of the State of Oregon. Any claim, action suit or proceeding (collectively, a "Claim") between the Department and Licensee that arise from or relates to this Agreement must be brought and conducted solely in the Circuit Court of Marion county for the State of Oregon; except that, if a Claim must be brought in a federal forum, the Claim must be brought and conducted solely in the District Court for the District of Oregon. In no event may this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution or otherwise. By execution of this Agreement, Licensee consents to the personal jurisdiction of such courts.
- 16.2. Severability. If any term or provision of this Agreement is held to be invalid, illegal or unenforceable by a court of competent authority, the offending term or provision is to be deleted and the remainder of the Agreement is not to be affected by such invalidity, illegality or unenforceability, but is to remain valid and enforceable to the fullest extent permitted by law.
- 16.3. No Implied Waiver. The failure of the Department to enforce any provision of this Agreement does not constitute a waiver by the Department of that provision or of any other provision of this Agreement.
- 16.4. Amendments. No modification or amendment of this Agreement or of any of its conditions or provisions is binding upon the parties unless in writing, signed by both parties.
- 16.5. Merger Clause. This Agreement constitutes the entire agreement between the parties on the subject matter addressed herein. There are no understandings, agreements, or representations, oral or written, regarding this Agreement except as contained, incorporated or referenced herein.
- 16.6. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, and all of which constitute but one and the same instrument.
- 16.7. Construction. In construing this document, where the context so requires, the singular includes the plural and all grammatical changes are to be made so that this document applies equally to corporations and to individual s.

IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below.

DEPARTMENT:

LICENSEE:

By: *Lisa Sumption*
Lisa Sumption
As it's: Director
Date: 12/16/19

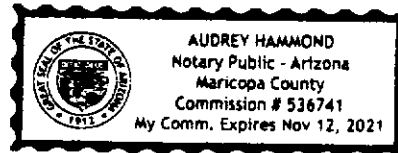
By: *Melvin L Stewart*
As it s: _____
Date: 12-11-19

ACKNOWLEDGEMENTS

Arizona)
STATE of ~~OREGON~~)
COUNTY of Maricopa) ss:

This instrument was acknowledged before me on this 11th day of December 2019, by
Melvin L Stewart

Audrey Hammond
Notary Public for ~~Oregon~~ Arizona
My Commission Expires: 11/12/2021



STATE OF OREGON)
) ss.
County of Marion)

This instrument was acknowledged before me on this 16th day of December 2019, by Lisa Sumption
as the Director of the Oregon Parks and Recreation Department.

Tracy Amanda Collis
Notary Public for Oregon
My Commission Expires: 7-25-2021



JOHN HEATON P.L.S.

TRU SURVEYING LINE

2333 SUMMERS LANE
KLAMATH FALLS, OREGON 97603
PHONE: (541) 884-3691

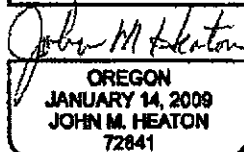


JUNE 29, 2016

LEGAL DESCRIPTION OF 30 FOOT WIDE ACCESS LICENSE

A 30 FOOT WIDE STRIP OF LAND SITUATED IN THE SW1/4 SE1/4 OF SECTION 15, T39S, R10EWM, KLAMATH COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF PARCEL A OF "MAJOR LAND PARTITION NO. 80-28", FROM WHICH THE SOUTHWEST CORNER OF SAID PARCEL A BEARS S81°36'00"W 30.33 FEET; THENCE S81°36'00"W, ALONG THE SAID SOUTH LINE AND ITS EXTENSION, 291.94 FEET TO A POINT ON THE NORTHEAST RIGHT OF WAY LINE OF STATE HIGHWAY 140; THENCE, ALONG THE SAID RIGHT OF WAY LINE, S57°30'00"E 39.09 FEET AND ON THE ARC OF A CURVE TO THE LEFT (RADIUS EQUALS 230.43 FEET AND CENTRAL ANGLE EQUALS 01°42'11") 6.85 FEET; THENCE, LEAVING SAID RIGHT OF WAY LINE, N81°36'00"E 252.72 FEET; THENCE NORTH 30.33 FEET TO THE POINT OF BEGINNING, WITH BEARINGS BASED ON RECORD OF SURVEY 3426 ON FILE AT THE OFFICE OF THE KLAMATH COUNTY SURVEYOR.

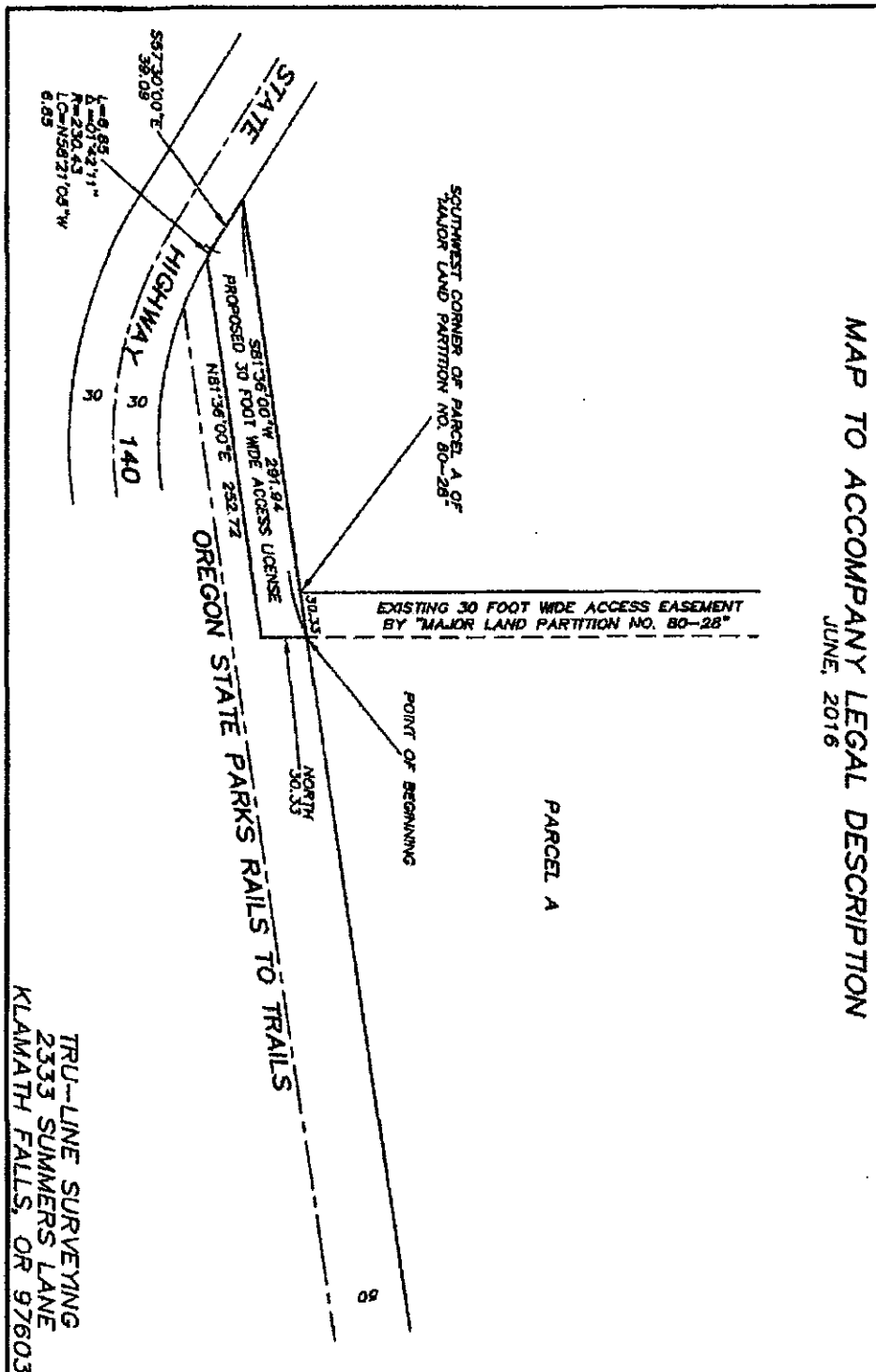


John M. Heaton
JOHN M. HEATON P.L.S. 72841

RENEWAL DATE 6/30/17

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

MAP TO ACCOMPANY LEGAL DESCRIPTION JUNE, 2016



JOHN HEATON P.L.S.

TRU SURVEYING LINE

2333 SUMMERS LANE
KLAMATH FALLS, OREGON 97603
PHONE: (541) 884-3691



JUNE 29, 2016

LEGAL DESCRIPTION OF ACCESS EASEMENT RELINQUISHMENT

A PORTION OF THE ROAD EASEMENT CONTAINED IN DEED VOLUME M80 AT PAGE 12402 OF THE KLAMATH COUNTY DEED RECORDS, SITUATED IN THE SW1/4 SE1/4 OF SECTION 15, T39S, R10EWM, KLAMATH COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF PARCEL A OF "MAJOR LAND PARTITION NO. 80-28", FROM WHICH THE SOUTHWEST CORNER OF SAID PARCEL A BEARS S81°36'00"W 323.00 FEET; THENCE S08°24'00"E 22.00 FEET; THENCE S81°36'00"W, PARALLEL WITH THE SAID SOUTH LINE, 314.12 FEET; THENCE SOUTH 12.13 FEET; THENCE N81°36'00"E, PARALLEL WITH THE SAID SOUTH LINE, 327.89 FEET; THENCE N08°24'00"W 34.00 FEET TO A POINT ON THE SOUTH LINE OF SAID PARCEL A; THENCE S81°36'00"W 12.00 FEET TO THE POINT OF BEGINNING, WITH BEARINGS BASED ON RECORD OF SURVEY 3426 ON FILE AT THE OFFICE OF THE KLAMATH COUNTY SURVEYOR.



John M. Heaton
OREGON
JANUARY 14, 2009
JOHN M. HEATON
72841

RENEWAL DATE 6/30/17

John M. Heaton
JOHN M. HEATON P.L.S. 72841

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

JUNE, 2016

