

Skamania County, WA
Total: \$115.50
EASE
Pgs=13

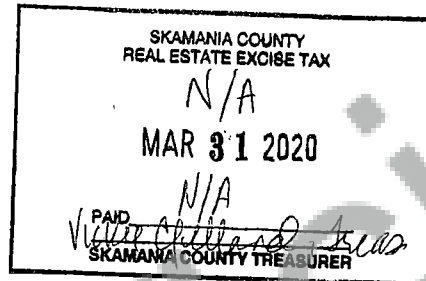
2020-000740

03/31/2020 10:28 AM

Request of: WEYERHAEUSER COMPANY



FILED FOR RECORD AT THE
REQUEST OF AND RETURN TO:
Weyerhaeuser Company
Attn: Land Title
220 Occidental Avenue South
Seattle, WA 98104
File No. T2019-638



Title: RIGHT OF WAY EASEMENT AGREEMENT
Reference Number(s) of Documents assigned or released: N/A
Grantor: LATHE E. SIMMONS and JANICE A. SIMMONS, a married couple
Grantee: WEYERHAEUSER COMPANY, a Washington corporation
Legal description (abbreviated: i.e. lot, block, plat or section, township, range) NE1/4SE1/4 of Sec. 11 and NW1/4SW1/4 of Sec. 12, T2N, R5E, W.M., Skamania County, Washington
Additional legal is on page 11 of document. G.S.
Assessor's Property Tax Parcel: 02-05-00-0-0-1300-00

RIGHT OF WAY EASEMENT AGREEMENT

This Right of Way Easement Agreement (this "**Agreement**"), is effective as of the 18th day of March, 2020 (the "**Effective Date**") and made by and between LATHE E. SIMMONS and JANICE A. SIMMONS, a married couple ("**Grantor**"), and WEYERHAEUSER COMPANY, a Washington corporation ("**Weyerhaeuser**"). Weyerhaeuser and Grantor are sometimes referred to herein individually as a "**Party**", and collectively as, the "**Parties**".

RECITALS

Weyerhaeuser owns certain real property located in Skamania County, Washington, as is more particularly described in the attached **Exhibit A** ("**Weyerhaeuser Property**"). The Weyerhaeuser Property is the benefitted property subject to this Agreement.

Grantor owns certain real property located in Skamania County, Washington, as is more particularly described in the attached **Exhibit B** ("**Grantor's Property**"). Grantor's Property is the burdened property subject to this Agreement.

Weyerhaeuser desires to obtain from Grantor, and Grantor desires to grant Weyerhaeuser, a perpetual, non-exclusive easement over a certain portion of the Grantor's Property that provides access to the Weyerhaeuser Property pursuant to the terms and conditions contained in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of 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 Weyerhaeuser a perpetual, appurtenant, non-exclusive right of way easement (the "**Easement**") sixty feet (60') in width, and being thirty feet (30') on each side of the center line of an existing road (the "**Road**") located on the Grantor's Property and located approximately as shown on the attached **Exhibit C** (the "**Easement Area**"). Weyerhaeuser may permit Weyerhaeuser Permittees (as defined below) to use the Easement and other rights granted to Weyerhaeuser in this Agreement, subject to the terms and conditions of this Agreement.
- 2. Purpose.** The rights granted hereunder are conveyed by Grantor for the purpose of providing Weyerhaeuser and the Weyerhaeuser Permittees (defined below), vehicular ingress and egress to and from Weyerhaeuser Property for purposes of constructing, maintaining, repairing, and using the Road for ingress and egress to Grantee's property for all lawful residential, commercial

and industrial uses provided. The Easement granted herein is also for the purpose of constructing, reconstructing, maintaining, repairing, and using a utility transmission line over, under, along and across the Easement Area.

The Road may not be used for any other purpose without Grantor and Grantee, or their respective heirs, successors, and assigns, entering into and recording an amendment to this Agreement.

3. **Permittees.** Weyerhaeuser, its subsidiaries, and affiliates and all of their employees, agents, contractors, licensees, lessees, invitees, and assigns are sometimes referred to herein collectively as the “**Weyerhaeuser Permittees**”. Grantor’s employees, agents, contractors, licensees, lessees, invitees, and assigns are sometimes referred to herein collectively as the “**Grantor Permittees**”.

4. **Reservation of Rights.** Grantor reserves for itself and the Grantor’s Permittees, the right at all times to use, cross, re-cross, maintain, patrol and repair the Road in any manner that will not unreasonably interfere with the rights of Weyerhaeuser. Grantor shall not relocate, abandon, decommission, or otherwise modify the Road without the prior written consent of Weyerhaeuser.

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 interfere with the rights granted Weyerhaeuser hereunder.

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 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 Weyerhaeuser’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 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 the Road or portion thereof. In the absence of an agreement as set forth above, Weyerhaeuser 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 their present condition or as may be hereafter improved.

7. **The Parties' Responsibilities.** Each Party 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. Immediately report to each other any dangerous or defective condition with respect to any portion of the Road; and
- e. Ensure that their respective permittees (Grantor Permittees for Grantor and Weyerhaeuser Permittees for Weyerhaeuser) and their respective 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

8. **Indemnity.** Each Party agrees to defend, indemnify, save, protect and hold harmless the other Party for, from and against all causes of action, litigation, cost, loss, liability, damage and expense (including attorneys' fees) for injury or death to persons, whomsoever, and damage to or loss of property, to whomsoever belonging, including (without limitation) each of their respective permittees (Grantor Permittees for Grantor and Weyerhaeuser Permittees for Weyerhaeuser), arising out of or in any way connected with the use of the Road by such Party and its Permittees; unless such causes of actions, litigation, cost, loss, liability, damage and expense results from the sole negligence of the other Party.

9. **Insurance.** Weyerhaeuser shall be required, before using the Road for commercial use, which includes logging activity, to obtain a policy of liability insurance. Minimum amounts of insurance shall be Comprehensive General Liability, including bodily injury and property damage in the amount of \$2,000,000 each occurrence. Comprehensive Automobile Liability insurance is to include minimum limits of \$1,000,000. Grantor acknowledges that Weyerhaeuser is a self-insured company and accepts such self-insurance so long as the same is in accordance with, at a minimum, the limits and policies set forth in this Section 9. Grantor shall accept a letter confirming such self-insurance in lieu of a Certificate of Insurance.

10. **Assignment.** To the extent consistent with this Agreement, this Agreement shall be freely assignable by the Parties in their sole and absolute discretion.

11. **Environmental Matters.** Weyerhaeuser shall not cause nor permit any filling activity to occur in or on the Easement Area, except by prior written approval of Grantor. Weyerhaeuser 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.

12. **Improvements.** Weyerhaeuser 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.

13. **Fire Suppression and Control.** The Parties shall comply with all laws and regulations pertaining to fire protection and suppression, and take every possible precaution to prevent fires from igniting on Grantor's Property and spreading to the Weyerhaeuser Property and Grantor's Property. In case of fire, the Parties shall immediately notify each other, as well as appropriate government agencies, and shall make every reasonable effort to suppress or contain the fire.

14. **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. The rights contained in this Agreement shall run with the land and inure to and be for the benefit of the Parties and their respective successors and assigns, forever.

15. **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.

16. **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 Weyerhaeuser and Grantor 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.

17. **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.

18. **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.

19. **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.

20. **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 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 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. The arbitration shall be held in King County, Washington.

21. **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 (such as Federal Express or UPS), 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 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 Weyerhaeuser:

Weyerhaeuser Company
Attn: Land Use Manager
3539 Industrial Way, Suite A
Longview, WA 98632

With a copy to:

Weyerhaeuser Company
Law Dept. HQ7
220 Occidental Avenue South
Seattle, WA 98104

If to Grantor:

Lathe E. Simmons and Janice A. Simmons
843 North P Street
Washougal, WA 98671

22. **Governing Law; Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington. 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 serving the county in which the Easement Area is located. The Parties waive any right to a claim of *forum non conveniens*.

[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:

[Signature]
Lathe E. Simmons

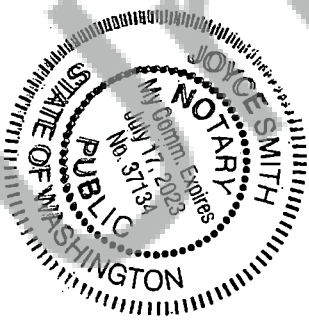
[Signature]
Janice A. Simmons

ACKNOWLEDGMENT

STATE OF Washington
COUNTY OF Clark

On this 26th day of March 2020, before me personally appeared Lathe E. Simmons and Janice A. Simmons, the persons that executed the within and foregoing instrument, and acknowledged said instrument to be their free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

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

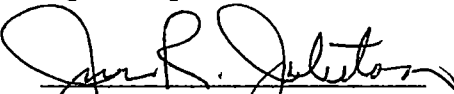


[Signature]
Notary Public in and for the State of Washington
My appointment expires: 7-11-2023

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.

WEYERHAEUSER COMPANY

a Washington corporation

By 

Name James R. Johnston

Title Vice President

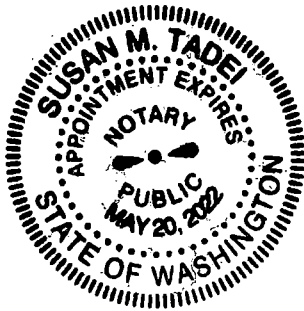
Unofficial Copy

ACKNOWLEDGMENT

STATE OF WASHINGTON)
)
COUNTY OF KING)

On this 18th day of March, 2020, before me personally appeared James R. Johnston to me known to be the Vice President of WEYERHAEUSER 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.

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



Susan M. Tadei
Notary Public in and for the State of Washington
Printed Name: Susan M. Tadei
Residing in Indianola
My appointment expires: May 20, 2022

EXHIBIT A

The Weyerhaeuser Property
Skamania County, Washington

Township 2 North, Range 5 East, W.M.

Section 1: Government Lots 1 – 4; S1/2NW1/4; SW1/4; and the S1/2NE1/4 and W1/2SE1/4, Less and Except that portion conveyed to Steven E. Epling in Bargain and Sale Deed recorded March 15, 2017 under Auditor's File No. 2017000537, records of Skamania County, Washington.

Township 3 North, Range 5 East, W.M.

Section 26: SW1/4NW1/4, SW1/4, SW1/4SE1/4

All other lands now or hereafter owned by Weyerhaeuser within the general area of Grantor's Property.

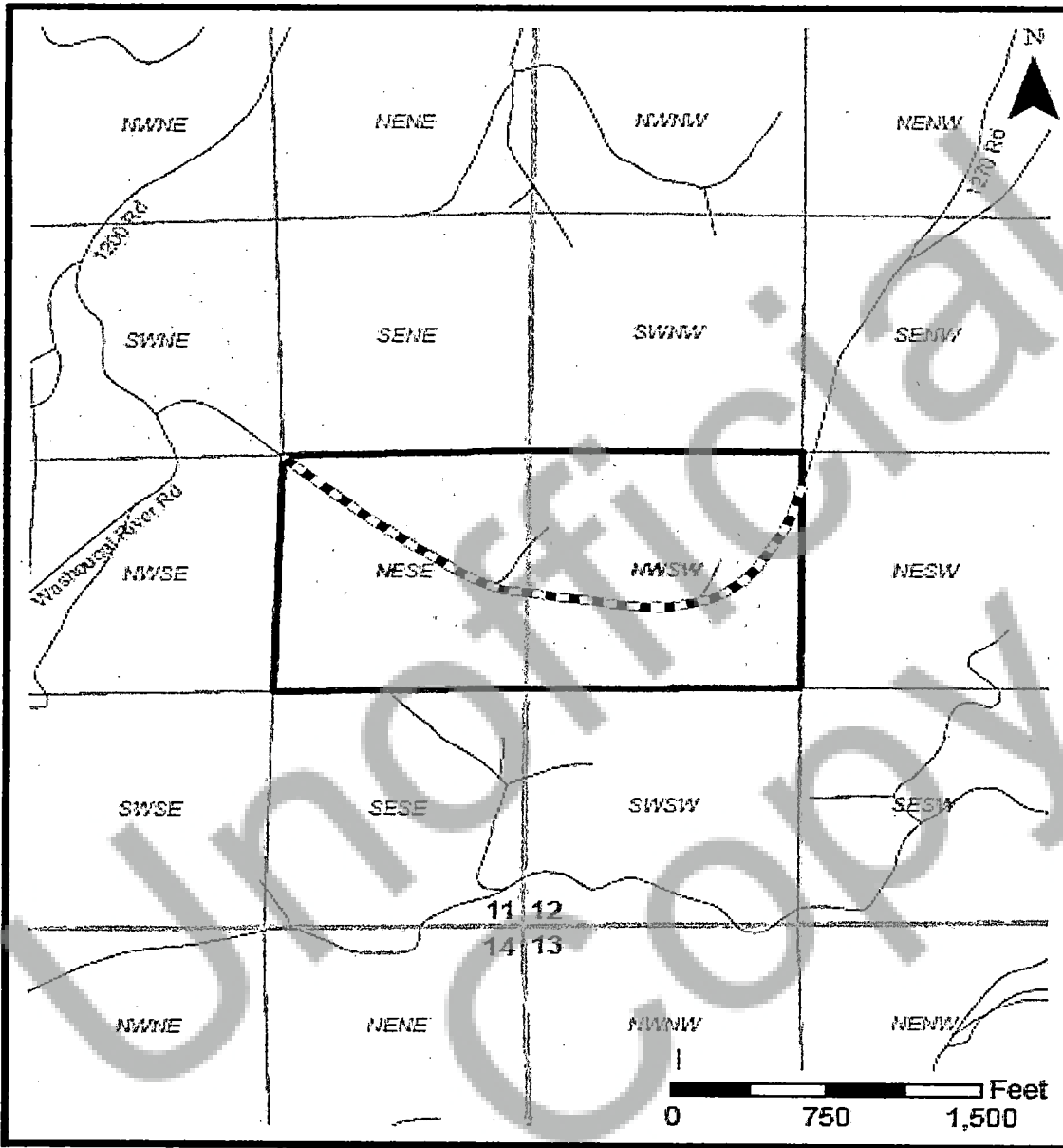
EXHIBIT B
Grantor's Property
Skamania County, Washington

The Northeast Quarter of the Southeast Quarter (NE1/4 SE1/4) of Section 11; The Northwest Quarter of the Southwest Quarter (NW1/4 SW1/4) of Section 12; All in Township 2 North, Range 5 East, W.M., Skamania County, Washington.

Unofficial
Copy

EXHIBIT C

Map of the Easement Area and the Road Skamania County, Washington



-  Grant of Easement to Weyerhaeuser Company
 -  Servient Property
 -  Section Line
 -  Roads
- Township 2 North, Range 5 East
Skamania County, WA
- 
Weyerhaeuser
- 53059H0D15_GRW - 11/30/2018
LT Dept - Mayturum