

**2021-011839**

**Klamath County, Oregon**

08/03/2021 02:43:00 PM

Fee: \$142.00

**Return Address:**

Weyerhaeuser NR Company  
220 Occidental Avenue South  
Seattle, WA 98104  
Attn: Corporate Real Estate

**Title:** Right of Way Easement Agreement  
**Grantor:** Weyerhaeuser NR Company  
**Grantee:** Five Mile Ranch LLC  
**Assessor's Property Tax Parcel:** 3612-00000-04600

**RIGHT OF WAY EASEMENT**

This Right of Way Easement Agreement (this "**Agreement**"), is effective as of the 13<sup>th</sup> day of July, 2021, (the "**Effective Date**") by and between **WEYERHAEUSER NR COMPANY**, a Washington corporation, ("**Grantor**"), and **FIVE MILE RANCH, LLC**, an Oregon limited liability company, ("**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, as such is legally described on the attached **Exhibit A** ("**Grantor's Property**"), attached hereto and made a part hereof. Grantor's Property is the burdened property subject to this Agreement.

Grantee owns certain real property located in Klamath County, Oregon, as such is legally described on the attached **Exhibit B** ("**Grantee's Property**"), attached hereto and made a part hereof. Grantee may use this easement to access Grantee's Property; the Grantee's Property is benefitted property by this Agreement, and Grantor's Property is burdened by this esement that is appurtenant to Grantee's Property described on Exhibit B.

Grantee desires to obtain from Grantor, and Grantor desires to grant Grantee, a non-exclusive easement over a certain portion of Grantor's Property that permits Grantee and Grantee's invitees, heirs, successors and assigns to access 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 strict observance of and compliance with, the terms and conditions set forth in this Agreement, hereby grants to Grantee a non-exclusive right of way easement (the “**Easement**”) generally thirty-three (33) feet in width, and being approximately sixteen and one-half feet (16.5’) on each side of the center line of an existing unpaved road (the “**Road**”) located on Grantor’s Property and located approximately as shown on the attached **Exhibit C** (the “**Easement Area**”), attached hereto and made a part hereof.
2. **Purpose.** The rights granted hereunder are conveyed by Grantor for the purpose of providing Grantee vehicular and pedestrian ingress and egress to and from Grantee’s Property for commercial, agricultural, and residential purposes. This is an perpetual easement, which is intended to run with the land, and inure to the benefit and burden, as the case may be, the Parties, heirs, assigns, and successors.
3. **Permittees.** Grantor, its subsidiaries, and affiliates and all of its 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, and invitees are sometimes referred to herein collectively as the “**Grantee Permittees**”.
4. **Grantor Reservation of Rights.** Grantor reserves for itself and Grantor Permittees, the right at all times for any purpose, to use, cross, re-cross, maintain, patrol and repair the Road in any manner that will not unreasonably interfere with the rights of Grantee. Grantor reserves the right to relocate the Road in Grantor’s sole discretion. As long as reasonable alternative access exists to Grantee’s Property, Grantor reserves the right to abandon the Road in Grantor’s sole discretion.
5. **Non-Exclusive Easement; Third Parties.** Grantor may grant to third parties, including without limitation Grantor Permittees, upon such terms as Grantor chooses, any or all of the rights reserved by it herein.
6. **Road Maintenance.** The cost of road maintenance and resurfacing shall be allocated between the Parties on the basis of respective uses of the Road. When any Party uses the Road, or any portion thereof, that Party shall perform or cause to be performed, or contribute or cause to be contributed, that share of maintenance and resurfacing, if any, occasioned by such use as hereinafter provided. During periods when the Road or portions thereof are solely used by one Party, such Party shall maintain all or portions of the Road used to the standards existing at the time use is commenced. During periods when more than one party is using the Road or portions thereof, the Parties shall meet and establish necessary maintenance provisions. Such provisions may include, without limitation, and at Grantor’s discretion, (a) the appointment of a maintainer, which may be one of the Parties or a mutually acceptable third party, who will perform or cause to be performed at a reasonable and agreed upon rate the maintenance and resurfacing, if any, of the Road or portions thereof being used; and (b) a method of payment by which each party using the Road or portions thereof, shall pay its pro rata share of the cost incurred by said maintainer in maintaining or resurfacing, if any, the Road or portion thereof. In the absence of an

agreement as set forth above, Grantor shall have the right to maintain and repair the Road in its discretion and to charge any party using the Road for its proportionate share of maintenance. For purposes of this Agreement, maintenance is defined as the work normally necessary to preserve and keep the roadway, road structure and road facilities as nearly as possible in its present condition or as may be hereafter improved and to keep it in compliance with Applicable Laws.

7. **Assumption of Risk.** Grantor's Property has been used for commercial 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's Property or the nature or condition of, or traffic on, any roads or trails, and Grantee assumes all risks of personal injury or property damage to Grantor, Grantee, Grantee Permittees, Grantor Permittees, any other third parties, and to the employees, representatives, invitees or contractors of any of them, in connection with the exercise of rights hereunder.

8. **Grantee's Responsibilities.** Grantee shall:

- a. Take all reasonable precaution to prevent unauthorized persons from using the Road;
- b. Not drive with excessive speed upon the Roads;
- c. Not install any fencing, gates or other obstructions on the Roads or Easement Area;
- d. Immediately report to Grantor any dangerous or defective condition with respect to any portion of the Road;
- e. Ensure that 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;
- 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's Property (including, but not limited to, the Easement Area) by Grantor or Grantor Permittees or such other third parties as Grantor may grant as herein provided; and
- g. Comply, and ensure that 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 and Grantor's Property.

9. **Indemnity.** Grantee shall defend, indemnify, and hold harmless Grantor, Grantor Permittees, and its respective subsidiaries, and affiliates, and all of its 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 act or omission of Grantee or Grantee Permittees under this Agreement or otherwise arising in connection with activities on or around the Roads or Easement Area or Grantor's Property or its subsidiaries, or affiliates, except claims

caused by Grantor's sole negligence. This includes, without limitation, any claims for: injury to or death of persons; damage to property; 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 Grantee Permittees' activities hereunder. Grantee shall take all steps needed to keep Grantor's Property free of liens arising from Grantee's activities, and promptly obtain or bond the release of any such liens that may be filed.

10. **Insurance.** Before commencing any activities under this Agreement, Grantee shall, at its own cost and expense, secure a policy or policies of insurance, and, during the term of this Agreement, maintain such insurance, in a form, and with companies with at least an A.M. Best Rating of A VIII or better (or in the absence of an A.M. Best Rating, insurance companies acceptable to Grantor), insuring against liability resulting from or attributable to the Grantee's activities, or the activities of Grantee Permittees or other persons acting for or on behalf of Grantee, including the following:

a. Homeowners or Personal Liability insurance with a limit of not less than \$300,000 per occurrence and in the aggregate for bodily injury and property damage and automobile liability insurance covering owned, hired and non-owned vehicles. The policies shall name Grantor, its subsidiaries, and affiliates, as additional insureds with respect to the performance of this Agreement. The coverages shall be primary, exclusive of any coverage carried by Grantor, and shall be exhausted first, notwithstanding that Grantor may have other valid and collectible insurance covering the same risk. Nothing herein contained shall limit Grantee's liability to Grantor as to the scope or the amount of the insurance coverage. Termination of the certificate of insurance will cause this Agreement to automatically terminate. Upon termination, Grantee shall provide a statement in recordable form evidencing such termination.

b. Coverages under this Section 10 may be reviewed by Grantor and revised in Grantor's reasonable discretion from time to time, as dictated by economic or legal considerations, or to conform to the applicable prevailing insurance requirements, and Grantor reserves the right to make reasonable changes to the amounts and types of insurance limits and policies required under this Agreement.

On or before mutual execution of this Agreement, Grantee shall deliver to Grantor certificates from Grantee's insurance carrier evidencing the coverages described herein along with copies of the applicable endorsements. The policies required under this Section 10 shall not be terminated, reduced or changed without Grantee providing at least thirty (30) days prior written notice to Grantor.

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, caused by or resulting from Grantee's or 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. 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 Grantor's 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, the Roads or Grantor's Property. If a release of hazardous substance occurs in, on, around, under, above or from Grantor's Property or the Easement Area arising out of any action of the Grantee or 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 may be withheld in Grantor's sole discretion. Furthermore, if such consent is provided, 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 Grantee and shall be the exclusive property of Grantor upon termination of this Agreement.

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

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

17. **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.

18. **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.

19. **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.



20. **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.

21. **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.

22. **Disputes.** If disputes arise under this Agreement, the Parties will first attempt to negotiate a solution through the following 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 ten (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 3 candidates for arbitrator and the arbitration rules each candidate would use if selected, and the responding party will choose the arbitrator from that list. Each candidate must have at least 10 years of real estate law experience and special training or experience in arbitration of business disputes. The arbitration award shall be final and binding on the parties and judgment on any award may be enforced in any court having jurisdiction thereof.

23. **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, on 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 (5) 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: Legal Department  
220 Occidental Avenue S.  
Seattle, WA 98104

If to Grantee:

Five Mile Ranch, LLC  
c/o Kathleen Mastagni  
3827 Marshall Avenue  
Carmichael, CA 95608

24. **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 the State court serving the county in which the Easement Area is located.

*[Signatures appear on the following page]*

IN WITNESS WHEREOF, this Agreement is executed on the date of the acknowledgment below but shall be effective for all purposes as of the Effective Date.



GRANTOR:  
WEYERHAEUSER NR COMPANY

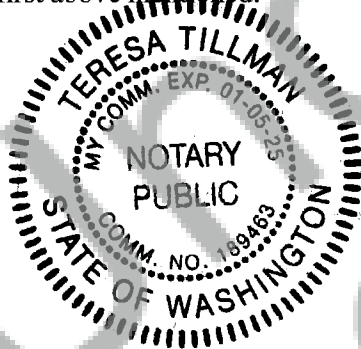
By:

Kristy Harlan  
Kristy Harlan  
Senior Vice President, General Counsel

STATE OF WASHINGTON )  
  )  
COUNTY OF KING )

On this 13<sup>th</sup> day of July, 2021, before me personally appeared Kristy Harlan to me known to be the Senior Vice President and General Counsel 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 s/he is 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.



Teresa Tillman  
Notary Public in and for the State of Washington  
Printed Name: Teresa Tillman  
Residing at: King County  
My appointment expires: Jan. 05, 2025



IN WITNESS WHEREOF, this Agreement is executed on the date of the acknowledgment below but shall be effective for all purposes as of the Effective Date.

GRANTEE:  
FIVE MILE RACH, LLC

By: Kathleen Mastagni  
Printed Name: Kathleen Mastagni  
Its: Member

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public, in and for said County in said State, hereby certify that \_\_\_\_\_, whose name is signed to the foregoing conveyance, and who is known to me to be the \_\_\_\_\_ of FIVE MILE RANCH, LLC, the limited liability company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that she is authorized to execute said instrument.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

SEE ATTACHED FOR  
REQUIRED CALIFORNIA  
WORDING

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

**CALIFORNIA ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Sacramento

On April 29, 2021

Date

before me, Candace C. Childs, Notary Public

Here Insert Name and Title of the Officer

personally appeared Kathleen Mastagni

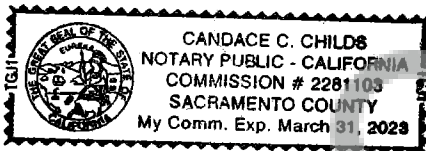
Name(s) of Signer(s)

N/A

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal and/or Stamp Above

Signature Candace C. Childs

Signature of Notary Public

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document Right of Way Easement

Document Date: April 29, 2021

Number of Pages: 134/144

Signer(s) Other Than Named Above: N/A

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Kathleen Mastagni

☒ Corporate Officer – Title(s): member

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer is Representing: J.B.

Signer's Name: \_\_\_\_\_

☐ Corporate Officer – Title(s): \_\_\_\_\_

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

**EXHIBIT A**  
Grantor's Property  
Klamath County, Oregon

The West 1/2 of the East 1/2 of Section 12, Township 36 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon, containing approximately 160 acres.  
Assessor's Tax Parcel R-3612-00000-04600-000

Unofficial  
Copy

**EXHIBIT B**  
Grantee's Property  
Klamath County, Oregon

The East 1/2 of the Southeast 1/4 of Section 12, Township 36 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon, containing approximately 80 acres.  
Assessor's Tax Parcel R-3612-00000-04900

Unofficial  
Copy

**EXHIBIT C**  
**Map of the Easement Area and the Road**  
**Klamath County, Oregon**

