

## MEMORANDUM

**TO:** Interested Parties

**FROM:** Ken Bierly, Deputy Director

**DATE:** September 1, 2011

**SUBJECT:** Hearing for Ecola Creek Forest Reserve Addition Conservation Easement

The Oregon Watershed Enhancement Board (OWEB) has awarded a grant to the City of Cannon Beach to defray costs the city recently incurred in its acquisition of an approximately 805-acre property adjacent to its existing forest preserve in the Ecola Creek watershed. The city acquired the property in a land trade with the Oregon Department of Forestry. The city will manage the property for watershed protection, which will benefit OWEB priority species such as Coho salmon, steelhead, band-tailed pigeon, and red-legged frog. The city will also manage the property for environmental education and recreation that are consistent with the protection of the property's conservation values.

In exchange for its grant funds, OWEB will hold a conservation easement on the property to ensure that use of the property is consistent with the Board's constitutional mandate — the protection and restoration of native salmonids, fish and wildlife habitat, watersheds, and water quality.

As a state agency, OWEB is required to hold a public hearing when it considers acquiring a conservation easement. **OWEB staff will hold a public hearing to receive public comment and to answer questions about the draft conservation easement and its provisions on Wednesday, October 5, 2011. The hearing will take place from 11:30am to 12:30pm at City Hall – Council Chambers 163 East Gower Street, Cannon Beach, Oregon 97110.**

An OWEB representative will be at the hearing to answer questions and receive public comment about the conservation easement. A representative from the city will also be present to answer questions and to discuss management of the property.

A copy of the draft conservation easement is attached for your information. Please call me at (503) 986-0182 if you have questions or will require special accommodations during the public hearing.

After recording, return to:  
Oregon Watershed Enhancement Board  
775 Summer Street NE, Suite 360  
Salem, OR 97301-1290

## CONSERVATION EASEMENT

This Conservation Easement ("**Easement**"), is granted by the City of Cannon Beach ("**Grantor**") to the State of Oregon, acting by and through its Oregon Watershed Enhancement Board, ("**OWEB**"). It is executed by Grantor and accepted by OWEB on \_\_\_\_\_, 2011 (the "**Effective Date**").

## RECITALS

- A. Grantor is an Oregon municipal corporation.
- B. Grantor is the sole owner in fee simple of certain real property located in Clatsop County, Oregon, described in Exhibit A ("**the Property**").
- C. The Property possesses natural, scenic, educational, recreational, and fish and wildlife habitat values (collectively "**Conservation Values**," described in Section 3, below) of importance to Grantor and to the citizens of the State of Oregon.
- D. OWEB is an agency of the State of Oregon directed under Article XV, Section 4b of the Oregon Constitution and is authorized under Oregon Revised Statutes (ORS) 541.375(9) to allocate funding to 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, and political subdivisions of this state for land acquisition projects that, in the judgment of OWEB, further the goal of protecting or restoring wild salmonids, fish and wildlife habitat, watersheds, or water quality in Oregon.
- E. Grantor will receive funds from OWEB as reimbursement of a portion of the purchase price paid by Grantor when it purchased the Property. In exchange for the receipt of such funds, Grantor is willing to grant this Easement to OWEB under ORS 271.715 to 271.795.
- F. The purpose of this Easement is to ensure that the Property will continue to be used for purposes specified under Article XV, Section 4b of the Oregon Constitution, in satisfaction of the requirements of ORS 541.375(9), to protect the Conservation Values of the Property, and to accomplish the goals stated in this Easement and described by Grantor in its grant application to OWEB (No.

209-112) on file with OWEB, upon which basis OWEB has awarded funding to Grantor to assist with acquisition of the Property.

## **AGREEMENT**

- 1. Grant of Easement.** In consideration of \$1,400,000.00 (the “*Funds*”), Grantor hereby grants to OWEB a perpetual easement on the Property, subject to the terms stated below.
- 2. Rights of OWEB.** To accomplish the purpose of this Easement, OWEB may:
  - a. preserve and protect the Conservation Values of the Property;
  - b. enter the Property: (i) without notice if OWEB determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement as provided in Section 8(b) below; and (ii) at any reasonable time after giving Grantor notice, which OWEB may give by telephone, to monitor Grantor’s compliance with and otherwise enforce this Easement; and
  - c. prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement or the Conservation Values of the Property and require that Grantor restore the Property damaged by any inconsistent activity or use.

In exercising its rights under the Easement OWEB shall not interfere with Grantor’s use and quiet enjoyment of the Property, except to the extent authorized under the Easement.

- 3. Conservation Values.** Grantor shall preserve, protect, and enhance the following Conservation Values:
  - a. Priority ecological systems:
    - i. Ecola Creek and tributaries (approximately 16 stream miles)
    - ii. Red alder and Sitka spruce lowland forested floodplain and wetlands (approximately 285 acres)
    - iii. Sitka spruce and western hemlock-dominated upland forest, 50-60 year-old age class (approximately 480 acres)
  - b. Habitat for priority species:
    - i. Coho salmon
    - ii. Steelhead
    - iii. Bald eagle
    - iv. Band-tailed pigeon
    - v. Great-blue heron
    - vi. Peregrine falcon
    - vii. Rufous hummingbird
    - viii. Willow flycatcher
    - ix. Red-legged frog

- x. Townsend's big-eared bat
- c. Healthy watershed function: The streams are connected to the wetlands and floodplains in a broad valley floor. The connections attenuate high stream flows, afford off-channel habitat to salmon and steelhead, and filter sediment and other pollutants from the water.
- d. The specific existing Conservation Values of the Property are documented in an inventory of relevant features of the Property, dated July 27, 2011, on file at the offices of Grantor and OWEB and incorporated into this Easement by this reference ("***Baseline Inventory Documentation***"). The Baseline Inventory Documentation consists of reports, maps, photographs, and other documentation that provide, collectively, a mutually agreed representation of inventoried relevant features of the Property at the time of this Easement. Grantor and OWEB intend the Baseline Inventory Documentation to serve as an objective informational baseline for purposes of monitoring Grantor's compliance with the terms of this Easement. Grantor and OWEB have reviewed and accepted the Baseline Inventory Documentation, as evidenced in the acknowledgement attached to this Easement as Exhibit B.

**4. Prohibited Activities; Trespassers; Exceptions.** Grantor shall not use or authorize others to use the Property in any way that is inconsistent with Article XV, Section 4b of the Oregon Constitution, the Conservation Values of the Property, or the Approved Management Plan described in Section 5 below. Further, Grantor shall prevent unauthorized individuals from entering the Property and eject any trespassers discovered on the Property. In general, Grantor may use or authorize the use of the Property for recreation or education if this use does not impair the Conservation Values of the Property.

Any activity on the Property or use of the Property, inconsistent with the purpose of this Easement or detrimental to the Conservation Values is expressly prohibited, and Grantor shall not engage in or permit any such activity or use.

By way of example, the following activities on and uses of the Property are prohibited, except as noted below or in the Approved Management Plan described in Section 5 below:

- a. Division. Any division, partition or subdivision of the Property.
- b. Commercial Activities. Any commercial or industrial activity.
- c. Construction. Any construction, improvement or other man-made modification including buildings, structures, fences, roads and parking lots, except for:
  - i. boundary fences that are "wildlife friendly" as defined by the Oregon Department of Fish and Wildlife or a successor agency, providing opportunity for wildlife ingress and egress;

- ii. temporary fences built for the protection of trees and vegetation, including protection from wildlife damage, that are limited to isolated and small areas (individual trees or bushes) or small plantings (less than 1/5 of an acre); and
  - iii. maintenance of existing roads to allow preservation, protection, and enhancement of the Conservation Values.
- d. Vegetation. Any cutting or removal of trees or vegetation, except for the purpose of noxious weed control, removal of danger trees, or removal of obstructions to permitted roads.
  - e. Land Surface Alteration. Any mining, quarry, gravel extraction, grading, excavation, or alteration of the land surface.
  - f. Dumping. Any dumping or accumulation of waste or unsightly or offensive materials.
  - g. Water Courses. Any alteration of natural water courses, lake shores, wetlands or other water bodies.
  - h. Off-Road Vehicle Use. Use of any motorized off-road vehicles including snowmobiles, dune buggies, all-terrain vehicles or motorcycles, whether on or off existing roads, except for vehicles needed to facilitate implementation of the Approved Management Plan.
  - i. Bicycles. Any operation of bicycles, except on existing roads.
  - j. Firearms. Any discharging of firearms.
  - k. Hazardous Materials. Any release of Hazardous Substances on or about the Property, or any act or omission, causing, contributing to, or exacerbating of any release of a Hazardous Substance. "**Hazardous Substances**" includes any material or substance that is defined as a "hazardous substance" under any federal, state or local law, oil, asbestos, fertilizers, herbicides, pesticides, or their residues. "**Release**" includes any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including abandoning or discarding barrels, containers or other closed receptacles containing any hazardous substance, but excludes the proper application of fertilizers, herbicide, and pesticide in accordance with the Approved Management Plan and all product and manufacturer instructions as to use and application rate and all applicable laws, rules, and permits.

Grantor shall promptly notify OWEB of the presence or release of Hazardous Substances in, on, or about the Property, whether caused or discovered by Grantor or any other person or entity. After notifying OWEB, Grantor shall take all action to contain, remove, and remediate the Hazardous Substances required by law or

necessary to protect the Conservation Values of the Property. 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 the Environmental Protection Agency (“EPA”), Oregon Department of Environmental Quality (“DEQ”), or their authorized representatives.

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

- l. Public Access. Any access by the public, except for enhancement, monitoring, education, or recreation activities authorized by Grantor that do not harm the Conservation Values.
- m. Billboards and Signs. All billboards and signs, except signs that display the name and address of the Property, the owner’s name, the area protected by the Easement, prohibitions of any unauthorized entry or use, restoration activities implemented, public access rules, and educational content consistent with protection of the Conservation Values.
- n. Domestic, Exotic or Farm Animals. All domestic, exotic, and farm animals of any kind, unless expressly permitted in writing by OWEB after it finds that allowing the animals is consistent with preservation, protection, and enhancement of the Conservation Values.
- o. Cultural Resources. Any excavation, injury, destruction, removal, or alteration of any cultural resources on or about the Property, except for activity authorized by a permit issued under ORS 390.235 and undertaken in compliance 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.
- p. Applicable Law. Any activity not in compliance with any federal, state, and local law, regulation, or requirement applicable to the Property.
- q. Liens or Easements. Granting or otherwise permitting any lien or easement to encumber or attach to the Property, which would allow activities inconsistent with the protection of the Conservation Values.

Grantor shall obtain OWEB’s prior written approval of any proposed activity on the Property not fully approved in the Approved Management Plan described in Section 5 below, to ensure that the proposed activity is designed and carried out in a manner that is not inconsistent with the purpose of this Easement. Grantor’s written notice of any proposed activity must (i) be received by OWEB no less than 75 days prior to the date Grantor intends to undertake the proposed activity; and (ii) describe the nature,

scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit OWEB to judge whether the activity is consistent with the purpose of this Easement.

- 5. Management Plan.** Grantor shall propose a management plan (“**Proposed Management Plan**”) that describes how Grantor shall preserve, protect, and enhance the Conservation Values of the Property. The Proposed Management Plan must be consistent with OWEB’s established guidelines for management plans, and address public access, invasive species control, restoration including but not limited to road decommissioning, forest management, and coordination of power line maintenance. The Proposed Management Plan must include monitoring and evaluation activities and a schedule for implementation.
- a. Grantor shall submit the Proposed Management Plan to OWEB within 12 months after the Effective Date.
  - b. Grantor and OWEB shall work together to revise the Proposed Management Plan, as appropriate, until the Proposed Management Plan is acceptable to Grantor and OWEB and has been approved by OWEB. When approved by OWEB, the Proposed Management Plan will then be an approved management plan (“**Approved Management Plan**”). OWEB shall not withhold its approval of a Proposed Management Plan unless it believes, in good faith 1) that the Proposed Management Plan inadequately addresses material issues related to the preservation, protection, and enhancement of the Conservation Values; and 2) that reasonable alternative provisions will result in better protection of the Conservation Values. If Grantor and OWEB do not agree on specific provisions of an Approved Management Plan within 18 months after the Effective Date, the parties shall resolve their disagreement using the dispute resolution process in Section 8 below.
  - c. Grantor shall not conduct any activities described in the Proposed Management Plan until OWEB either approves the Proposed Management Plan or OWEB expressly permits the specific activities in writing.
  - d. If Grantor fails to submit a Proposed Management Plan to OWEB within 12 months after the Effective Date, OWEB may prepare its own management plan, or contract with a third party to prepare a management plan which, upon being approved by OWEB, will become the Approved Management Plan. Grantor shall pay all of OWEB’s costs and expenses for preparation of the plan.
  - e. After the Proposed Management Plan or the plan prepared under Section 5(d) above has received final approval by OWEB, Grantor shall manage the Property in a manner consistent with the terms of the Approved Management Plan and this Easement.
  - f. Grantor may propose changes to an Approved Management Plan at any time by submitting a written request to OWEB. OWEB shall endeavor to review and

comment on the proposed changes within 60 days after receiving Grantor's proposed changes. OWEB shall approve or reject the proposed changes according to the standards set forth in Section 5 (b) above. If OWEB fails to approve the proposed changes by the end of the 60-day period, the proposed changes are rejected. If Grantor and OWEB do not agree on specific provisions of the proposed changes, the parties shall resolve the dispute using the dispute resolution process in Section 8 below.

- 6. Duration, Burdens, and Benefits.** This Easement binds the Grantor, its successors and assigns, and runs with the Property in perpetuity. The benefits of this Easement are in gross and are assignable, but only to an eligible holder specified in ORS 271.725(1) or its successor provision.
- 7. Ecosystem Services Credits.** Grantor may, upon OWEB's written approval, sell mitigation credits, wetland credits, carbon credits, habitat credits, species credits, and other similar types of mitigation or conservation credits ("*Ecosystems Services Credits*") generated from the enhancement of Conservation Values beyond the values indicated in the Baseline Inventory Documentation. Grantor shall submit a written request for OWEB's approval at least 30 days prior to the next regularly scheduled public business meeting of OWEB's governing body. Grantor's request shall describe in detail (including as appropriate maps, photographs, inventories, or other documentation) how the enhanced Conservation Values exceed those described in the Baseline Inventory Documentation. Where applicable, Grantor's request shall also demonstrate how the sale of Ecosystem Services Credits complies with any restrictions associated with funding used to achieve the enhanced Conservation Values.
- 8. OWEB's Remedies.**

  - a. Mediation of Disputes. The parties shall attempt to amicably resolve any disputes or disagreements through informal discussions followed by non-binding mediation prior to resorting to litigation. If the parties agree to mediate a dispute, they shall select a mutually acceptable qualified third party mediator and each party shall share the costs of the mediator equally; each party shall bear its own costs for preparing for and attending the mediation. However, if OWEB in its sole discretion determines that informal discussions or mediation may not be fruitful or the resulting delay may otherwise threaten the Conservation Values, OWEB may at any time pursue any of the remedies available to it under this Section 8.
  - b. Notice of Violation; Corrective Action.

    - i. If OWEB determines that a violation of this Easement has or may have occurred or is threatened, OWEB may give written notice to Grantor of the violation and may demand:

- A. corrective action sufficient to cure the violation within 30 days; and,
- B. if 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, restoration of the portion of the Property injured to its prior condition in accordance with a plan approved by OWEB.

However, if OWEB, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, OWEB may pursue its remedies under this Section 8 without prior notice to Grantor or without waiting for any cure period provided in a violation notice to expire.

- ii. If the parties fail to adopt an Approved Management Plan within 18 months after the Effective Date, or if Grantor fails to properly implement the Approved Management Plan, OWEB may:
  - A. prepare a management plan as described in Section 5(d), above;
  - B. perform, or cause to be performed, the obligations under the Approved Management Plan, and enter upon the Property for this purpose; and
  - C. recover from Grantor all costs incurred by OWEB as a result of OWEB performing or causing performance of the Approved Management Plan;
- c. Legal Action. If Grantor fails to cure a violation of the terms of this Easement within 30 days after receipt of notice from OWEB, or, if the violation cannot reasonably be cured within 30 days, fails to begin curing the violation within the 30-day period, or fails to continue diligently to cure the violation until finally cured, OWEB may:
  - i. enforce this Easement, enjoin the violation, ex parte as necessary, by temporary or permanent injunction, and require the restoration of the Property to the condition that existed prior to the violation or to the condition otherwise required by this Easement; or
  - ii. recover damages for violation of this Easement or injury to any Conservation Values protected by this Easement, including damages for the loss of scenic, aesthetic, or environmental values, or damages for the value of Ecosystem Services Credits sold by Grantor that are properly owned by OWEB; or
  - iii. recover the greater of the following from Grantor:
    - A. The Funds, together with interest from the Effective Date at the rate provided for in ORS 82.010, as amended from time to time. The required repayment amount will not exceed five times the Funds; or

B. The Liquidation Value, which takes into account both increases and decreases in the fair market value of the Property over time, and is to be calculated as follows:

- i. the fair market value of the Property at the time the Liquidation Value is to be determined, as if unencumbered by the Easement, and unencumbered by any other lien or mortgage on the Property;
- ii. less the value (if any) of any capital improvements Grantor made to the Property after the Effective Date, if the improvements are otherwise permitted pursuant to Section 4 above;
- iii. multiplied by 54.7 %, which constitutes the percentage that the Funds bear to the fair market value of the Property as established by the appraisal prepared by Mason, Bruce and Girard, Inc. and dated April 28, 2011, on file at the offices of Grantor and OWEB (the "*Appraisal*").

For example, if the fair market value of the Property at the time the Liquidation Value is to be determined is \$1,000,000, and the value of Grantor's capital improvements made after the Effective Date is \$200,000, and OWEB's grant equaled 60% of the fair market value of the Property as established by the Appraisal, the Liquidation Value is:

$$(\$1,000,000 - \$200,000) \times .60 = \$480,000.$$

Upon Grantor's payment of the greater of the amounts calculated under Section 8.c.iii.A and Section 8.c.iii.B above, OWEB shall execute and record a document terminating its interest in this Easement.

- d. Equitable Relief. Grantor acknowledges that OWEB acquired this Easement to protect the Conservation Values, that injury to the Conservation Values cannot be adequately compensated with money damages, that OWEB's remedies at law for any violation of the terms of this Easement are inadequate and that OWEB may pursue equitable relief in addition to any other remedies available to it.
- e. Release of Easement for Liquidation Value. If OWEB determines in good faith that the purpose of this Easement cannot be realized, OWEB shall, upon receipt of the Liquidation Value as defined in Section 8.c.iii.B above, execute and record a document terminating its interest in this Easement.
- f. No waiver. The failure of OWEB to enforce any term of this Easement or the waiver of any violation or nonperformance of this Easement in one instance does not constitute a waiver by OWEB of that or any other term nor is it a waiver of any subsequent violation or nonperformance. Any waiver, if made, is effective only in the specific instance and for the specific purpose given.

- g. Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription.
- h. Acts Beyond Grantor's Control. Nothing in this Easement entitles OWEB to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control. In addition, Grantor is not responsible for any prudent action it takes under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

**9. Joinder in Actions Against Third Parties.** Upon request by OWEB Grantor shall join with OWEB in any action OWEB may deem necessary or prudent to bring against third parties to protect the Conservation Values of the Property.

**10. Notice and Approval.**

- a. Notice. 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 is complete after 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 Planner  
 City of Cannon Beach  
 PO Box 368  
 Cannon Beach, OR 97110  
 (503) 436-8040

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

- b. OWEB's Approval. If OWEB's approval is required, OWEB shall, unless otherwise provided in this Easement, grant or withhold its approval in writing within 60 days after receipt of Grantor's written request. OWEB may withhold its approval only upon its good faith determination that the proposed action is inconsistent with the purpose of this Easement. If, at the end of 60 days, Grantor has not received notification of OWEB's approval, the request is denied.

**11. Maintenance, Repair, Taxes and Assessments.** OWEB has no obligation or liability for any maintenance or repair of the Property, or for the payment of any real estate taxes or assessments levied on the Property.

**12. Indemnification.** Grantor shall indemnify and hold OWEB and the State of Oregon and their officers, employees and agents harmless against all losses and liabilities arising out of or relating to the activities of Grantor or its officers, employees, subcontractors or agents on the Property. To the extent permitted by Article XI, section 7 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 to 30.300, OWEB shall indemnify and hold Grantor and its officers, employees, and agents harmless against all losses and liabilities arising out of or relating to the

activities of OWEB or its officers, employees, subcontractors, or agents on the Property.

**13. Grantor Representations.** Grantor represents that, after reasonable investigation and to the best of its knowledge:

- a. No Hazardous Substances exist or have been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property.
- b. There are not as of the Effective Date any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or 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.
- c. Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use.
- d. There is no pending or threatened litigation in any way affecting, involving, or relating to the Property.
- e. 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, or 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.
- f. There are no liens or easements on the Property that would allow activities inconsistent with protection of the Conservation Values.

**14. Control.** Absent a judicial decree or judgment providing otherwise, nothing in this Easement gives OWEB any right or ability to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), or ORS 465.255.

**15. Severability.** If any term of this Easement conflicts with governing law or if any provision is held to be invalid or unenforceable by a court of competent jurisdiction, the parties intend (i) that the term be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law, and (ii) that the remaining terms of this Easement remain in full force and effect.

- 16. Assignment or Disposal.** Grantor shall not assign or transfer its rights or delegate its responsibilities under this Easement or sell, lease, exchange, or otherwise dispose of the Property without OWEB's prior written approval, which OWEB shall not unreasonably withhold. After Grantor gives notice, OWEB shall consider transfer of the interest in land acquired with OWEB's assistance at the next regularly scheduled public business meeting of OWEB's governing body. In accordance with ORS 541.376, OWEB shall not consider approval of Grantor's request if a profit will result from conveyance of the Property. If Grantor plans to grant additional easements on the Property, or allow modification of easements or encumbrances pre-dating the Effective Date, Grantor shall provide 60 days prior written notice of the proposed easement to OWEB, and shall give OWEB an opportunity to consult on the proposed easement language.
- 17. Modification.** No amendment of this Easement is valid unless it is in writing and signed by both parties.
- 18. 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, Grantor and OWEB shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and of all resulting direct or incidental damages. As between Grantor and OWEB, OWEB shall receive the Liquidation Value of the Property or portion condemned. After OWEB has received Liquidation Value, Grantor may recover from the proceeds, if any, its funds in the amount of \$1,170,000. After Grantor has recovered its funds, OWEB and Grantor shall pay from remaining condemnation proceeds, if any, all expenses reasonably incurred by Grantor and OWEB in connection with the taking or in lieu purchase from the amount recovered.
- 19. Governing Law.** This Easement is subject to the laws of the State of Oregon.
- 20. Liberal Construction.** The parties intend this Easement to be liberally construed in favor of maintaining the Conservation Values of the Property.

Grantor:

**By:** \_\_\_\_\_  
**Its:** \_\_\_\_\_

STATE OF OREGON                     )  
  ) SS  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires:

Accepted by OWEB as Grantee:

**By:** \_\_\_\_\_  
**Its: Executive Director**

STATE OF OREGON                     )  
  ) SS  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires:

## **EXHIBIT A**

### **LEGAL DESCRIPTION OF THE PROPERTY**

The Northwest quarter (NW $\frac{1}{4}$ ); the Southeast quarter (SE $\frac{1}{4}$ ); the North half of the Southwest quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$ ); and the Southeast quarter of the Southwest quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$ ) of Section 28;

the Southeast quarter (SE $\frac{1}{4}$ ); the South half of the Northeast quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$ ); the Northwest quarter of the Northeast quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$ ) of Section 29; and

the North half of the Northeast quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$ ) of Section 33;

All in Township 5 North Range 10 West, Willamette Meridian, Clatsop County, Oregon.

**EXHIBIT B**

ACCEPTANCE AND ACKNOWLEDGEMENT  
OF  
BASELINE INVENTORY DOCUMENTATION

The undersigned hereby accept and acknowledge that the Baseline Inventory Documentation for the Ecola Creek Forest Reserve Addition Conservation Easement, Clatsop County, Oregon, prepared by Miriam Hulst of the Oregon Watershed Enhancement Board and dated July 27, 2011, is an accurate representation of the Property as of the date of grant of the Easement. The undersigned have received copies of the Baseline Inventory Documentation.

Grantor

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Date

Oregon Watershed Enhancement Board

\_\_\_\_\_  
Name: Thomas M. Byler  
Executive Director

\_\_\_\_\_  
Date