
After recording, return to:

[Melissa Leoni
Oregon Watershed Enhancement Board
775 Summer St. NE #360
Salem, Oregon 97301]

CONSERVATION EASEMENT

This Conservation Easement is entered into pursuant to ORS 271.715 to 271.795 this ____ day of _____, 2004, between the City of Cannon Beach (hereinafter “Grantor”) and the State of Oregon, acting by and through its Oregon Watershed Enhancement Board, an agency of the State of Oregon, as holder (hereinafter “Grantee”).

RECITALS:

- A. The Grantor is a local government in Clatsop County, Oregon;
- B. The Grantor is the sole owner in fee simple of certain real property described in Exhibit A (“the Property”);
- C. The Property possesses natural, scenic, educational, recreational, and fish and wildlife values (collectively called “Conservation Values”, as further described in Section 3, below) of great importance to the Grantor and to the citizens of the State of Oregon;
- D. Grantee is an agency of the State of Oregon whose statutory mission is to provide funding to support the acquisition of lands and waters, or interests therein from willing sellers, for the purpose of maintaining or restoring watersheds, 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, 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;
- E. The Grantor has purchased the Property with funds provided, in part, by the Grantee. In exchange for the receipt of such funds, the Grantor has agreed to grant to Grantee a conservation easement as provided in this Agreement;

F. Grantee has publicized and held public meetings in compliance with ORS 271.735 and has thereafter determined that the purchase of a conservation easement is in the public interest;

G. ORS 541.375(9) requires that real property acquired with funds from the Watershed Improvement Grant Fund be used for purposes specified under section 4b, Article XV of the Oregon Constitution, attached as Exhibit B;

H. The purpose of this Conservation Easement is to ensure that the Property will continue to be used for purposes specified under section 4b, Article XV of the Oregon Constitution, in satisfaction of the requirements of ORS 541.375(9), to protect the Conservation Values enumerated in Section 3 of this Easement, and to accomplish the goals described by Grantor in its grant application to Grantee (No. 205-001), upon which basis Grantee awarded Grantor funding to assist with acquisition of the Property.

AGREEMENT

1. Grant of Conservation Easement. In consideration of \$185,000.00 (the “Funds”), and of the mutual promises, terms, conditions, restrictions and undertakings herein set forth, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity upon the Property of the nature and character and to the extent hereinafter set forth.

2. Obligations of the Grantor. The Grantor shall:

- a. Preserve and protect the Conservation Values of the Property (as described in Section 3, below), in perpetuity, preserving its predominantly natural, scenic, forested, and open space condition;
- b. Take all actions necessary to insure that the Property is used and managed in a manner consistent with the Conservation Values described in Section 3, below;
- c. Take all actions necessary to insure that the Property is not used in violation of the use restrictions contained in Section 4, below; and
- d. Prepare a proposed management plan and implement an Approved Management Plan as provided in Section 6, below.

3. Specific Conservation Values. The uses of the Property are limited to those consistent with section 4b, Article XV of the Oregon Constitution and the restoration, preservation and protection of the Conservation Values identified below. Grantor and Grantee have identified the following specific Conservation Values that shall be preserved, protected, and enhanced under this Easement:

- a. Healthy watershed function;

- b. Coastal forest and forested riparian habitats, including the preservation of remnant temperate-climate rainforest;
- c. Native fish and wildlife habitat, including:
 - i. Habitat for native resident and anadromous salmonid species, such as populations of coho salmon, steelhead, chum salmon, searun cutthroat trout, and Pacific Lamprey,
 - ii. Habitat for native terrestrial and avian species; and
- d. Current or historic wetlands located on the Property.

4. Prohibited Actions. Except as expressly permitted in Section 5, any activity on the Property, or use of the Property, inconsistent with the purposes of this Conservation Easement or detrimental to the Conservation Values in Section 3 is expressly prohibited, and the Grantor agrees not to engage in or permit any such activity or use. By way of example, the following activities and uses are explicitly prohibited, except to the extent expressly permitted in the Approved Management Plan, described in Section 6, or approved in writing by Grantee, which approval shall not be unreasonably withheld:

- a. Division. Any division, partition or subdivision of the Property is prohibited.
- b. Commercial Activities. Commercial or industrial activity is prohibited.
- c. Construction. All construction, improvements and/or other man-made modifications such as buildings, structures, fences, roads and parking lots are prohibited, except for:
 - i. Temporary fences built for the protection of trees and vegetation.
 - ii. Maintenance of existing roads to allow restoration, preservation, and protection of the Conservation Values identified in Section 3 of this Easement.
 - iii. Construction, improvements and/or man-made modifications approved in writing by Grantee, which approval shall not be unreasonably withheld.
- d. Cutting Vegetation. Any cutting of trees or vegetation is prohibited, except for the purpose of noxious weed control, removal of danger trees, or obstructions to permitted roads.
- e. Land Surface Alteration. Any mining, quarry, gravel extraction, grading, excavation, or alteration of the land surface is prohibited.

- f. Dumping. Waste and unsightly or offensive materials are not allowed and may not be accumulated on the Property.
- g. Water Courses. Natural water courses, lake shores, wetlands or other water bodies may not be altered.
- h. Off-Road Vehicles. Except for vehicles needed to facilitate implementation of the Approved Management Plan, motorized off-road vehicles such as snowmobiles, dune buggies, all-terrain vehicles and motorcycles may not be operated on the Property. Off road bicycle trails may not be developed on the Property.
- i. Firearms. No shooting of firearms, guns, rifles, for professional or recreational purposes on or from the Property is allowed.
- j. Hazardous Materials. The owner of the Property or land manager shall not, by any act or omission, cause, contribute to or exacerbate a release of hazardous substances on or about the Property. As used herein, the term "Hazardous Substances" includes, without limitation, any material or substance that is (i) defined as a "hazardous substance" under any federal, state or local law, including oil; (ii) asbestos; (iii) fertilizers, herbicides, pesticides, and their residues; and (iv) nuclear or radioactive materials. The Grantor shall promptly notify Grantee of the presence or release of Hazardous Substances in, on, or about the Property, whether caused or discovered by the Grantor or any other person or entity. The Grantor shall take any action required by law to contain, remove, and remediate the Hazardous Substances. In addition, the Grantor shall take all appropriate actions to contain, remove or remediate the Hazardous Substances to the extent necessary to protect the Conservation Values identified in Section 3 this Conservation Easement. The Grantor shall cooperate fully with any investigation, removal or remedial action on or about the Property and shall not hinder or delay entry to, investigation of, or removal or remedial action on the Property by EPA, DEQ or their authorized representatives.

If Hazardous Substances are found or released on the Property, the Grantor shall keep Grantee informed on a quarterly basis about the progress of any actions to remove, remediate, or contain Hazardous Substances on the Property, or decisions that no removal, remediation or containment will be necessary.

- k. Billboards. Billboards and signs are prohibited. Signs may, however, be displayed to state:
 - i. the name and address of the Property.
 - ii. the owner's name.
 - iii. the area protected by this Conservation Easement.

- iv. prohibition of any unauthorized entry or use.
- v. restoration activities implemented.

Signs may also be displayed for educational purposes consistent with protection of the Conservation Values described in Section 3 of this Easement.

1. No domestic, exotic or farm animals of any type are allowed on the Property unless expressly permitted in writing by Grantee and consistent with enhancement, preservation, or protection of the Conservation Values described in Section 3 of this Easement.
5. Permitted Actions. The Property may be used for the activities described in the Grantor's grant application, including watershed restoration activities, educational activities, and passive, low-impact recreational use such as hiking and walking trails, in a manner consistent with section 4b, Article XV of the Oregon Constitution, the Conservation Values listed in Section 3 of this Easement, and the Approved Management Plan.
6. Management Plan.
- a. Grantor shall prepare a proposed management plan to enhance, protect and preserve the Conservation Values on the Property.
 - b. Grantor shall submit its proposed management plan to Grantee for approval no later than June 30, 2006.
 - c. If Grantor fails to submit an acceptable management plan to Grantee by August 30, 2006, Grantee will have the right, but not the obligation, to prepare its own management plan, or contract with a third party to prepare an acceptable management plan, and Grantor will pay all Grantee costs and expenses for the preparation of such plan. Such remedy shall be in addition to any other remedies provided for in Section 9, below.
 - d. After a proposed management plan has received final approval by Grantee, or has been prepared by Grantee pursuant to Section 6(c) above, (the "Approved Management Plan"), Grantor will manage the Property in a manner consistent with the terms of the Approved Management Plan and this Conservation Easement.
7. Duration, Burdens, and Benefits. The covenants and restrictions of this Conservation Easement are binding on the Grantor and its successors and assigns, and shall run with the Property in perpetuity. The benefits of this Conservation Easement are in gross and are assignable, but only to an eligible holder specified in ORS 271.725(1).
8. Grantee's Right Of Entry And Inspection. Grantee shall have the right, in a reasonable manner and at reasonable times, to enter and inspect the Property to determine

compliance with this Conservation Easement. Except in the case of an emergency, Grantee shall attempt to give the Grantor prior notice, which may be by telephone.

9. Grantee's Remedies.

- a. Notice of Violation; Corrective Action. If Grantee determines that a violation of the terms of this Easement or the Approved Management Plan has occurred or is threatened, Grantee shall give written notice to the Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement or the Approved Management Plan, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.
- b. Management Plan. If an Approved Management Plan is not adopted by September 30, 2006, or if the Grantor fails to properly implement the Approved Management Plan, then Grantee will have the right, but not the obligation to:
 - i. Prepare a management plan as provided in Section 6(c), above;
 - ii. Perform, or cause to be performed, the obligations under the Approved Management Plan, in which case i) the Grantor will reimburse Grantee for all costs incurred thereby and ii) grant to Grantee or its designees a license to enter the property and perform the duties under the Approved Management Plan; and/or
 - iii. Require the Grantor to repay to Grantee the grant amount (\$185,000), which shall bear interest from the effective date of this Agreement at the rate provided for in OAR Chapter 695, as amended from time to time. Upon repayment to Grantee, Grantee will release this Conservation Easement and the Grantor's obligations hereunder.
- c. Legal Action. If the 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 within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may alternatively:
 - i. Bring an action in equity in a court of competent jurisdiction to enforce the terms of this Easement or Approved Management Plan, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury; or

- ii. Bring an action to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values.
 - iii. In addition, Grantee shall be entitled to recover damages for costs or expenses incurred due to the failure of the Grantor to perform its obligations under the Approved Management Plan.
- d. **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 Section 9 without prior notice to the Grantor or without waiting for the period provided for cure to expire.
- e. **Scope of Relief.** Grantee's rights under this Section 9 apply equally in the event of either actual or threatened violations of the terms of this Easement. The Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in Section 9(c), both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.
- f. **Remedies Cumulative.** Grantee's remedies described in this Section 9 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- g. **Attorney Fees.** In any action or suit to enforce any right or remedy under this Agreement the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs. Grantee's obligation under this Section 9 is subject to the limitations of Article XI, section 7 of the Oregon Constitution.
- h. **Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by the 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 the Grantor shall impair such right or remedy or be construed as a waiver.
- i. **Waiver of Certain Defenses.** The Grantor hereby waives any defense of laches, estoppel, or prescription.

- j. **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, without limitation, fire, flood, storm, natural earth movement, and trespassers (although the Grantor shall take reasonably prudent actions to prevent trespasser access to the Property). In addition, the Grantor shall not be responsible for any prudent action, taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

10. **Rights Of Action Against Third Parties.** Grantee may bring any action it deems necessary or prudent against third parties if, in its good faith judgment, it believes such third parties' actions may impair the Conservation Values identified in Section 3 above.

11. **Notices.** For purposes of this agreement, notices may be provided to either party, by personal delivery or by mailing by First Class Mail a written notice to that party at the address shown below, or at such other address as a party may instruct by notice given the other pursuant to this paragraph. Service will be complete upon the earlier of delivery or 2 business days after depositing the properly addressed notice with the U.S. Postal Service with sufficient postage.

GRANTOR:

City Manager
City of Cannon Beach
PO Box 368
Cannon Beach, OR 97110
(503) 436-1581

GRANTEE:

Executive Director
Oregon Watershed Enhancement Board
775 Summer Street, NE
Salem, OR 97301-1290
(503) 986-0186

12. **Maintenance or Repair, Taxes or Assessments.** Grantee shall have no obligation or liability for maintenance or repair of the Property, or for the payment of any real estate taxes or assessments levied on the Property.

13. **Indemnification.** Grantor and Grantee acknowledge that each is insured with respect to tort liability by the State of Oregon Insurance Fund, a statutory system of self-insurance established by ORS chapter 278 and subject to the Oregon Tort Claims Act (ORS 30.260 to 30.300). Each party agrees to accept that coverage as adequate insurance of the other party with respect to personal injury and property damage. Grantor and Grantee each shall be responsible for any negligent acts or omissions of its own employees or agents under this conservation easement.

14. **Severability.** In the event any provision of this Conservation Easement is determined by a court to be void and unenforceable, all other terms of this Conservation Easement shall remain valid and binding.

15. **Assignment or Disposal.** The Grantor may not assign or transfer its rights or delegate its responsibilities under this Conservation Easement or sell, lease, exchange, or otherwise dispose of the Property without prior written approval from OWEB, which

approval shall not be unreasonably withheld. Such approval will not be granted if a profit, as defined by OWEB in OAR Chapter 695, as amended from time to time, will result from conveyance of the Property. The foregoing notwithstanding, the Grantor may grant other conservation easements on the Property, without the necessity of obtaining the prior approval of OWEB, so long as such conservation easements are consistent with and advance the protections of the Conservation Values described in Section 3 of this Easement, the management goals for the Property as specified in the Grantor's grant application (#205-001), and Section 4(b), Article XV of the Oregon Constitution.

16. Dispute Resolution. If there is a dispute regarding the use restrictions contained in this Conservation Easement or assignment or transfer of the Property, prior to Grantee seeking to enforce the terms of the Easement, 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 Conservation Easement. If the parties are unable to resolve the matter themselves they shall confer in good faith with respect to resolving the matter through mediation with a mutually acceptable, qualified third party. Each party shall share the cost of mediation equally.

17. Modification. This Conservation Easement may not be modified, changed, amended, deleted or eliminated without the express written consent of both parties, their successors or assigns.

18. Oregon Law: This Conservation Easement will be construed in accordance with Oregon Law.

19. Liberal Construction: This Conservation Easement shall be liberally construed in favor of maintaining the Conservation Values of the Property, as described in Section 3, above.

IN WITNESS WHEREOF, the Grantor and Grantee have executed this Conservation Easement on this ____ day of _____, 2004.

Accepted by City of Cannon Beach as Grantor:

By: _____

Its: _____

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument is acknowledged before me this ____ day of _____, 2004, by _____, of _____, on its behalf.

NOTARY PUBLIC FOR OREGON
My commission expires: _____

Accepted by OWEB as Grantee:

By: _____

Its: Acting Director

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument is acknowledged before me this __ day of _____, 2004, by _____, of _____, on its behalf.

NOTARY PUBLIC FOR OREGON
My commission expires: _____

EXHIBIT A

IN CLATSOP COUNTY, OREGON

TOWNSHIP 5 NORTH, RANGE 10 WEST OF THE WILLAMETTE MERIDIAN:

SECTION 28: THE **SW¹/₄SW¹/₄** **LESS AND EXCEPT** THAT PORTION THEREOF LYING WITHIN PARCEL 1 OF PARTITION PLAT NO. 1994-022 RECORDED MAY 24, 1994 IN BOOK 2 AT PAGE 27, CLATSOP COUNTY PLAT RECORDS;

SECTION 32: THAT PORTION OF THE **NE¹/₄NE¹/₄NE¹/₄** LYING NORTHEASTERLY OF THE NORTHEASTERLY RIGHT OF WAY LINE OF THAT 30 FOOT WIDE ACCESS, UTILITY, AND WATERLINE EASEMENT CREATED ON PARTITION PLAT 1994-022 FOR THE BENEFIT OF THE CITY OF CANNON BEACH;

SECTION 33: THAT PORTION OF THE **NE¹/₄NW¹/₄** DESCRIBED AS FOLLOWS:
BEGINNING AT A POINT WHICH IS THE WEST ONE-SIXTEENTH CORNER COMMON TO SECTIONS 28 AND 33, TOWNSHIP 5 NORTH, RANGE 10 WEST, SAID POINT BEING MARKED BY A BRASS CAP;
THENCE SOUTH 89°28'08" EAST, ALONG THE NORTH LINE OF SAID SECTION 33, A DISTANCE OF 709.73 FEET;
THENCE SOUTH 22°14'49" EAST A DISTANCE OF 288.30 FEET;
THENCE SOUTH 42°34'05" WEST A DISTANCE OF 125.07 FEET;
THENCE NORTH 72°37'01" WEST A DISTANCE OF 769.39 FEET, MORE OR LESS, TO A POINT ON THE WEST LINE OF SAID **NE¹/₄NW¹/₄**;
THENCE NORTH ALONG SAID WEST LINE A DISTANCE OF 135.66 FEET TO THE **POINT OF BEGINNING**;

THE **W¹/₂NW¹/₄** **LESS AND EXCEPT** THAT PORTION THEREOF LYING WITHIN PARCEL 1 OF PARTITION PLAT NO. 1994-022 RECORDED MAY 24, 1994 IN BOOK 2 AT PAGE 27, CLATSOP COUNTY PLAT RECORDS.

EXHIBIT B

Oregon Constitution Article XV

Section 4b. Use of net proceeds from state lottery for salmon restoration and watershed and wildlife habitat protection. Moneys disbursed for the public purpose of financing the restoration and protection of wild salmonid populations, watersheds, fish and wildlife habitats and water quality from the fund established under Section 4 of this Article shall be administered by one state agency. At least 65 percent of the moneys will be used for capital expenditures. These moneys, including grants, shall be used for all of the following purposes:

- (1) Watershed, fish and wildlife, and riparian and other native species, habitat conservation activities, including but not limited to planning, coordination, assessment, implementation, restoration, inventory, information management and monitoring activities.
- (2) Watershed and riparian education efforts.
- (3) The development and implementation of watershed and water quality enhancement plans.
- (4) Entering into agreements to obtain from willing owners determinate interests in lands and waters that protect watershed resources, including but not limited to fee simple interests in land, leases of land or conservation easements.
- (5) Enforcement of fish and wildlife and habitat protection laws and regulations. [Created through initiative petition filed March 11, 1998, and adopted by the people Nov. 3, 1998]