

7194-1227653

90
10
11-

RECORDED TO
RECORD
FOR
2009-044898

Division of Chief Deputy Clerk
Lane County Deeds and Records

2009-044898



\$111.00

01093444200900448980180189

08/04/2009 01:12:19 PM

RPR-ESMT Cnt=1 Stn=6 CASHIER 07
\$90.00 \$10.00 \$11.00

After recording this Easement, please return to: The McKenzie River Trust,
1245 Pearl Street., Eugene, Oregon, 97401

Conservation Easement for Duncan Island Ranch, Siuslaw River, Lane County, Oregon
CONSERVATION EASEMENT

THIS GRANT OF CONSERVATION EASEMENT is made this 28 day of July, 2009 by M. Hayden Sears and Dawn E. Sears ("Grantor", which word where the context requires includes Grantor's executors, administrators, legal representatives, devisees, heirs, successors, and assigns), in favor of the **McKenzie River Trust** an IRC §501(c)(3) Oregon corporation qualified to do business in Oregon, which is a land conservancy qualified to receive this easement under ORS 271.715-271.795 or IRS Code §170(h), of Eugene, Oregon, ("Grantee"). The State of Oregon, by and through the Oregon Watershed Enhancement Board ("OWEB") has certain rights hereunder, including third party rights of enforcement. The duration of this conservation easement ("Easement") is perpetual.

Background and Parties Intentions:

- I. Grantor is the holder of the legal and equitable title of sixteen parcels of approximately 5 acres each within Siuslaw Shore Acres, those certain parcels of land comprising, in total, approximately 86 acres more or less, located along the Siuslaw River in Lane County, Oregon, and identified, in Lane County Map and Taxlots 32-48 respectively, (hereinafter "Property"). The Property is more specifically described on Exhibit "A," attached hereto, and incorporated herein by reference. The extents of areas covered by this Conservation Easement and those not included in the easement area are shown on Exhibit B, Conservation Easement Zones. The terms and conditions of this Easement do not apply within the Farmstead Zone described in Exhibit A, shown on Exhibit B, and further described and identified in the Baseline Documentation Report.
- II. The Property possesses certain, natural, scenic, habitat, wetland, water quality and productive soils values associated with the Siuslaw River watershed, (collectively, "Conservation Values"), of great importance to Grantees, the people of Lane County, the State of Oregon and the United States of America; specifically:
 - a. The Property encompasses approximately one river mile of the Siuslaw River and more than one river mile of Duncan Slough both known to provide important habitat for Coho salmon.
 - b. The Property contains approximately 12 acres of mature spruce forest dominated by spruce, hemlock and cedar, which provide shading for aquatic species, refuge for terrestrial species, and woody material for the river system;
 - c. The Property also contains approximately 37 acres of significant tidally influenced estuarine wetlands as well as approximately 8 acres of lowland non-linear forest wetlands that can provide nesting, feeding, and nursery areas for a diverse array of at-risk fish and wildlife species, such as coho salmon, bald eagle, and green sturgeon;
 - d. The Property is identified in the Siuslaw National Forest's Management Plan as being located in a key watershed to be managed consistent with maintaining high water quality, high levels of

large wood available to an active floodplain, and a closed forest canopy consistent with the life cycle needs of listed and threatened species; the Property is also noted as a high priority for conservation and restoration in the 2005 *Tidal Wetland Prioritization for the Siuslaw River Estuary*;

- e. Protecting the estuary from pollutants is essential to ensuring the health of the fish and invertebrates that inhabit the estuary and the birds and mammals that feed on them. Protecting water quality is also an important part of conserving the significant recreational fisheries for which the estuary is highly valued.
- f. The specific Conservation Values of the Property are further documented in an inventory of relevant features of the Property on file at the offices of the Grantee and OWEB and incorporated by this reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this Easement and which is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this Easement;
- g. Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity;
- h. Grantee intends by accepting this Easement to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and generations to come;
- i. This Easement is acquired in part with a grant from OWEB, (Grant Agreement # 209-116) an agency of the State of Oregon whose statutory mission includes providing funding to support the acquisition of lands and waters, or interests therein from willing sellers, for the purpose of maintaining or restoring watersheds, fish and wildlife habitat, and native salmonids. Interests in these lands and waters may be held by local, state and federal agencies, tribes, not-for-profit land conservation organizations and trusts, state institutions of higher education, independent not-for-profit institutions of higher education or political subdivisions of this state, as long as the entity continues to use the land or water for the purposes specified under section 4b, Article XV of the Oregon Constitution. OWEB is a third-party beneficiary of certain rights under this Easement.
- j. The Property also contains upland pasture ground certified in 2008 by Oregon Tilth as Organic and is currently used for both grazing and food-crop production. Grantors wish to see such uses continue on a limited basis in that upland to support the ecological integrity and agricultural viability of the Property, without significantly impairing or interfering with the Conservation Values. The purpose of Oregon Tilth is to "educate gardeners, farmers, legislators, and the general public about the need to develop and use sustainable growing practices that promote soil health, conserve natural resources, and prevent environmental degradation while producing a clean and healthful food supply for humanity."

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of Oregon, in particular ORS 271.715 to 271.795, and the IRS Code §170(h), Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent set forth in the deed ("Easement").

1. **Purpose.** It is the purpose of this Easement to ensure that the Property described will be retained, maintained and managed forever in its natural, scenic, forested, aquatic and rural condition and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property. It is further the specific purpose of this Easement to protect the Property from fragmentation due to subdivision and unrestricted residential and/or commercial development and to

conserve important, diverse estuarine wetland and riparian forest habitats, upland soils, and the wildlife inhabiting these communities (such purposes, collectively, the "Conservation Values"). In achieving these purposes, it is the intent of the Easement to allow the continuation of such agricultural and educational uses of the Property as may be conducted such that the Conservation Values remain protected.

2. **Rights of Grantee.** To accomplish the purpose of the Easement the following rights are conveyed to Grantee by this Easement:
- a. To identify additional Conservation Values on the Property;
 - b. To recognize, preserve, and protect the Conservation Values of the Property;
 - c. To enter upon the Property at reasonable times at least annually in order to monitor compliance with and otherwise enforce the terms of this Easement in accordance with Paragraph 7 herein; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and;
 - d. To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in Paragraph 7 herein.
3. **Prohibited Uses.** Under the terms of this Easement, the Property is described as consisting of two zones: A (Upland Zone) and B (Estuary Zone) (further described in Exhibit A). Except as allowed by rights reserved to Grantor in Paragraph 4 or when approved in writing by Grantee and OWEB, certain activities and uses as specified below are inconsistent with the Conservation Values of the Property and the Purpose of this Easement and are therefore prohibited or restricted upon or within the Property generally and Zone B particularly. Grantor agrees not to engage in or permit on the Property in Zones A and B, and only Zone B as noted below, the occurrence of any of the following activities or uses which are expressly prohibited, unless specifically allowed in an approved Management Plan kept on file with Grantee and OWEB.

Zones A and B:

- a. The legal or de facto partition, division, or subdivision of the Property, or its conveyance except as a single Property in its current configuration as described in exhibit A.
- b. Mechanical alteration within the bed or banks of any waterway or wetland for any purpose, except those provided for in an approved Management Plan.
- c. Conducting any commercial or industrial activity.
- d. Mining, including, but not limited to, the removal of sand and gravel.
- e. Placement or maintenance of any cellular phone or other communication tower.
- f. Dumping or disposal of waste, refuse, and debris except that which is reasonably generated by activities permitted herein, provided that any such dumping or disposal shall be in accordance with applicable laws. There shall be no feedlots on the Property.
- g. Placement of any signs or billboards, except signs stating the conditions of access to the Property may be posted; exceptions may include property identification signs, boundary markers, directional signs, signs posting the Property against trespass, memorial plaques, and temporary signs indicating the Property is for sale.
- h. Any use of the Property that is inconsistent with the purposes of this Easement or will adversely affect the Conservation Values.

- i. The permanent storage of petroleum products, herbicides, pesticides, or other substances, which, if accidentally released, would pose a danger to clean water or wildlife habitat.
- j. Washing, spraying or cleaning of vehicle parts or machinery, which may carry oils or other toxic residues to the soils or waters of the Property.
- k. Creation of new or expansion of existing rights of way and access easements including driveways, roads and utility lines
- l. Cutting or otherwise removing trees, timber, shrubs, or vegetation except where such actions restore native species, and ecological functions, further noted below.
- m. Placement or construction of any additional buildings or structures on the Property, including electrical, water, and waste infrastructure.
- n. The maintenance of vehicles, including changing of oils, repair and rebuilding of machinery and tools.
- o. The treatment of the soils or surfaces of the Property with petroleum products or biologically toxic substances, including, but not limited to, pesticides and herbicides, which may run into the ground or surface areas of the site, unless Grantee and OWEB's approval is obtained for management of invasive species or temporary activities consistent with protecting or maintaining the Conservation Values of the Property.
- p. The use of poison, traps, or other such devices.
- q. The permanent storage of vehicles.

In addition, the following actions are prohibited in Zone B:

- r. Altering or removing soil or water, including any excavation, mining, removal of topsoil, rock, sand, gravel, or similar materials, or other mechanical activities that result in a material change in the topography within the Property boundary.
- s. Off-driveway or off-trail operation of machinery or vehicles, except as necessary to implement the Management Plan.
- t. The construction of new structures including, but not limited to, any fences, dikes, berms, water storage areas, channels and roads.
- u. Domestic animal or livestock grazing, or intentional introduction of non-native plant species or farming, plowing, discing, chiseling, interseeding, or any type of cultivation.

4. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from ownership of the Property including the right to engage in all uses of the Property not expressly prohibited or restricted herein or by law and that are not inconsistent with the purposes of this Easement ("Reserved Rights"). Without limiting the generality of the foregoing, and subject to the terms of Paragraph 3, the Grantor reserves the following rights:

- a. Installation of power poles, lines, and associated infrastructure along the existing driveway right of way (defined in Exhibit A and further in Baseline Documentation) to service the farmstead zone not covered under the easement.
- b. Restoration and monitoring of natural and native ecological functions of the Property for the long-term benefit of the Property, subject to the Management Plan. The Management Plan is to be developed collaboratively by Grantee and Grantor and submitted to OWEB within 12 months of the date this Easement is recorded, with final approval by OWEB within 18 months of recording this Easement. A copy of the Management Plan is to be kept on file with Grantee and OWEB. The Management Plan must describe the planned future management of the Easement Property, species and habitat management practices, restoration projects, agricultural activities, forestry activities and a monitoring plan to assess progress toward

attaining or maintaining conservation goals, public access, and educational or research opportunities on the Property. The monitoring plan must include a provision to supplement the baseline condition as conservation goals are achieved. The Management Plan must be consistent with the Purposes and terms of this Easement. Grantors and Grantee agree to work together in good faith to update the Management Plan as may be necessary from time to time.

- c. The cutting of trees for non-commercial personal consumption (up to 2 cords per year), native ecological enhancement, and for the protection of personal property, and the mowing or removal of blackberry and other non-native shrubs that threaten agricultural activities in zone A.
- d. Maintenance and continued use of the domestic water lines and irrigation system currently located and operating on and appurtenant to the Property in accordance with the terms of State of Oregon Permit #5976 (August 6, 1923) and State of Oregon Permit #16262 (April 9, 1945).
- e. Limited livestock grazing and crop production in Zone A to provide income and/or to keep invasive species to a minimum on the Property. The allowable extent of tilled areas for crop production is limited to no more than 1 acre in total in their current configuration, which is further described in the Baseline Documentation Report and which will also be referenced in the management plan developed for the Property. Grantor intends that agricultural activities on the Property shall not impose a threat or impact to the documented conservation values. Grazing will continue at or below the current level identified in the Baseline Documentation Report. Grazing and farming practices will be included in the agricultural management plan, approved by the Grantee, with particular attention given to any potential negative impacts to the conservation values in the estuary portion of the Property (Zone B). If Grantee feels that grazing and farming activities are negatively impacting these values, Grantee may impose limitations (such as restrictions on the number of animals or use of agro-chemicals on the Property) to meet the purpose and intent of this easement. Such limitations will be made after consulting with Grantor and agricultural consultants or biologists; will be made in writing to Grantor; will be amended to this easement in accordance with Paragraph 14.d herein; and will be kept on file with Grantee.
- f. General enjoyment of the Property that does not impair its Conservation Values.

5. ***Grantee and OWEB's Approval.*** Where Grantee and OWEB's approval is required, as set forth in Paragraphs 3 and 4, above, Grantee and OWEB shall grant or withhold their approvals in writing within thirty (30) days of receipt of Grantor's written request therefore. Grantee and OWEB's approval may be withheld only upon a reasonable determination by Grantee and OWEB that the action as proposed would be inconsistent with the purposes of this Easement.

6. ***Dispute Resolution.*** If there is a dispute regarding the use of the Property and consistency with the terms of this Easement, prior to Grantee or OWEB seeking to enforce the terms of the Easement as described in Section 7, the parties shall meet, negotiate in good faith, and attempt to resolve amicably any controversy or any disputed claim by any party against any other party arising under or related to this Easement. If the parties are unable to resolve the matter themselves, any party may refer the dispute to mediation by request made in writing upon the others and they shall confer in good faith with respect to resolving the matter through mediation with a mutually acceptable, qualified third party. No party shall be obligated to continue the mediation process beyond a period of sixty (60) days from the date of receipt of the initial request, or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute. Each party shall share the cost of mediation equally. OWEB's obligation under this Paragraph is subject to the limitations of Article XI, section 7 of the Oregon Constitution. Grantee and OWEB may condition their participation in mediation on the Grantor temporarily agreeing to

refrain from any activity or use that Grantee or OWEB, in good faith, believes violates the terms of the Easement.

7. *Grantee's Remedies.*

- a. Notice of Violation; Corrective Action. If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, a directive to restore the portion of the Property so injured.
- b. Scope of Relief. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may
 1. Bring an action in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation *ex parte* as necessary, without notice and without bond at the time suit is filed by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to such injury. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate, or
 2. Bring an action at law to recover reasonable damages for violation of the terms of this Easement, including but not limited to damages for the loss of scenic, aesthetic, or environmental values, including but not limited to the cost of undertaking any corrective action on the Property.
- c. Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire.
- d. Costs of Enforcement. Any cost incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs of suit and attorneys' fees on appeal where Grantee substantially prevails, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement will be borne by Grantor. If Grantor substantially prevails in any action to enforce the terms of this Easement, Grantor's costs of suit, including, without limitation, attorneys' fees on appeal, will be borne by Grantee. OWEB's obligation under the Section is subject to the limitations of Article XI, section 7 of the Oregon Constitution.
- e. Grantee's Discretion. Enforcement of the terms of this Easement will be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
- f. Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription.
- g. Acts Beyond Grantor's Control. Nothing contained in this Easement is to be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth

movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

8. **Access.** No right of access by the general public to any portion of the Property is conveyed by this Easement.

9. ***Costs, Liabilities, and Environmental Compliance.***

- a. **Upkeep and Maintenance.** Grantor retains all responsibilities and shall bear all cost and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any use permitted by this Easement, and all such activities or uses shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Property free of any liens arising out of any work performed for, or materials furnished to Grantor.
- b. **Remediation.** If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all reasonable steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefore.
- c. **Control.** Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control: (1) over the day-to-day operations of the Property; or (2) over any of Grantor's allowable activities on the Property; or (3) as an "owner or operator" with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"; 42 USC 9601 *et seq.*).

10. **Taxes.** Grantor must pay, before delinquency, all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any taxes imposed upon, or incurred as a result of this Easement, and must furnish Grantee with satisfactory evidence of payment upon request. With Grantor's permission, Grantee is authorized, but in no event obligated, to make or advance any payment of taxes, upon seven (7) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment will bear interest until paid by Grantor at the lesser of: two (2) percentage points over the prime rate of interest from time to time charged by U.S. National Bank of Oregon or the maximum rate allowed by law.

11. ***Representations and Warranties of Grantor.*** Grantor represents and warrants that, after reasonable investigation of documents in its possession, and to the best of their knowledge:

- a. **Fee Title.** Grantor is the owner in fee simple of the Property and has the right to convey the Easement to Grantee.
- b. **Environmental Matters.**
 - i. No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the

environment exists or has been released, generated, stored, deposited, disposed of, or abandoned on the Property, except for types and quantities of materials used for common household purposes;

- ii. There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements;
- iii. Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;
- iv. There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and
- v. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

12. Representations and Warranties of Grantee. Grantee is a public benefit, tax exempt nonprofit organization, qualified under Section 501(c)(3) and 170(h) of the Internal Revenue Code and is a qualified organization to hold, monitor and manage this Property under the ORS 271.715-271.795, whose primary purpose is the preservation, protection or enhancement of land in its natural, scenic, or open space condition in perpetuity through title interest;

13. Hold Harmless. Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or death of any person, or physical damage to any property, resulting from any act, condition, omission of any duties of Grantor under this instrument, or other matter related to or occurring on or about the Property, regardless of cause; in the event of shared negligence, Grantor agrees to indemnify the Grantee to the extent of Grantor's liability as determined by an arbitrator or the court; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property; (3) the presence or release in, on from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, soil, or in any way harmful or threatening to human health or the environment, unless caused by any of the Indemnified Parties.; and (4) the obligations, covenants, representations, and warranties of Paragraphs 10, 11, 12, 13, and 14 herein.

14. Extinguishment, Valuation, Condemnation, and Amendments.

- a. Extinguishment. If circumstances arise in the future such as to render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims,

from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Oregon law at the time, in accordance with Paragraph 14.b. Grantee shall use all such proceeds in a manner consistent with the purposes of this Easement.

- b. Valuation. This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of Paragraph 14.a, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in the value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code of 1954, as amended. For the purpose of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant. In the event of condemnation, pursuant to Paragraph 14.c., or extinguishment, pursuant to Paragraph 14.a., Grantee is entitled to 10% and OWEB is entitled to 90% of any proceeds attributable to the value of the Easement at the time of extinguishment or condemnation.
 - c. Condemnation. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in Paragraph 14.b.
 - d. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement provided that Grantor and Grantee first obtain the written consent of OWEB, which shall not unreasonably be withheld, and provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including ORS chapter 271 or Section 170(h) of the Internal Revenue Code of 1954, as amended, and any amendment shall be consistent with the purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Lane County, Oregon.
15. **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement with Grantor's prior written consent, which shall not be unreasonably withheld, and with prior written approval of OWEB, which shall not unreasonably be withheld, only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under ORS 271.715 to 271.795 (or any successor provision then applicable). Approval from OWEB will not be granted if a profit, as defined in OAR 695-045-0150, as amended from time to time, will result from conveyance of the Easement. As a condition of such transfer, Grantee shall require that the assignee comply with the terms of that certain watershed acquisition Grant Agreement (#209-116) between OWEB ("OWEB Grant Agreement") and Grantee. Grantee agrees to give written notice to Grantor of an assignment at least twenty (20) days prior to the date of such assignment. The failure

of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

- 16. *Executory Limitation.*** If Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), or to be authorized to acquire and hold conservation easements under ORS 271.715 795 (or any successor provision then applicable), then Grantee's rights and obligations under this Easement shall become immediately vested in such organization as a court of competent jurisdiction shall direct pursuant to applicable Oregon law and consistent with the requirements for an assignment pursuant to paragraph 15.
- 17. *Subsequent Transfers.*** Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which they divests themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.
- 18. *OWEB Third Party Right of Enforcement*** OWEB is an intended third party beneficiary of this Easement and, pursuant to ORS 271.715, OWEB is hereby granted third party right of enforcement. As such, OWEB may exercise all of the rights and remedies provided to Grantee herein, and is entitled to all of the indemnifications provided to Grantee in this Easement. OWEB and Grantee each have independent authority to enforce the terms of this Easement; provided, however, that OWEB expects that Grantee shall have primary responsibility for monitoring and enforcement of the Easement. In the event that OWEB and Grantee do not agree as to whether the Grantor is complying with the terms of the Easement, OWEB or Grantee may proceed with enforcement actions without the consent of the other. If OWEB elects to enforce the terms of this Easement, it shall first follow the provisions applicable to Grantee, including notice of violation, opportunity to cure, and mediation as appropriate; provided, however, that OWEB shall not be obligated to repeat any non-judicial dispute resolution steps already taken by Grantee.

Grantor shall comply with all state and federal laws related to archeological objects and sites and cultural resources as defined in ORS 358.905 and OAR 736-018-0020. Specifically, Grantor must not, by any act or omission, excavate, injure, destroy, remove, or alter any cultural resources present on or about the Property, unless that activity is authorized by a permit issued under ORS 390.235.

OWEB's third party right of enforcement will automatically transfer to another State agency charged with maintaining or restoring watersheds, fish and wildlife habitat, water quality and native salmonids in the event OWEB is dissolved or reorganized.

In accordance with OAR 695-045-0150, in the event that the Easement is transferred or assigned by Grantee without the consent of OWEB, OWEB may require that OWEB funds shall be repaid by the Grantee with interest due and payable from the effective date of the OWEB Grant Agreement # 209-116 at the rate provided for in ORS § 82.010, as may be amended from time to time.

In the event that the Property is used by Grantor in a manner that is not consistent with the purpose and objectives of this Easement, the terms of that certain OWEB Grant Agreement, or the purposes

specified in Section 4(b), Article XV of the Oregon Constitution, and OWEB in its sole discretion determines that the Conservation Values of the Property have been diminished to the extent that the purpose of the OWEB grant can no longer be accomplished, then OWEB shall have the right, in addition to any other remedies described in this Easement, to require that Grantee pay to OWEB the sum that would otherwise be recoverable by OWEB as a result of a condemnation or extinguishment of the Easement under Paragraph 14. Upon payment under this paragraph, Grantee and OWEB agree to record an amendment to this Easement releasing all of OWEB's third-party enforcement rights under the Easement.

- 19. *Joint Enforcement*** Before either Grantee or OWEB exercises its rights to undertake mediation or legal action as provided for in Paragraphs 6 and 7, the party contemplating such action agrees to confer with the other party as to whether they will join the mediation or legal action and share costs and expenses related to such action; provided, however, that this agreement to confer shall not be construed as a limitation on the ability of Grantee or OWEB to exercise its enforcement and other rights under this Easement. If Grantee and OWEB decide to join in the action and share costs and expenses related to the action, the parties joining in the action and sharing costs and expenses related to the action shall apply any recovery to reimburse such parties for their costs and expenses provided that any amount received (a) based on loss of value to the Easement, or (b) resulting from condemnation or extinguishment of the Easement shall be shared with OWEB as described in Paragraph 14.b only after reimbursing each party for its reasonable costs and expenses.
- 20. *Unilateral Enforcement.*** If Grantee or OWEB chooses not to undertake mediation or legal action as provided for in Paragraph 7, or share costs and expenses related to such action, such party shall not be entitled to any recovery for enforcement costs; provided, however, that any amount received (a) based on loss of value to the Easement, or (b) resulting from condemnation or extinguishment of the Easement shall be shared with OWEB as described in Paragraph 14b only after first reimbursing any party for its reasonable costs and expenses that are not otherwise separately paid as part of any award or judgment.
- 21. *Estoppel Certificates.*** Upon request by Grantor, Grantee shall within twenty (20) days execute and deliver to Grantor, or any party designated to Grantor, any document, including an estoppel certificate, which certifies, to the best of the Grantee's knowledge, Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within, thirty (30) days of receipt of Grantor's written request therefore.
- 22. *Notices.*** Any notice, demand, request, consent, approval or communication that either party desires or is required to give the other shall be in writing and either served personally or sent by first class mail, postage prepaid, to the parties and at the addresses first stated above, on page 1 of this Easement, or to such other address as either party from time to time shall designate by written notice to the other. All notices to OWEB must be directed as follows:

Executive Director
Oregon Watershed Enhancement Board
775 Summer Street NE, Suite 360
Salem, Oregon 97301-1290
503-986-0178

23. Recordation. Grantee shall record this instrument in timely fashion in the official records of Lane County, Oregon and may re-record it at any time as may be required to preserve its rights in this Easement.

24. General Provisions.

- a. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Oregon.
- b. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purpose of this Easement and the policy and purpose of ORS 271.715 to 271.795. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- c. Severability. If any provision of this Easement, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- d. Entire Agreement. This instrument, with its exhibits, sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Paragraph 14.d.
- e. No Forfeiture. Nothing contained herein will result in a forfeiture or revision of Grantor's title in any respect.
- f. Joint Obligation. The obligations imposed by this Easement upon Grantor, or his or her successors, shall be joint and several.
- g. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. Unless specifically provided otherwise, the terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and his or her personal representatives, heirs, successors, and assigns, and the above-named Grantee and its successors and assigns.
- h. Terminations of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- i. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- j. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns, forever.

IN WITNESS WHEREOF Grantor and Grantee have set their hands on the day and year first above written.

Dated: 7/28/09

By: [Signature]
M. Hayden Sears, Grantor

Dated: 7/28/09

By: Dawn E. Sears
Dawn E. Sears, Grantor

STATE OF OREGON)
) ss
COUNTY OF LANE)

Personally appeared before me ^{their ms} , and acknowledged the foregoing to be ^{her} voluntary act and deed.
Before me this 28 day of July, 2009. M. Hayden Sears and Dawn E. Sears.



[Signature]
Notary Public of Oregon

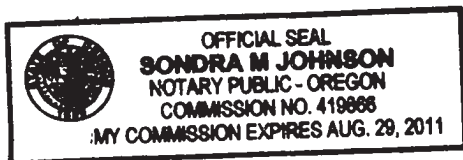
My Commission Expires 8-29-2011

Dated: 7/28/09

By: [Signature]
Roger Robb, President
McKenzie River Trust, Grantee

STATE OF OREGON)
) ss
COUNTY OF LANE)

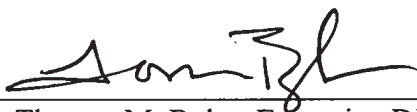
Personally appeared before me Roger Robb, President McKenzie River Trust, and acknowledged the foregoing to be his voluntary act and deed. Before me this 28 day of July, 2009.



[Signature]
Notary Public of Oregon

My Commission Expires 8/29/2011

Dated: 7/24/09

By: 
Thomas M. Byler, Executive Director
Oregon Watershed Enhancement Board
Third Party Beneficiary

STATE OF OREGON)
) ss
COUNTY OF MARION)

Personally appeared before me Thomas M. Byler, Executive Director, Oregon Watershed Enhancement Board, and acknowledged the foregoing to be his voluntary act and deed. Before me this 29 day of July, 2009.

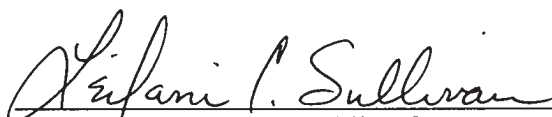

Notary Public of Oregon
My Commission Expires June 10, 2011



EXHIBIT A

Real property in the County of Lane, State of Oregon, described as follows:

LOTS 32 THROUGH 48, INCLUSIVE, SIUSLAW SHORE ACRES, AS PLATTED AND
RECORDED IN BOOK 8, PAGE 25, LANE COUNTY OREGON PLAT RECORDS, IN LANE
COUNTY, OREGON.

EXHIBIT B

Farmstead Zone (Outside of Easement)

UTM coordinates:

SE corner: N 44 1.079 W -123 57.865

SW corner: N 44 1.081 W -123 58.016

NE corner: N 44 1.110 W -123 57.906

NW corner: N 44 1.125 W -123 58.012

Zone A (Upland)

Zone A overlies portions of Lots 32-48, as outlined on the aerial photo in Exhibit B.

SE corner: N 44 1.003 W -123 57.476

SW corner: N 44 1.052 W -123 58.475

NE corner: 44 1.201 W -123 57.451

NW corner: 44 1.075 W -123 58.483




Zone B (Estuary)

That portion of the above described Property, Lots 32-48, not included in Zone A or the Farmstead Zone defined in the Baseline documentation report kept on file with grantee.

Exhibit B. Conservation Easement Zones



Legend

-  Farmstead Zone = 3.0 acres
EXCLUDED FROM EASEMENT
-  Zone A = 22.3 acres
-  Zone B = 60.7 acres

940 470 0 940 Feet



Duncan Island Ranch Conservation Easement

Exhibit C

Acknowledgement of Property Condition:

In compliance with Section 1.170A-14(g)(5) of the federal tax regulations, the undersigned accept and acknowledge that this Baseline Documentation Report is an accurate representation of the property at the time of the conservation easement conveyance.

LANDOWNER (GRANTOR):

Dated: 7/28/09


By: 
M. Hayden Sears, Grantor

Dated: 7/28/09

By: 
Dawn E. Sears, Grantor

LAND TRUST (GRANTEE):

Dated: 7/28/09

By: 
Roger Robb, President
McKenzie River Trust, Grantee