

JAN 16 2002

After recording, return to:

Rt: ~~[Allison Hensey]~~ Wendy Hudson  
The Oregon Watershed  
Enhancement Board  
775 Summer St. NE #360  
Salem, Oregon 97301]

State of Oregon, County of Klamath  
Recorded 08/30/2002 7:02 a m.  
Vol M02, Pg 49313-18  
Linda Smith, County Clerk  
Fee \$ 46.00 # of Pgs 6  
1400 opa

### CONSERVATION EASEMENT

This Conservation Easement is made pursuant to ORS 271.715 to 271.795 this 11 day of January, 2002 between The Nature Conservancy, as grantor, and the State of Oregon, acting by and through its Oregon Watershed Enhancement Board (OWEB), an agency of the State of Oregon, as holder.

#### RECITALS:

- A. OWEB granted \$750,000.00 from its Watershed Improvement Grant Fund (the "Funds") to The Nature Conservancy for partial reimbursement of Grantee for the cost of acquiring that certain real property in Lake and Klamath Counties, Oregon described in the attached Exhibit A (the "Property") pursuant to Grant Agreement No. 200-135 (the "Grant Agreement");
- B. The Nature Conservancy is the sole owner of the Property in fee simple;
- C. 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;
- D. 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);
- E. OWEB has held one or more public hearings on the acquisition of this conservation easement, and has given notice of such hearings in accordance with ORS 271.735; and
- F. OWEB has determined that acquisition of this conservation easement is in the public interest.

Now, therefore, OWEB and The Nature Conservancy agree as follows:

1. Grant of Conservation Easement. The Nature Conservancy does hereby freely grant to the State of Oregon acting by and through OWEB as holder, its successors and assigns, forever, a nonpossessory conservation easement to the Property including the following covenants, conditions and restrictions.
2. Restrictions on Use of the Property. The uses of the Property are limited to those described in Grantee's grant application, those consistent with the protection and restoration of riparian, wet meadow and forest habitat, the recovery of bull trout and redband trout, and research and education about the preserve in a manner compatible with the forgoing, and those uses listed in section 4b of Article XV of the Oregon Constitution.
3. Right of Entry and Inspection. OWEB has the right, in a reasonable manner and at reasonable times, to enter and inspect the Property to determine compliance with this conservation easement.
4. Duration; Burdens and Benefits. The covenants and restrictions of this conservation easement are binding on The Nature Conservancy 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).
5. Right of Enforcement. The Nature Conservancy and OWEB agree that there is no adequate remedy at law for enforcement of the use restrictions set forth in section 2 of this conservation easement, and that OWEB shall be entitled to specific performance of such restrictions.
6. Maintenance or Repair, Taxes or Assessments. OWEB 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.
7. Indemnification. The Nature Conservancy shall defend, save, hold harmless and indemnify OWEB and the State of Oregon, their officers, employees and agents, from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of The Nature Conservancy or its officers, employees, subcontractors or agents on the Property.
8. 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.
9. Assignment or Disposal. The Nature Conservancy 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. The foregoing notwithstanding, Grantee may enter into grazing leases on the Property without the necessity of obtaining the prior approval of OWEB, so long as such leases are compatible with and advance the management goals for the property as specified in Grantee's grant application, attached as Exhibit B ("Grant Application").

10. Modification. This conservation easement may not be modified, changed, amended, or eliminated without the express written consent of both parties, their successors or assign.

IN WITNESS WHEREOF, The Nature Conservancy and OWEB have executed this conservation easement on this 11 day of January, 2002

The Nature Conservancy

By: [Signature]  
Its: Vice President

STATE OF ~~OREGON~~ WASHINGTON

) ss.  
County of KING

WENDY D. McDONALD  
STATE OF WASHINGTON  
NOTARY ---- PUBLIC  
MY COMMISSION EXPIRES 8-23-03

The foregoing instrument is acknowledged before me this 11 day of January, 2002, by Elliot Marks, of The Nature Conservancy, on its behalf.

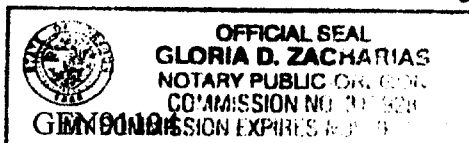
Wendy McDonald  
NOTARY PUBLIC FOR OREGON  
My commission expires: 8-23-03

Accepted by OWEB as holder:

[Signature]  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF OREGON )  
) ss.  
County of Marion

The foregoing instrument is acknowledged before me this 10 day of December, 2001, by Geoffrey Huntington, of OWEB, on its behalf.



Gloria D. Zacharias  
NOTARY PUBLIC FOR OREGON  
My commission expires: 11-9-02

EXHIBIT A

49316

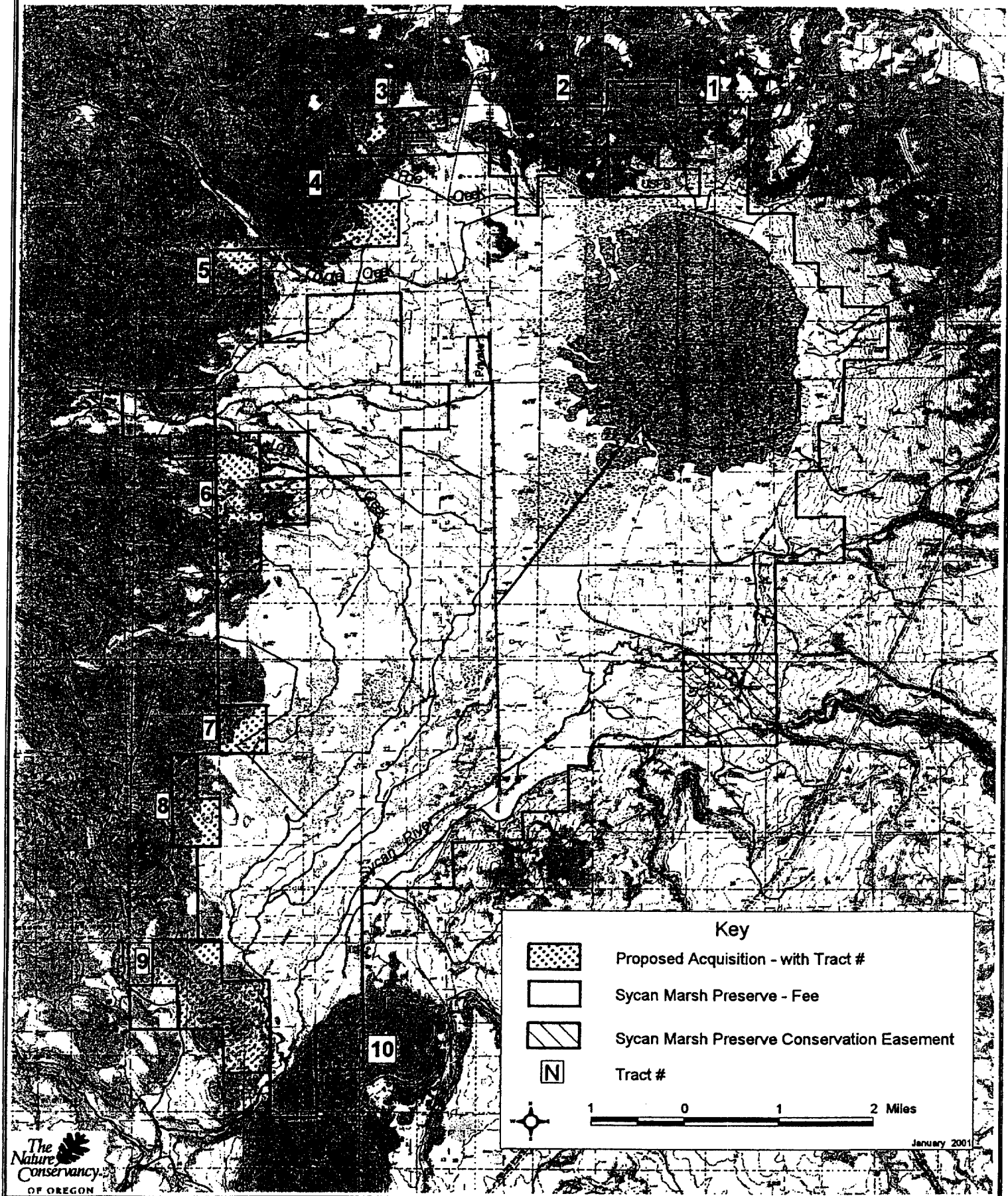
PROPERTY DESCRIPTION

Legal Description

- Parcel 1: The NE  $\frac{1}{4}$  of Section 23 and the N  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  of section 24 all in Township 31 South, Range 13 East of the Willamette Meridian in Lake County, Oregon.
- Parcel 2: The N  $\frac{1}{2}$  of Section 26 Township 31 South, Range 13 East of the Willamette Meridian in Lake County, Oregon
- Parcel 3: The SW  $\frac{1}{4}$  of Section 27 Township 31 South, Range 13 East of the Willamette Meridian In Lake County, Oregon
- Parcel 4: Parcel 2 of the Partition Plat 1999-P-167 located in Section 21 of Township 31 South, Range 14 East of the Willamette Meridian, in Lake County, Oregon, according to said Partition Plat filed October 6, 1999 (also known as NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 21 in Township 31 South, Range 14 East).
- Parcel 5: The N  $\frac{1}{2}$  of the NE  $\frac{1}{4}$ ; the SE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 19 and the SW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 20 all in Township 31 South, Range 14 East of the Willamette Meridian in Lake County, Oregon.
- Parcel 6: The SW  $\frac{1}{4}$  of Section 3; the N  $\frac{1}{2}$  and the SW  $\frac{1}{4}$  of Section 10 all in Township 32 South, Range 13 East of the Willamette Meridian in Lake County, Oregon.
- Parcel 7: The SW  $\frac{1}{4}$  of Section 22 Township 32 South, Range 13 East of the Willamette Meridian in Lake County, Oregon.
- Parcel 8: The W  $\frac{1}{2}$  of the E  $\frac{1}{2}$  and the E  $\frac{1}{2}$  of the SE  $\frac{1}{4}$  all in Section 28 Township 32 South, Range 13 East of the Willamette Meridian in Lake County, Oregon.
- All the following described real property situate in Klamath County, Oregon Township 33 South, Range 13 East of the Willamette Meridian:
- Parcel 9: Section 3: SW  $\frac{1}{4}$   
Section 4: Government Lots 1, 2 and 3, S  $\frac{1}{2}$  NE  $\frac{1}{4}$ , SE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , SE  $\frac{1}{4}$   
Section 10: NW  $\frac{1}{4}$
- Parcel 10: Section 11: NW  $\frac{1}{4}$

# Figure 1: Sycan Marsh Land Acquisition Proposal

49317



**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% 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]