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After Recording Return to:
The Klamath Tribes
Attention: Allen Foreman, Chairman
501 Chiloquin Boulevard
PO Box 436
Chiloquin, OR 97624

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State of Oregon, County of Klamath
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Linda Smith, County Clerk
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DEED OF CONSERVATION EASEMENT

This GRANT DEED OF CONSERVATION EASEMENT ("Easement") is made by Taylor Hyde and Becky Hatfield-Hyde, husband and wife, having an address of Post Office Box 894, Chiloquin, Oregon 97624 ("Grantor"), in favor of THE KLAMATH TRIBES, a Federally-Recognized Indian Tribe, having an address of 501 Chiloquin Boulevard, Chiloquin, OR 97624 ("Grantee") (collectively "Parties"). The State of Oregon, by and through the Oregon Watershed Enhancement Board ("OWEB"), and the United States, by and through the Natural Resources Conservation Service ("NRCS" or the "United States"), have certain rights hereunder, including third party rights of enforcement.

1. RECITALS

- 1.1. Grantor is the owner in fee simple of the certain real property (hereinafter, "Protected Property"), more particularly described in Exhibit "A" (Legal Description) and shown on Exhibit "B" (Site Map), which are attached to this instrument and incorporated herein by this reference. The Protected Property, which is also known as the Yainix Ranch, consists of approximately 788 acres in 2 parcels: the Yainix Ranch, with approximately 475 acres of irrigated pastureland and 2 miles of the Sycan River, above its confluence with the Sprague River; and the Yainix Annex, a 313 acre parcel of upland juniper - sage - bunchgrass land grazed for supplementary pasture.
- 1.2. The Protected Property is located in the Sprague River Valley, an area characterized as of the Effective Date of this Easement by the lack of native riparian and wetland vegetation, presence of threatened and endangered species, topsoil and streambed erosion, low water quality (including high temperatures, high sediment and nutrient contents, low dissolved oxygen, and low flows), and altered stream morphology (including disconnection between river and floodplain due to substantial channel incision).
- 1.3. The Protected Property is part of the Upper Klamath Basin, recognized for the historic range of its aquatic and wetland systems, the role of these and riparian areas in sheltering one of the largest concentrations of waterfowl in North America, the presence of endangered and threatened species of fish and wildlife, its high agricultural productivity and the importance of ranching to local community well-being, and its significance,

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including the presence of registered archaeological sites, to the culture and welfare of the Klamath Tribes.

- 1.4. The Protected Property possesses existing and potential interdependent economic, ecological and social attributes (collectively “Ranchland Stewardship and Conservation Values”) of great importance to Grantor, Grantee, the people of the Upper Klamath Basin, and the people of the State of Oregon. The Ranchland Stewardship Values include agricultural (agricultural productivity, and protection of agricultural soils of State-wide importance) and open space (scenery) attributes described in more detail in Recitals 1.5, 1.6 and 1.10. These values recognize that the Protected Property’s economic sustainability, and its support of rural family and community stability, is an important contributor to the long-term stewardship of the Protected Property. The Conservation Values include existing and future natural (e.g., upland, aquatic, riparian and wetland habitats and ecological functions, and fish and wildlife species) attributes, described in more detail in Recitals 1.7, 1.8 and 1.10. Grantor intends to protect these Ranchland Stewardship and Conservation Values through sustainable ranching practices and land stewardship designed to provide an economically sustainable enterprise, as well as high quality water, fish and wildlife habitat and ecosystem function, especially in aquatic, riparian and wetland areas.
- 1.5. The Protected Property contains soils of State-wide importance that are particularly productive for pasture and forage production, and are consistent with cattle ranching. Permanent protection of the Protected Property will further the purposes of the federal Farm and Ranch Lands Protection Program, which seeks to protect prime, unique, State-wide or locally important soil from conversion to non-agricultural uses by purchasing interests in land. 16 U.S.C. §§ 3838h and 3838i.
- 1.6. The Protected Property adds to the pastoral character of the surrounding area, and affords unobstructed views in all directions, including up the Sycan drainage and south and east to Yainax Butte and other prominent mountains, and includes few man-made features beyond those necessary for ranching and livestock production. The Protected Property is visible from Highway 140 and the town of Beatty, and is bordered by two high-use local roads, providing scenic values to the people of Oregon that use these public roads. Permanent protection of the scenic and open space values will further the legislatively declared policy of the State of Oregon to “protect natural resources and conserve scenic and historic areas and open spaces.” Oregon Administrative Regulations (“OAR”) 660-015-0010(4).
- 1.7. The Protected Property contains potential habitat for Lost River and shortnose suckers, and may, at some point in the future provide habitat for other wildlife species such as Coho salmon afforded protection under state law and the Endangered Species Act, 16 U.S.C. § 1531 et. seq. The Property features existing and potential habitat for greater sandhill cranes (Oregon Sensitive Listed – OAR 635-100-040), and numerous other species of migratory waterfowl. Grantor and Grantee expect that fostering sustainable ranching practices and compatible management will benefit the Protected Property’s threatened and endangered species by providing and restoring habitat and ecological

function, especially in aquatic, riparian and wetland areas. The Conservation Values to be protected under this Easement include habitat and wildlife species that are existing or may be enhanced by required incremental but material progress toward the Conservation Goals (defined in Section 7.1), as documented by the monitoring described in Section 8.2.5.

- 1.8. Restoring the Protected Property's river, riparian and wetland resources will enhance conditions in the drainage, and move positively towards meeting the Oregon Department of Environmental Quality's Stream Temperature Standards listed in the Draft Upper Klamath Lake Drainage Stream Temperature Analysis (August 2001) and the Upper Klamath Lake Drainage Total Maximum Daily Load by reducing sediment and nutrient loading, and contributing cool, late season flows. The Conservation Values to be protected under this Easement include existing aquatic, riparian and wetland habitats, and conditions that will be created by required incremental but material progress and achievement of the Conservation Goals (defined in Section 7.1), as documented by the monitoring described in Section 8.2.5.
- 1.9. Grantor and Grantee intend that this Easement be irrevocable and shall constitute enforceable restrictions pursuant to Oregon Revised Statutes ("ORS") §§ 271.715-271.795. Grantor and Grantee agree that this Easement is intended to permanently protect the Ranchland Stewardship and Conservation Values of the Protected Property in a manner that will meet the requirements of Section 170(h)(4)(A) of the Internal Revenue Code of 1986, as may be amended from time to time (the "Code").
- 1.10. The Ranchland Stewardship and Conservation Values of the Protected Property described above are documented in an inventory of relevant features of the Protected Property on file at the offices of Grantee, OWEB and NRCS and incorporated herein by this reference, which consists of reports, maps, photographs and other documentation, and which may be updated from time to time as provided for in this Easement ("Baseline Documentation"). Grantor, Grantee and NRCS have acknowledged in a signed statement, a copy of which is attached as Exhibit "C" (Acknowledgement of Conservation Easement Baseline Documentation) to this instrument and incorporated herein by this reference, that the Baseline Documentation dated October 21, 2004 ("Initial Baseline Documentation"), provides, collectively, an accurate representation of the Protected Property on the Effective Date of this Easement and is intended to serve as an objective, although not exclusive, information baseline and tool for Monitoring and Compliance Evaluation of the terms of this Easement. Grantor and Grantee further agree that, within twelve (12) months of the execution hereof, a collection of additional Baseline Documentation will be compiled by Grantee and, if concurred in by Grantor in writing as an accurate representation of the Protected Property (which concurrence shall not be unreasonably withheld) through execution of an Acknowledgement of Conservation Easement Baseline Documentation (in a form substantially similar to that in Exhibit "C") that is recorded in the official records of Klamath County, Oregon, shall be incorporated herein by this reference. Failure to timely compile or record the additional Baseline Documentation shall not affect the enforceability or validity of any other provision of this Easement.

The condition of the aquatic, riparian and wetland habitats and ecological functions and the upland vegetation of the Protected Property relative to attainment of the Conservation Goals will be updated every 10 years in an Updated Baseline Report, pursuant to the provisions of Section 8.2.6 of this Easement. It is the intent of the parties that each Updated Baseline Report will establish new and updated Baseline Documentation, which will supplant all previous baseline reports, for identifying the then current Ranchland Stewardship and Conservation Values to be protected hereunder, and to aid in Monitoring and Compliance Evaluation of the terms of this Easement, as described in Sections 8.2 and 8.3.

- 1.11. Grantor intends that the Ranchland Stewardship and Conservation Values of the Protected Property be conserved and maintained forever, which will facilitate the continuation of agricultural uses on the Protected Property and foster sustainable and compatible ranching practices and other enterprises related to diversified ranch management (such as nature-based tourism). This Easement permits only those land uses on the Protected Property that do not significantly impair or interfere with the Ranchland Stewardship and Conservation Values. Grantor, Grantee and OWEB agree that such uses include the ranching uses reserved by Grantor and permitted by this Easement.
- 1.12. Grantor and Grantee believe that without the protective covenants of this Easement, and the financial support generated from the sale of this Easement, the Ranchland Stewardship and Conservation Values of the Protected Property, in time, easily could be lost to economic pressures. These pressures would threaten Grantor's financial ability to retain ownership of the Protected Property based on livestock returns alone, without resorting to sale, subdivision, development or unsustainable livestock management that could jeopardize or destroy the Ranchland Stewardship and Conservation Values of the Protected Property.
- 1.13. Grantor, owner in fee of the Protected Property, has the right to protect and preserve in perpetuity the Ranchland Stewardship and Conservation Values of the Protected Property, and desires to transfer certain rights to Grantee to protect and preserve in perpetuity the Ranchland Stewardship and Conservation Values of the Protected Property. This grant, however, shall not be interpreted to deprive Grantor of the ability to also protect and conserve the Ranchland Stewardship and Conservation Values.
- 1.14. In furtherance of its Purpose (as defined in Section 3.1), this Easement requires Grantor to manage cattle grazing on the Protected Property without exceeding the limits set forth in Section 6.4.2. This stocking rate applies to the combined capacity of both protected parcels, which shall be managed in accordance with the Operations Plans referenced in Section 8.1. This limitation on stocking rates represents Grantor's and Grantee's mutual agreement on the level of grazing that is predicted to best support and maintain the Ranchland Stewardship and Conservation Values of the Protected Property while achieving the Conservation Goals described in Section 7.1. Grantor asserts that the required stocking rate creates an income stream sufficient to support debt after the

diminution in value imposed by the recording of this Easement, and is limited to facilitate rotational grazing and decrease the risk of cattle-induced damage to aquatic, riparian and wetland areas. The stocking rate conforms closely to the estimated production levels prescribed by the United States Department of Agriculture's Soil Survey of Klamath County.

- 1.15. In furtherance of its Purpose, this Easement also identifies Conservation Goals for the Protected Property (defined in Section 7.1), which place emphasis under this Easement on Grantor's obligation to progressively restore aquatic, riparian and wetland habitat and functions on the Protected Property over time consistent with maintaining a compatible ranching enterprise. This Easement addresses the circumstances under which the Conservation Goals can be achieved, and Grantee's right to ensure material progress toward the Conservation Goals over time.
- 1.16. The Operations Plans, Monitoring, and Compliance Evaluation processes (all as described in Section 8) are structured to promote adaptive learning and management toward achieving the Conservation Goals. Adaptive management recognizes that natural systems are dynamic, and that management decisions must be flexible and responsive to these changes. The goal of the Operations Plans referenced in Section 8.1 is to improve watershed conditions over time by making incremental but material progress toward the Conservation Goals. The evaluation of progress will be made by determining condition trends over time, as described in Section 8.2. Grantor and Grantee agree to rely on ongoing communication, and joint learning through structured monitoring events and use of the Proper Functioning Condition framework (as defined below), to refine and improve conservation and/or management measures and the best indicators of material progress.
- 1.17. This Easement is acquired in part with a grant from OWEB, whose mission is to promote and implement programs to restore, maintain, and enhance watersheds in the state of Oregon in order to protect the economic and social well-being of the state and its citizens. OWEB has received the written opinion of competent professionals that Grantor's compliance with the terms of this Easement will restore watersheds, habitat and native salmonids. As such, OWEB recognizes that the purchase of this Easement is in the public interest, furthers OWEB's mission, and is consistent with Section 4b, Article XV of the Oregon Constitution, which directs the State to foster activities and acquisitions for the "restoration and protection of...watersheds, fish and wildlife habitats and water quality." OWEB is a third-party beneficiary of certain rights under this Easement.
- 1.18. This Easement is also acquired in part with funds from the Farm and Ranchland Protection Program, administered on behalf of the United States by the United States Department of Agriculture ("USDA") through the Commodity Credit Corporation and NRCS. By virtue of these funds, the United States recognizes that purchase of this Easement is in the public interest. The United States is a third-party beneficiary of certain rights under this Easement.

- 1.19. The original Grantor, Taylor Hyde and Becky Hatfield-Hyde, is a multi-generational ranching family whose vision is to restore, sustain and cherish – through partnerships – the wetlands, springs, river and uplands, and rural lifestyles and sense of community of the Yainix Ranch and surrounding areas; to provide opportunities to share experiences with other residents for land restoration and community stability; and to create and sustain meaningful work, interaction with interesting people, beauty, and a strong spiritual sense in a manner that is ecologically, culturally and economically sound.
- 1.20. Grantee, the Klamath Tribes, is a Federally-recognized Indian Tribe, qualified as a “holder” under ORCS § 271.715(3) to acquire and hold a conservation easement in the Protected Property. Grantee has ties, from time immemorial, to the land, waters and resources of the Upper Klamath Basin. Since being restored as a Federally-recognized Indian Tribe in 1986, protection of natural resource-related rights has been a central concern of the Klamath Tribes. A Natural Resources Department aids the Klamath Tribes’ mission by protecting, preserving and enhancing natural resources, in particular, restoration of habitat and water quality for the cwaam and qapdo (Lost River and shortnose sucker) which are important to the physical and spiritual well-being of the Tribes. Grantee is further committed to collaborative partnerships with local landowners for restoration of important natural resources, and generating solutions for restoration-compatible agriculture in the Sprague Valley. Grantee recognizes the importance of protecting sustainable agriculture and agricultural soils in furtherance of the economic, ecological and social well-being of tribal members and the entire community. Grantee intends to transfer this Easement within five years to a qualified local or ranchland restoration entity that has been collaboratively developed or identified by Grantor, Grantee and OWEB, and approved by the USDA, provided that failure to identify such an entity shall not affect the terms and conditions of this Easement. Grantee shall exercise all rights and duties of a land trust until the time of such transfer.
- 1.21. Grantor, Grantee, OWEB and NRCS intend to maintain a close working relationship and to rely on on-going communication, mutual learning, and discussion to control and minimize costs among the Parties, to ensure that the Purpose, Objectives (as defined below) and terms of this Easement are fulfilled, and to avoid the need for formal dispute resolution.
- 1.22. The Parties intend this Easement to demonstrate the possibilities of restoring economic, social, and environmental health to the Klamath Basin, by providing a tool that alleviates the burden of debt in exchange for perpetual, enforceable stewardship. Grantor and Grantee see the combined restoration of natural values and ecological function, and the stabilization of ranching practices, economies and lifestyles, as key to resolving the natural resource conflicts that have divided and polarized the Upper Klamath Basin communities. Grantee agrees by accepting this grant of Easement to honor the intentions of Grantor stated herein, and to support and enforce the conservation and protection of the Conservation Values of the Protected Property for the benefit of this generation and the generations to come.

- 1.23. Defined terms set forth in this Easement are summarized in Exhibit "D" (Definitions), which is attached to this instrument and incorporated herein by this reference. In the event of any conflict between the defined terms set forth in this Easement and the summary of defined terms in Exhibit D, the defined terms set forth in this Easement shall govern.

2. CONVEYANCE AND CONSIDERATION

- 2.1. For the reasons stated above, and in consideration of the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of Oregon and in particular ORS §§ 271.715-271.795, Grantor hereby voluntarily grants, conveys and warrants, for valuable consideration, the receipt of which is acknowledged hereby, to Grantee a conservation easement in gross in perpetuity over the Protected Property, consisting of the rights in the Protected Property, hereinafter enumerated, subject only to the restrictions set forth herein and any title matters of record as of the Effective Date of this Easement.
- 2.2. This conveyance is a conveyance of an interest in real property under the provisions of ORS § 93.010.
- 2.3. Grantor expressly intends that this Easement runs with the land and that this Easement shall be binding upon Grantor's and Grantee's successors and assigns.

3. PURPOSE

- 3.1. **Purpose.** The Purpose of this Easement is to: (a) protect the Ranchland Stewardship Values and Conservation Values of the Protected Property forever, thereby facilitating the continued use of the Protected Property as a working ranch managed at a sustainable stocking rate; (b) restore and/or enhance the Conservation Values of the Protected Property over time to achieve the Conservation Goals (as defined below) on the Protected Property; (c) allow for compatible ranch-related, recreational and educational opportunities on the Protected Property for present and future generations; and (d) prevent any use of the Protected Property that will impair or interfere with its Ranchland Stewardship and/or Conservation Values. Grantor intends that this Easement will confine the use of, or activity on, the Protected Property to such uses and activities that are consistent with this Purpose.
- 3.2. **Objectives.** In furtherance of the Purpose of this Easement, Grantor and Grantee establish the following "Objectives" for the Protected Property:
- 3.2.1. Facilitate the continued use and management of the Protected Property as a working ranch for livestock production, rural economic support, and community well-being;
- 3.2.2. Allow Ranch-Related Economic Enterprises (as defined below) that increase and diversify the income potential of the Protected Property, while conserving,

restoring or enhancing the Ranchland Stewardship and Conservation Values of the Protected Property;

- 3.2.3. Provide for and enforce continual material progress toward the Conservation Goals, as described in Section 7, until such time as the Conservation Goals are achieved;
- 3.2.4. Maintain the Conservation Values that result from material progress toward the Conservation Goals, as described in Section 7, before, as, and after the Conservation Goals are achieved, including the level of Conservation Values identified at the time when the Conservation Goals are achieved as provided for in Section 8.2.6;
- 3.2.5. Preclude conversion of the Protected Property to industrial, non-ranching-oriented-commercial, or suburban/residential development (excluding diversified Ranch-Related Economic Enterprises as defined in Section 5.2.2).

3.3. Interpretation of the Easement

- 3.3.1. The Parties intend that this Easement be interpreted in a manner consistent with its Purpose and Objectives.
- 3.3.2. The Parties intend that this Easement be interpreted to confine the Grantor's use of the Protected Property to such activities that are consistent with the Purpose, Objectives and terms of this Easement, including any Operations Plans (as defined below) approved under this Easement. At the same time, the Parties intend, and this Easement is structured, to give Grantor maximum flexibility and discretion to undertake activities that are consistent with the Purpose, Objectives and terms of this Easement.
- 3.3.3. The Parties intend, and this Easement is structured, to allow the level of restoration of species and ecological functions, especially in aquatic, riparian and wetland areas, on the Protected Property to be increased over time until the Conservation Goals are achieved, and to maintain the level of Conservation Values identified as and after the Conservation Goals are achieved in perpetuity thereafter.
- 3.3.4. Except for the contingent right of the United States of America, as provided in Section 16, and the third party right of enforcement provided to OWEB in Section 17 and the other rights granted to OWEB and the United States herein, no term or provision of this Easement is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation not a party to this Easement, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.

- 3.4. No Public Rights Conveyed Through Easement.** The Parties acknowledge that Grantor does not grant any rights to the general public through this Easement, including without limitation, any rights of public access to, on or across, or public use of, the Protected Property. Furthermore, the Parties acknowledge that Grantor does not expand or extend through this Easement any privilege or license provided by Grantor to the public to access or use the Protected Property. It is Grantor's intent and objective (but this Easement does not impose any obligation upon Grantor or its successors or assigns) to allow public access on and across the Protected Property for certain recreational and educational uses. Grantor or its designated agent may in its sole discretion prohibit, limit or expand, to the extent consistent with the terms of this Easement, public access to any area of the Protected Property at any time and from time to time, including, by way of illustration only, to fulfill Grantor's ecosystem restoration plans, to protect and enhance water quality, to protect and enhance fish and wildlife resources, or to protect, maintain and perpetuate those areas of the Protected Property that contain rare, unusual and culturally significant plants and plant communities, or unusual natural features. Grantor reserves the right to charge reasonable fees for access on and across and use of the Protected Property.

4. RIGHTS CONVEYED TO GRANTEE

To accomplish the Purpose and Objectives of this Easement, the following rights are conveyed to Grantee by this Easement.

- 4.1. Protection.** Grantee shall have the right to identify, protect and conserve in perpetuity, and to work in cooperation with Grantor to enhance and restore the Ranchland Stewardship and Conservation Values.
- 4.2. Access by Grantee.** As provided for and limited herein, Grantor hereby grants to Grantee reasonable and non-exclusive access in common with Grantor and others entitled thereto at reasonable times across the Protected Property and all of its parts solely for the purposes of fulfilling Grantee's obligations under this Easement and exercising its affirmative rights under this Easement. Specifically, Grantee shall have the right:
- 4.2.1.** To enter upon, inspect, observe and study the Protected Property, with such persons as Grantee may require, at mutually agreeable dates and times and upon reasonable prior notice to the Grantor, for the purpose of (a) identifying the current uses and practices on the Protected Property and the condition of the Protected Property, and (b) monitoring the uses and activities on the Protected Property to determine whether they are consistent with this Easement.
 - 4.2.2.** To enter upon the Protected Property, at a mutually agreeable date and time and upon prior notice to Grantor, to inspect the Protected Property after major natural events occur, such as fires, windstorms, and floods.

- 4.2.3. To enter upon the Protected Property at such other times as are necessary if there is reason to believe that a violation of the Easement is occurring, for the purposes of enforcing the provisions of this Easement. Prior to entry, Grantee must provide Grantor notice, and describe the basis of the reasonable belief that a violation is occurring on the Protected Property.
- 4.2.4. Grantee shall exercise its access rights in compliance with applicable law and in a manner that will not materially disturb or interfere with Grantor's reserved rights, any other person's lawful use of the Protected Property, or Grantor's quiet enjoyment of the Protected Property.
- 4.3. **Injunction and Restoration.** Grantee shall have the right to prevent, or cause Grantor to prevent, any use of, or activity on, the Protected Property that is inconsistent with the Purpose, Objectives and terms of this Easement, including trespasses by members of the public, and shall have the right to undertake or cause to be undertaken the restoration of such areas or features of the Protected Property as may be materially damaged by activities contrary to the provisions hereof, all in accordance with Section 11.
- 4.4. **Enforcement.** Grantee shall have the right to enforce the terms of this Easement, in accordance with Sections 10 and 11. Grantee shall have the right to enforce the terms of this Easement related to protection, restoration and enhancement of the Conservation Values regardless and irrespective of whether or not Grantor is in compliance with the terms of this Easement related to protection of the Ranchland Stewardship Values. Similarly, Grantee shall have the right to enforce the terms of this Easement related to protection of the Ranchland Stewardship Values regardless and irrespective of whether or not Grantor is in compliance with the terms of this Easement related to protection, restoration and enhancement of the Conservation Values.
- 4.5. **Assignment.** Grantee shall have the right to assign, convey, or otherwise transfer Grantee's interest in the Protected Property in accordance with Section 15.
- 4.6. **Signage.** Grantee shall have the right to erect and maintain a sign or other appropriate marker on the Protected Property, visible from a public road, bearing information indicating that the Protected Property is protected by this Easement and held by Grantee. The sign shall also name the funding sources for the acquisition of the Easement to the extent required by the funding sources. The location and design of the sign shall be determined by mutual consent of Grantor and Grantee. The wording of the information shall be determined by Grantee, but shall clearly indicate that the Protected Property is privately owned and not open to the public. Grantee shall be responsible for the costs of erecting and maintaining such sign or marker.

5. GRANTOR'S RESERVED RIGHTS

- 5.1. **General.** Grantor reserves for itself and its successors and assigns, any and all rights not otherwise conveyed to Grantee under this Easement and any and all uses of, or activities on, the Protected Property that are not inconsistent with the Purpose and Objectives and

terms of this Easement, or with any Operations Plans approved under this Easement, and that are not prohibited herein. Without limiting the generality of the foregoing, Grantor specifically reserves for itself and its successors and assigns the following uses and activities, which shall be considered permitted uses and activities under the Easement.

5.2. Ranch Management Use. Grantor may engage in, and allow others to engage in, Ranch Management Activities on the Protected Property, as further provided for and limited in this Section and in Section 6.

- 5.2.1. The term "Ranch Management Activities" shall be broadly defined to include all ranch management activities allowable under law.
- 5.2.2. Ranch Management Activities shall be broadly interpreted to also include such diversified, ranch-related economic enterprises ("Ranch-Related Economic Enterprises") that maintain the primacy of, and are subordinate to, the ranchland character and use of the Protected Property, that are compatible with the Conservation Goals, and that provide supplemental income. Such enterprises may include, as examples, fee-based fishing or other on-site nature-based tourism, lodging and hospitality primarily for guest ranching and other on-site recreational or educational activities, supplementary crop production, and alternative energy production (including micro-hydro, micro-wind or solar power) primarily for use on the Protected Property as limited by Section 6. Such enterprises do not include, as examples, golf courses or other commercial playing fields, hotels or motels, wind farms, large-scale hydro, aircraft landing strips/helicopter pads, retail or wholesale outlets, warehousing facilities, manufacturing plants or any other enterprises that are not related to the permitted ranching, educational or recreational activities on the Protected Property, and/or not subordinate to ranching activities on the Protected Property.
- 5.2.3. All Ranch Management Activities shall be carried out in compliance with the Purpose, Objectives and terms of this Easement, including any Operations Plans approved under this Easement.
- 5.2.4. Grantor retains discretion over the specific character and content of the management decisions and practices necessary to restore, protect and maintain the Ranchland Stewardship and Conservation Values of the Protected Property, including all Ranch Management Activities, as limited by the Compliance Evaluation process of Section 8.3.
- 5.2.5. Grantor may maintain a reasonable quantity of livestock as pets, for personal food consumption, as working animals, and for recreation, up to an Animal Unit Month ("AUM") limit of 10 AUMs per calendar year. Such livestock shall not count toward the AUM limit described in Section 6.4.2.
- 5.2.6. Grantor may engage in farming on the Protected Property, so long as farming is consistent with and subordinate to ranching character and operations and is in

compliance with the terms of this Easement, including any Conservation Plans approved under this Easement.

- 5.2.7. Grantor may maintain, repair, replace or decommission structures, houses, barns, water-pollution-control facilities, water impoundments, fences, corrals, roads, ditches, sloughs, pumps, levees, and other permanent improvements ("Improvements") existing on the Property as of the Effective Date of this Easement, provided that such activities related to existing Improvements are carried out in compliance with the terms of this Easement, including the coverage limitation provided for in Section 6.5.1 of this Easement and any Operations Plans approved under this Easement. Such Improvements shall include utility systems that support the Improvements such as electric power lines, septic systems, water storage and delivery systems, telephone and communication cable systems and the like.
- 5.2.8. Grantor may construct additional Improvements not existing as of the Effective Date of this Easement in compliance with the Purpose, Objectives and terms of this Easement, subject to the coverage limitations and restrictions on new Improvements provided for in Section 6.5 of this Easement and any Operations Plans approved under this Easement.
- 5.3. **Recreational Use.** Grantor may engage in, and allow others to engage in, recreational activities on the Protected Property. All recreational activities on the Protected Property shall be carried out in compliance with the Purpose, Objectives and terms of this Easement, including any Operations Plans approved under this Easement, and in a manner that maintains the primacy of, and remains subordinate to, the ranchland character and use of the Protected Property. Such recreational activities may include, but are not limited to, nature observation, fly-fishing, hunting, camping and horseback riding.
- 5.4. **Educational Use.** Grantor may engage in, and allow others to engage in, educational activities on the Protected Property. All educational activities on the Protected Property shall be carried out in compliance with the Purpose, Objectives and terms of this Easement, including any Operations Plans approved under this Easement, and in a manner that maintains the primacy of, and remains subordinate to, the ranchland character and use of the Protected Property. Such educational activities may include, but are not limited to, ecological restoration trainings, and tribal cultural and ceremonial uses.
- 5.5. **Habitat Management Use.** Grantor may engage in, and allow others to engage in, habitat restoration, enhancement and management activities on the Protected Property. All habitat management activities on the Protected Property shall be carried out in compliance with the Purpose, Objectives and terms of this Easement, including any Operations Plans approved under this Easement. Such habitat management activities may include, but are not limited to, mechanical reconnection of springs with the river, or elevation of the river channel closer to its historic floodplain.

5.6. **Timber Use.** Grantor may remove trees from the Protected Property when required for safety, fire protection, salvage purposes, pest control, disease control, restoration, domestic use, or as necessary to benefit Ranch Management Activities. All timber management activities on the Protected Property shall be carried out in compliance with the Purpose, Objectives and terms of this Easements, including any Operations Plans approved under this Easement, and not be undertaken in a manner and to such extent as would make it impossible to achieve or maintain the Conservation Goals for upland areas, which includes a diversity of native trees and understory vegetation.

5.7. **Changes in Technology.** Grantor and Grantee recognize that Grantor's land uses and activities will evolve in response to changes in economic conditions, in technologies, in accepted agricultural, and ranch and forest management practices; provided that such uses and activities are consistent with the Purposes, Objectives and terms of this Easement, including any Operations Plans approved under this Easement.

5.8. **Water Rights.** Grantor reserves all rights, title, and interest in and to all water, water rights, and related interests in, on, under, or appurtenant to the Protected Property.

5.9. **Rights of Third Parties.** This Easement shall not be interpreted to restrict, limit, define, regulate, or otherwise affect the rights of third parties in the Protected Property that existed and were recorded in the records of the County auditor before the Effective Date of this Easement and not subordinated to this Easement.

5.10. **Emergencies.** Grantor may undertake activities necessary to protect public health or safety or prevent significant property damage, or which the Grantor is required by law to take in order to protect public health and safety.

6. PROHIBITED USES AND RESTRICTIONS ON PERMITTED USES

6.1. **General.** Any use of, or activity on, the Protected Property inconsistent with the (a) Purpose, Objectives or other terms of the Easement, and (b) any Operations Plans approved under this Easement is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in, or permit any such use or activity. Without limiting the generality of the foregoing, the following uses of, or activities on, the Protected Property are either (a) inconsistent with the Ranchland Stewardship and Conservation Values, Purpose or Objectives of this Easement and prohibited herein or (b) limited as provided herein to make such uses or activities consistent with the Ranchland Stewardship and Conservation Values, Purpose or Objectives of this Easement.

6.2. **No Conversion to Non-Ranching Oriented Uses.** Grantor shall not convert the Protected Property to industrial, non-ranching-oriented-commercial or suburban/residential development.

6.3. **No Subdivision.** Grantor shall not legally or in a "de facto" manner subdivide the Protected Property, which shall include, but not be limited to, any subdivision, short

subdivision, platting, binding site plan, testamentary division, or other process by which the Protected Property is divided into lots.

6.4. Limitations on Ranch Management Use.

6.4.1. *No Commercial Feedlots.* The establishment or maintenance of a commercial feedlot is prohibited. For purposes of this Easement, a commercial feedlot is defined as a permanently constructed confined area or facility within which the land is not grazed or cropped annually, and that is used and maintained for purposes of engaging in the business of the reception and feeding of livestock. However, seasonal confinement of animals raised on the Protected Property is expressly permitted and temporary confinement of other animals is permitted consistent with Oregon Department of Agriculture rules in OAR 603-074-0010(3) or successor provision. Furthermore, nothing in this Section shall prevent Grantor from leasing pasture for the grazing of livestock owned by others.

6.4.2. *Stocking Rate Limitation.* At no time shall the Protected Property be managed with stocking rates in excess of 2150 Animal Unit Months (AUMs) per calendar year or equivalents for non-cattle livestock as implemented by the Operations Plans described in Section 8.1.

6.5. Limitations on Improvements. Grantor may build or rebuild Improvements only in a manner consistent with the following absolute limit on impervious surfaces and other Improvement-related limitations:

6.5.1. *Impervious Surfaces Limitation.* The total area of the Protected Property covered by Improvements of any kind and impervious surfaces such as flooring, rooftops, gravel, asphalt or concrete shall be limited to no more than two percent (2%) of the area of the Protected Property; provided, however, that minor unenclosed agricultural improvements such as corrals, hayracks, headgates, fences, ditches, culverts, stock tanks, or other minor agricultural structures may be constructed or placed on the Protected Property and not count against this total impervious surface limit.

6.5.2. *Limitations on Building Envelope Improvements.* Grantor may install, build or construct, enlarge, maintain, repair, replace or decommission Improvements not existing as of the Effective Date of this Easement for personal and domestic uses and activities and all Ranch-Management Activities within the three building envelopes described and shown on the site map, in Exhibit "B", together comprising approximately 9 acres ("Building Envelopes"). In addition, Grantor may install, build or construct Improvements not existing as of the Effective Date of this Easement within the Building Envelopes for Ranch-Related Economic Enterprises if Grantor provides Grantee, OWEB and NRCS advance written notice of the proposed Improvements and Grantee consents to such Improvements as provided for in Section 9.

The Building Envelopes are shown in their approximate locations on the site map (Exhibit B), and the Parties agree to interpret these representations as maintaining the boundaries of the Building Envelopes according to the following limitations: for the Building Envelope marked as unit I on the site map, no Improvements within 100 feet of the high water mark of the Sycan River; for the Building Envelope marked as unit II on the site map, no improvements within 250 feet of the high water mark of the Sycan River. The Parties further agree that no later than 12 months following the Effective Date of this Easement, Grantee and Grantor shall jointly survey these Building Envelopes on the Protected Property to establish certain and accurate boundaries. The Parties shall then amend this Easement to include a new site map at Exhibit B reflecting the surveyed boundaries of the Building Envelopes, and a legal description (or an equivalent thereof that identifies objective, recordable boundary lines) of the surveyed boundaries of the Building Envelopes as Exhibit E to this Easement. Grantor further agrees not to develop any Improvements, beyond minor agricultural improvements described in Section 6.5.1, in the Building Envelopes until such time as this amendment has been recorded.

- 6.5.3. *Limitations on New Improvements Elsewhere on the Property.* Grantor may not install, build, or construct Improvements not existing as of the Effective Date outside the Building Envelopes, unless such Improvements are: (a) Minor unenclosed agricultural improvements not counting against the total impervious surface limit of Section 6.5.1; or (b) Temporary in nature (present on the Protected Property for less than one year); or (c) Reasonably necessary for Ranch Management Activities (excluding Ranch-Related Economic Enterprises) in compliance with the total impervious surface limit of Section 6.5.1, and approved in writing in advance by Grantee as provided for in Section 9. In addition, Grantor may install, build, or construct Improvements for alternative energy production (micro-hydro, micro-wind or micro-solar power) primarily for generating energy for the permitted uses on the Protected Property if Grantor provides Grantee, OWEB and NRCS advance written notice of the proposed Improvements and Grantee consents to such Improvements as provided for in Section 9.
- 6.5.4. *Limitations on Improvements Related to Advertising.* Improvements for the purpose of advertising are not allowed on the Protected Property. Signage consistent with the character of a working ranch, and for Ranch Management Activities is allowed on the Protected Property.
- 6.6. **Limitations on Mining.** Grantor shall not conduct, engage in, or permit the commercial mining or extraction of soil, sand, gravel, oil, natural gas, fuel, or any other mineral substance, using any surface mining method. Mineral extraction is permitted if such extraction is not accomplished by any surface mining method and the method of extraction has a limited, localized impact on the land that does not damage, impair or endanger the Ranchland Stewardship and Conservation Values of the Protected Property. No extraction permitted pursuant to this Section shall occur without prior written notice

to and consent of Grantee and OWEB as provided for in Section 9. Notice shall include a description of the type of extraction, the areas within which such extraction shall occur, and the anticipated impact thereof.

- 6.7. **Limitations on Alteration of Land.** Grantor shall not alter the surface of the land, including, without limitation, excavating or removing soil, sand, gravel, rock, stone, aggregate, peat, or sod, except as provided below.

6.7.1 Notwithstanding anything in this Section or Section 6.6 to the contrary, soil, sand, gravel, rock, stone, aggregate, peat or sod may be extracted without further permission from Grantee so long as such extraction is solely for such use on the Protected Property, is in conjunction with the activities permitted in Sections 5.2 and 5.5, is revegetated promptly after extraction is complete, and is accomplished in a manner that is consistent with the Purpose, Objectives and terms of this Easement, including any Operations Plans approved under this Easement.

6.7.2 Notwithstanding anything in this Section to the contrary, prior to extraction activities or developing improvements as referenced in Sections 6.5 and 6.7.1, Grantor shall notify and receive Grantee's consent as provided for in Section 9.2 with respect to any alteration of land that would have the effect of physically disturbing a known cultural site, a survey of which is included in the Baseline Documentation and incorporated herein by this reference.

- 6.8. **No Significant Erosion or Water Pollution.** Grantor shall not engage in any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters on the Protected Property.

- 6.9. **Limitations on Waste Disposal.** Grantor may accumulate and store trash, ashes, garbage or waste on the Protected Property only if such accumulation occurs in the normal course of domestic or Ranch Management Activities on the Protected Property. Long-term accumulation of trash (i.e., exceeding one calendar year in time) shall only occur within areas designated by Grantor with prior notice to and written approval of Grantee and OWEB. Such areas may contain waste generated by domestic or Ranch Management Activities on the Protected Property only, as long as such waste is either destined for transfer off-site, or for incineration on-site, or, in the case of biodegradable material, composted on-site. No permanent accumulation of waste (i.e., exceeding five calendar years in time) shall be permitted.

Grantor shall not otherwise dispose, store, or Release (or permit the disposal, storage or release of) any Hazardous Substance, rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly or offensive waste or material. The term "Release" shall mean any release, generation, treatment, disposal, storage, dumping, burying, abandonment, or migration from off-site. The term "Hazardous Substance" shall mean any substances, materials, or wastes that are hazardous, toxic, dangerous, or harmful or are designated as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or which are subject to

regulation as hazardous, toxic, dangerous, or harmful or as a pollutant by any federal, state, or local law, regulation, statute, or ordinance, including, but not limited to, petroleum or any petroleum product. The term "Hazardous Substances" shall not include biosolids, herbicides, pesticides, rodenticides, insecticides, and fertilizers applied in accordance with federal, state, and local law.

6.10. **No Access.** There shall be no public access without Grantor's consent.

6.11. **Compliance with Regulatory Requirements.** Grantor shall conduct all reserved and permitted uses and activities under this Easement to meet all requirements of federal, state and local statutes, rules, and regulations as they may be amended from time to time.

7. CONSERVATION GOALS AND AFFIRMATIVE OBLIGATIONS OF GRANTOR

7.1. **Conservation Goals.** In furtherance of the Purpose and Objectives of this Easement, Grantor and Grantee have identified conservation goals for the Protected Property ("Conservation Goals"). The Conservation Goals emphasize Grantor's obligation under this Easement to progressively restore aquatic, riparian and wetland habitat and functions on the Protected Property over time consistent with maintaining a compatible ranching enterprise. Every year Grantor will implement conservation and/or management measures on the Protected Property, as described in the Operations Plans provided for in Section 8.1, that are intended to produce Conservation Outcomes, as defined below, and that are indicative of and will provide for incremental but material progress towards the Conservation Goals. "Conservation Outcomes" are the observable, biophysical changes to the character of the Protected Property resulting from implementation of conservation and/or management measures, which may include, for example, changes in the range or quantity, or individual health or vigor of a particular species or community, or character of a particular physical feature such as bank width, riffle length, pool depth or the like. Progress will be monitored and evaluated as provided for in Sections 8.2 and 8.3. As and after the Conservation Goals are attained, Grantor agrees to maintain the Protected Property so as not to degrade the Conservation Values identified in Updated Baseline Reports referenced in Section 8.2.6. Nothing in this Section shall be construed as requiring Grantor to achieve any conservation protections above the Conservation Goals. The Conservation Goals are:

- 7.1.1. A narrower, deeper, more sinuous river channel increasingly connected to an abandoned floodplain;
- 7.1.2. A high diversity of aquatic, riparian, and wetland native species (plants, fish and wildlife) with diversity in plant communities, age, structure and composition;
- 7.1.3. Healthy and abundant sedge and rush communities in riparian and wetland zones along the length of the Sycan River on the Protected Property;
- 7.1.4. Mosaics of woody plants in the riparian and wetland zones, along the length of the Sycan River on the Protected Property;

- 7.1.5. Springs that provide high quality water for fish and other aquatic wildlife;
- 7.1.6. Wetland and riparian zones that provide nesting and holding habitat for migrating waterfowl and other species;
- 7.1.7. Wetland and riparian zones that attain and maintain Proper Functioning Condition (as described in TR 1737-15, *A User Guide to Assessing Proper Functioning Condition and the Supporting Science for Lotic Areas* [Prichard et al. 1998] ("TR 1737-15")) as a structural basis for achieving other Conservation Values described in this Section.

Proper Functioning Condition is defined in TR 1737-15 as follows: "Riparian-wetland areas are functioning properly when: (a) Adequate vegetation, land form, or large woody debris is present to: (i) Dissipate stream energy associated with high water flows, thereby reducing erosion and improving water quality; (ii) Filter sediment, capture bedload, and aid floodplain development; (iii) Improve flood-water retention and ground water recharge; (iv) Develop root masses that stabilize streambanks against cutting action; (v) Develop diverse ponding and channel characteristics *to provide* the habitat and the water depth, duration, and temperature necessary for fish production, waterfowl breeding and other uses; and (vi) Support greater biodiversity; and (b) There is adequate stability present *to provide* the listed benefits *applicable* to a particular area."

- 7.1.8. On the Yainix Ranch, upland areas managed primarily for livestock forage and perennial grass production, and increasingly exhibiting a compatible diversity of native grasses, shrubs and trees, providing shelter and protection for livestock and wildlife; and
 - 7.1.9. On the Yainix Annex, protection of the Conservation Values described in the initial Baseline Documentation, in particular presence, composition, diversity and vigor of native grasses and shrubs – especially perennial bunchgrasses, sage and bitterbrush.
- 7.2. **New Conservation Goals.** The Parties are free to increase the conservation protections beyond those listed in the Conservation Goals by amending this Easement as provided for in Section 14 so long as any such amendment is consistent with the Purpose and Objectives of this Easement.

8. OPERATIONS PLANS, MONITORING AND COMPLIANCE EVALUATION

- 8.1. **Operations Plans.** As provided for in Section 7, Grantor agrees to implement each year conservation and management measures on the Protected Property to maintain progress toward and attain the Conservation Goals referenced in Section 7 through those actions and practices set forth in its Operations Plans. The Operations Plans define, in part, the

legally binding actions that Grantor must accomplish during each period in question. The Operations Plans shall consist of the following plan components.

8.1.1. *Ranchland Stewardship Conservation Plan (NRCS Conservation Plan).*

Grantor's Operation Plans must include a Ranchland Stewardship component to address the ranching and farming uses of the Protected Property ("NRCS Conservation Plan"). Grantor recognizes the importance of good resource management and stewardship to preserve and protect the Ranchland Stewardship Values.

8.1.1.1. As required by Section 1238I of the Food Security Act of 1985, as amended, Grantor, their heirs, successors or assigns, shall conduct all agricultural operations on the Protected Property in a manner consistent with the NRCS Conservation Plan prepared in consultation with NRCS and approved by the Conservation District. This NRCS Conservation Plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect as of the Effective Date of this Easement. Grantor, in consultation with local NRCS staff, shall prepare and obtain approval of the first NRCS Conservation Plan by the Conservation District within twelve (12) months of the Effective Date of this Easement, which shall be updated according to NRCS local practices thereafter. However, Grantor may develop and implement an NRCS Conservation Plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. NRCS shall have the right to enter upon the Protected Property, with advance notice to Grantor, in order to monitor compliance with the NRCS Conservation Plan.

8.1.1.2. In the event of non-compliance with the NRCS Conservation Plan, NRCS shall work with Grantor to explore methods of compliance and give Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If Grantor does not comply with the NRCS Conservation Plan, NRCS will inform Grantee of Grantor's noncompliance. Grantee shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the NRCS Conservation Plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the NRCS Conservation Plan, (b) NRCS has worked with Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations.

8.1.1.3. If the NRCS standards and specifications for highly erodible land are revised after the Effective Date of this Easement based on an Act of Congress, NRCS will work cooperatively with Grantor to develop and implement a revised NRCS Conservation Plan. The provisions of this Section apply to the highly erodible land conservation requirements of the

Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which Grantor may be or become subject.

8.1.2. *Conservation Values Restoration Plan (Restoration Plan)*. Grantor's Operation Plans must also include a Conservation Values restoration component setting forth Grantor's planned conservation and/or management measures to provide for incremental but material progress towards and eventual attainment of the Conservation Goals (the "Restoration Plan"). The Restoration Plan must include at least the following contents: (a) a description of any planned improvements on the Protected Property as referenced in Section 5.2.7 and 6.5; (b) a general description of the conservation and management measures that Grantor commits to undertake within the one or three year time period covered by the Restoration Plan; (c) a description of the specific Conservation Outcomes to be achieved within the one or three year time period covered by the Restoration Plan by the measures set forth in the Restoration Plan; and (d) a discussion of how the planned actions and measures, and anticipated Conservation Outcomes, will provide for incremental but material progress toward the Conservation Goals.

8.1.2.1. Grantor shall prepare a Restoration Plan annually for the first three (3) years after the Effective Date of this Easement (each of which shall be one year in duration), and tri-annually thereafter (each of which shall be three years in duration); provided that preparation of a Restoration Plan may be delayed or waived at any time by mutual consent of Grantor and Grantee, and shall be made, as feasible, to coincide with in time, and integrate in contents, with the NRCS Conservation Plan to reduce the administrative burden on Grantor and Grantee. Grantor shall submit its Restoration Plan to Grantee on or before January 31 of each year in which a new Restoration Plan is required. Grantor's failure to timely provide a Restoration Plan shall neither affect Grantor's obligations under this Easement nor the enforceability or validity of any other provision of this Easement.

8.1.2.2. Upon receipt of any Restoration Plan prepared by Grantor, and following the provisions of Section 9, Grantee shall concur in the Restoration Plan or notify Grantor, in writing, what modifications to the Restoration Plan Grantee believes would be reasonably necessary to achieve the specific Conservation Outcomes within the one or three year time period covered by the Restoration Plan and/or provide for material progress toward the Conservation Goals. Grantor may, in its discretion, consult further with Grantee to facilitate communication and understanding between the parties, and/or amend the Restoration Plan to incorporate the conservation and management measures recommended by Grantee; provided, however, that Grantor's discretion to incorporate Grantee's recommendations may be limited according to the process set forth in Section 8.3.

8.2. Monitoring. Grantee, in collaboration with OWEB and NRCS, as appropriate, shall prepare or employ a Monitoring Plan, as described below, to gather data to evaluate the actions and practices undertaken under Grantor's Operations Plans, compliance with the terms of the Easement, and to update Baseline Documentation.

8.2.1. The Parties have established, and will implement, a joint monitoring plan to facilitate communication, mutual understanding and land stewardship, to avoid the need for formal dispute resolution, and to allow Grantee to gather qualitative and quantitative data to evaluate compliance with the Purpose, Objectives and terms of the Easement ("Monitoring Plan"). The Monitoring Plan includes a roster of specific techniques and methods for describing the condition of the Protected Property in relation to the Conservation Goals, for qualifying and quantifying Conservation Outcomes, and for identifying incremental but material progress toward the Conservation Goals, in order to evaluate compliance with the terms of this Easement (as described in Section 8.3). The initial Monitoring Plan is provided in the Baseline Documentation and incorporated herein by reference. The Parties shall update and adapt the Monitoring Plan, as necessary, to reflect changes in the Operations Plans and learning from past performance, to enable a more objective Compliance Evaluation, and/or to improve the utility of monitoring events to support progress toward the Conservation Goals.

8.2.2. The Monitoring Plan shall require at least one monitoring event per calendar year.

8.2.3. Grantee shall use data gathered by the specific techniques and methods in the Monitoring Plan to inform the Proper Functioning Condition assessments for Compliance Evaluation.

8.2.4. Grantee shall only employ persons in its monitoring activities who have the professional training or background to carry out the qualitative and quantitative methods of the Monitoring Plan competently, or who can do so under appropriate supervision.

8.2.5. Following the conclusion of each monitoring event, Grantee shall prepare a report documenting the condition and trend of the Ranchland Stewardship Values, and the Conservation Values of the Protected Property relative to achieving the Conservation Goals, including Proper Functioning Condition (as defined below) with respect to aquatic, wetland and riparian zones (the "Monitoring Report"). The Monitoring Report shall document the number of AUMs on the Protected Property which Grantor stocked in the previous year, a record of which Grantor shall provide in writing on or before annual monitoring events. Grantee shall use the Monitoring Report to assist in Compliance Evaluation.

8.2.6 Every 10 years after the Effective Date of this Easement until the Conservation Goals have been achieved, Grantee shall prepare a new baseline report to update the Baseline Documentation ("Updated Baseline Report"). The purpose of each Updated Baseline Report is to inventory and assess the condition of the then

existing agricultural (including soils) and open space attributes, aquatic, riparian and wetland habitats and ecological functions and upland vegetation on the Protected Property relative to attainment of the Conservation Goals, in order to establish new and updated Baseline Documentation for identifying the then current Ranchland Stewardship and Conservation Values to be protected hereunder. The Updated Baseline Report shall be prepared employing results of previous years' Monitoring as documented in Monitoring Reports. If concurred in by Grantor in writing as an accurate representation of the Protected Property (which concurrence shall not be unreasonably withheld), through execution of an updated Acknowledgement of Conservation Easement Baseline Documentation (in a form substantially similar to that in Exhibit "C") that is recorded in the official records of Klamath County, Oregon, this Updated Baseline Report shall supplant all previous baseline reports and be incorporated into this Easement as the then current Baseline Documentation by this reference. Failure to timely compile or record any Updated Baseline Report shall not affect the enforceability or validity of any other provisions of this Easement.

8.3. Compliance Evaluation. Grantor and Grantee intend, and evaluation of compliance by Grantee is structured so that decisions regarding the conservation and management measures implemented by Grantor on the Protected Property remain, to the fullest extent possible, within the discretion of Grantor (without limiting the intent of Grantor, Grantee, OWEB and NRCS to maintain on-going communication and a close working relationship under this Easement) unless Grantee determines during its Compliance Evaluation that Grantor's conservation and management measures are not achieving planned Conservation Outcomes, as defined in the Operations Plans, are not making required incremental but material progress toward the Conservation Goals, and/or are not protecting those Conservation Values already achieved and documented by Baseline Documentation. This Section 8.3 describes the process by which Grantee evaluates compliance, and the instances under which Grantor's discretion over management and conservation measures may be limited by Grantee ("Compliance Evaluation").

8.3.1. Grantee's assessment tool for evaluating material progress toward the Conservation Goals resulting from implementation of Grantor's Operations Plans, in particular Sections 7.1.2 to 7.1.7 relating to aquatic, wetland and riparian zones, shall primarily be the assessment of the Protected Property's condition and trend in relation to Proper Functioning Condition for aquatic, riparian and wetland areas (as described in TR 1737-15, *A User Guide to Assessing Proper Functioning Condition and the Supporting Science for Lotic Areas* [Prichard et al. 1998]). In relation to Sections 7.1.2 to 7.1.7, Grantor must maintain an upward trend toward Proper Functioning Condition, or having achieved Proper Functioning Condition, protect that condition thereafter. Grantor, Grantee and OWEB are free to amend this Easement to specify a more appropriate assessment tool for Compliance Evaluation as provided for in Section 14.

8.3.2 Grantor shall be in compliance with this Easement if Grantor carries out the actions set forth in the Operations Plan, and Grantee determines that those actions

have materially achieved the Conservation Outcomes described in the Operations Plan, as determined by Proper Functioning Condition assessments in aquatic, riparian and wetland areas.

- 8.3.3 If Grantee determines that the actions carried out by Grantor under the Restoration Plan have failed materially to achieve the Conservation Outcomes specified in the Restoration Plan, including those related to incremental but material progress toward Proper Functioning Condition in aquatic, wetland and riparian zones, Grantor shall modify its subsequent Restoration Plan to include those conservation and management measures specified by Grantee in writing as reasonably likely to achieve the Conservation Outcomes specified in the Restoration Plan.
- 8.3.4 If Grantor then either fails to: (a) incorporate the conservation and management measures specified by Grantee in writing; (b) carry out the actions set forth in the modified Operations Plan; and/or (c) materially achieve the Conservation Outcomes specified in the Restoration Plan, including those related to material progress toward Proper Functioning Condition in aquatic, wetland and riparian zones, Grantee may determine that Grantor is in non-compliance with the terms of this Easement for the period of time covered by the Restoration Plan, and exercise the enforcement rights of Section 11.
- 8.3.5 At no time shall Grantee determine that Grantor is in non-compliance with this Easement if Grantor demonstrates to Grantee's reasonable satisfaction that such failures as described in Sections 8.3.3 and 8.3.4 are either due to circumstances beyond Grantor's control as described in Section 11.10 or that such failure occurred despite a reasoned, deliberate effort on the part of Grantor to achieve such Conservation Outcomes (such as where Grantor followed the conservation and management measures specified by Grantee in writing).
- 8.3.6 This Section 8.3 notwithstanding, Grantee may determine that Grantor is in non-compliance with this Easement if Grantor engages in a use or activity prohibited under the terms of this Easement and may exercise Grantee's enforcement rights in accordance with Sections 10 and 11.
- 8.3.7 Grantee shall provide Grantor with preliminary, written opinions on compliance of proposed Grantor activities within thirty (30) days of Grantor's request. This provision is intended to facilitate communication and understanding between parties, and to prevent formal dispute resolution.

9. NOTICE, CONSULTATION, CONCURRENCE AND CONSENT

- 9.1. **Notice.** Wherever in this Easement notice to Grantor or Grantee is required or Grantor's, Grantee's or OWEB's concurrence or consent is required, and no other timeline for notice and concurrence is set forth elsewhere in the Easement, the party providing notice shall notify the other party in writing not less than forty five (45) days

prior to the date the party providing notice intends to undertake the action, use, or activity in question. The purpose of such notice is to afford the party receiving notice an opportunity to ensure that the action, use, or activity in question is designed and carried out in a manner consistent with the Purpose, Objectives and terms of this Easement. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed action, use, or activity in sufficient detail to permit the party receiving notice to make an informed judgment as to its consistency with the Purpose, Objectives and terms of this Easement.

- 9.2. Concurrence or Consent.** Wherever in this Easement Grantor's, Grantee's or OWEB's concurrence or consent is required, and no other timeline for concurrence or consent is set forth elsewhere in this Easement, the party whose concurrence is required shall grant or withhold its concurrence or consent in writing within forty five (45) days of receipt of the written request for concurrence or consent. Such concurrence or consent may be withheld only upon a reasonable determination by the concurring or consenting party that the action as proposed would be inconsistent with the Purpose, Objectives, or terms of this Easement and cannot be modified to make the proposed action consistent with the Purpose, Objectives and terms of this Easement. Any concurrence or consent may include reasonable conditions that must be satisfied in undertaking the proposed action, use, or activity.
- 9.3. Failure to Concur or Provide Consent Within the Required Time.** When concurrence or consent is required, and when the party whose concurrence or consent is required does not grant or withhold its concurrence or consent in the time period and manner set forth herein, the party requesting concurrence or consent may conclusively assume the other party's concurrence or consent in the proposed action, use, or activity in question. Grantor and Grantee agree that failure to concur or provide consent within the required time on one proposed action, use or activity shall not be deemed or construed to be a waiver of Grantee's rights under this Easement with respect to any future proposed action, use or activity.
- 9.4. Emergency Circumstances.** Notwithstanding the above, if Grantor must undertake emergency action to protect health or safety on the Protected Property or must act by and subject to compulsion of any governmental agency, Grantor may proceed with such action without Grantee's concurrence or consent only if Grantor first reasonably attempts to notify Grantee prior to taking such action and Grantee cannot provide its concurrence or consent, with or without conditions, within such time as is reasonable under the circumstances.
- 9.5. Role of the Oregon Watershed Enhancement Board.** Grantor and Grantee agree to grant OWEB a consultative role in, and access to, those consultations, meetings, monitoring events and other activities related to the Operations Plans, Monitoring and Compliance Evaluation of this Easement; specifically, those events and documents described in Sections 4.2, 8.1, 8.2, and 8.3. Grantor and Grantee shall provide OWEB staff with advance notice for all such activities, and with copies of all documents related

to management, monitoring and compliance, including but not limited to, Operations Plans, Monitoring Plans, and notices of compliance or non-compliance.

- 9.6. **Addresses for Notices.** Any notice, demand, request, consent, concurrence, approval, or communication that either party desires or is required to give to the other shall be in writing either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: Taylor Hyde and Becky Hatfield-Hyde
Post Office Box 894
Chiloquin, OR 97624
Phone: 541-533-2756
Fax: 541-783-3453

To Grantee: The Klamath Tribes
Attention: Chairperson
501 Chiloquin Boulevard / PO Box 436
Chiloquin, OR 97624
Phone: 541-783-2219
Fax: 541-783-3706

To NRCS: State Conservationist
U.S. Natural Resources Conservation Service
Oregon State Office
101 SW Main Street
Suite 1300
Portland, OR 97204-3221
Phone: 503-414-3085
Fax: 503-414-3277

To OWEB: Director
Oregon Watershed Enhancement Board
775 Summer St. NE, Suite 360
Salem, OR 97301
Phone: 503-986-0178
Fax: 503-986-0199

or to such other address as either party from time to time shall designate by written notices to the other.

10. **DISPUTE RESOLUTION**

10.1. **Preventive Discussions.**

- 10.1.1. Grantor and Grantee shall meet no less than annually at a date and time convenient for both Parties but not to exceed one business day in duration (unless

both Parties mutually agree that a shorter or longer, or no meeting at all, is necessary), at the offices of Grantor (or another location convenient to both Grantor and Grantee) to share information concerning the Protected Property collected by Grantor and Grantee and to provide an opportunity for both Parties to discuss any questions or concerns regarding the information collected by either party. This shall be in addition to and/or in connection with on-going monitoring events. These meetings are not intended to limit Grantor and Grantee from meeting periodically at other times to share and discuss information collected by the Parties.

10.1.2. Grantor and Grantee will promptly give the other notice of problems or concerns arising in connection with the other's actions under this Easement or the use of or activities or conditions on the Protected Property, and will meet as needed, but no later than fifteen (15) days after receipt of a written request for a meeting, to minimize the same.

10.1.3. Grantee will invite OWEB to such preventive discussion meetings provided for in Sections 10.1.1 and 10.1.2 between Grantor and Grantee.

10.2. **Mediation.** If the Parties disagree as to the consistency of any proposed use or activity with the Purpose, Objectives or terms of this Easement and the Parties are unable to resolve such disagreement through unassisted preventive discussions between themselves, and OWEB and/or NRCS as the case may be, and if Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either Grantor or Grantee may refer the dispute to mediation by request made in writing upon the other and with notice to OWEB and NRCS (who have full discretion to participate or not to participate in the mediation). Within ten (10) days of the receipt of such a request, the Parties shall select a single impartial mediator. Mediation shall then proceed in accordance with the following guidelines:

10.2.1. *Purpose.* The purpose of the mediation is to: (a) promote discussion between the Parties; (b) assist the Parties to develop and exchange pertinent information concerning the issues in dispute; and (c) assist the Parties to develop proposals which enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or de facto modification or amendment of the terms, conditions or restrictions of this Easement.

10.2.2. *Participation.* The mediator may meet with the Parties and their counsel jointly or ex parte. The Parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of both parties with settlement authority will attend mediation sessions as requested by the mediator.

10.2.3. *Confidentiality.* All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the

Parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a party.

10.2.4. *Time Period.* Neither 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.

10.2.5. *Costs.* The costs of the mediator shall be borne equally by Grantor and Grantee; the Parties shall bear their own expenses, including attorney's fees, individually.

10.3. **Arbitration.** Grantor, Grantee and OWEB may by mutual agreement submit disputed matters to arbitration upon such rules of arbitration as Grantor, Grantee and OWEB may agree.

10.4 **Review Committee.** In furtherance of the intent of preventing disputes, in particular related to the evaluation of material progress toward the Conservation Goals, and the status and trend of the aquatic, wetland and riparian zones on the Protected Property in relation to Proper Functioning Condition, Grantor and Grantee mutually agree that, in disputes over the evaluation of whether or not material progress is being made towards the Conservation Goals, and the causes of such failure to do so, and whether and how the Operations Plans can be modified to achieve Conservation Outcomes, either party may request upon notice to the other that a Review Committee (as defined below) be convened to review Monitoring Plans, monitoring data and characterizations of material progress, and to facilitate dialogue and mutual understanding between the Parties. With the approval of the other party, such a Review Committee will be convened with the composition and for the purpose described below.

10.4.1. The review committee shall consist of an interdisciplinary technical group, substantially matching the combined disciplines, background, and experience of the National Riparian Service Team or its regional cadres (which may include grazing management, aquatic biology, botany and wildland hydrology), and demonstrating familiarity with the use of Proper Functioning Condition assessments as a tool for facilitating objective understanding of the status and trend of aquatic, riparian and wetland function ("Review Committee").

10.4.2. The Review Committee shall engage Grantor, Grantee and monitoring personnel and perform a joint field review of the Operations Plans, Monitoring Plans and protocols, and a Proper Functioning Condition evaluation as defined in TR-1737-15. The goal of this joint field review shall be for the Review Committee to facilitate understanding between the Parties, and to provide independent evaluation of the reasons for the observed status and trend of the Protected Property toward Proper Functioning Condition, its material progress toward the

Conservation Goals for aquatic, riparian and wetland areas, and the actions in relation to applicable Compliance Evaluation and remedies under the Easement.

- 10.4.3 The Parties agree to consider in good faith the recommendations of the Review Committee in resolving disputes over the evaluation of whether or not material progress is being made towards the Conservation Goals.

11. GRANTEE'S REMEDIES

- 11.1. **Notice of Non-Compliance.** If Grantee determines that the 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 demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose, Objectives, or terms of this Easement, including any Operations Plans approved under this Easement, to restore the portion of the Protected Property so injured to its prior or potential condition in accordance with a plan approved by Grantee.
- 11.2. **Grantor's Failure to Respond.** Grantee may bring an action as provided in Section 11.3 if Grantor:
- 11.2.1. Fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee;
 - 11.2.2. Under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period; or
 - 11.2.3. Fails to continue diligently to cure such violation until finally cured.
- 11.3. **Grantee's Action.** Grantee may bring an action at law or in equity, or both, in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary and as allowed under the applicable civil rules, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any of the Ranchland Stewardship and Conservation Values protected by this Easement, including damages for the loss of the Ranchland Stewardship and Conservation Values; and to require the restoration of the Protected Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefore, Grantee, in its sole and absolute discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property. All such actions for injunctive relief may be taken without Grantee being required to post bond or provide other security.
- 11.4. **Immediate Action Required.** Notwithstanding any other provision of this Easement, if Grantee, in its sole and absolute discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Ranchland

Stewardship or Conservation Values, Grantee may pursue its remedies under this Section 11 without participation in dispute resolution as provided for in Section 10, prior notice to Grantor or without waiting for the period provided for cure to expire.

- 11.5. **Nature of Remedy.** Grantee's rights under this Section 11 apply equally in the event of either actual or threatened violations of the terms of this Easement. 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 this Section 11 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. Grantee's remedies described in this Section 11 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. The provisions of Section 11.6 shall not be interpreted to preclude Grantee from obtaining injunctive relief.
- 11.6. **Damages.** Inasmuch as the actual damages to the Ranchland Stewardship and Conservation Values that could result from a breach of this Easement by Grantor would be impractical or extremely difficult to measure, the Parties agree that the money damages Grantee is entitled to recover from Grantor shall be, at Grantee's election, the higher of (a) the amount of economic gain realized by Grantor from violating the terms of the Easement or (b) the cost of restoring any Ranchland Stewardship or Conservation Values that have been damaged by such violation. In the event Grantee chooses the second of the two measures, Grantor agrees to allow Grantee, its agents or contractors, to enter upon the Protected Property and conduct restoration activities.
- 11.7. **Costs of Enforcement.** In the event Grantor or Grantee (but not OWEB or NRCS) finds it necessary to bring an action at law or other proceeding against the other party to enforce or interpret any of the terms, covenants, or conditions of this Easement, the prevailing party in any such action or proceeding shall be paid all costs and reasonable attorneys' and consultants' fees by the other party and all such costs and attorneys' and consultants' fees shall be included in any judgment secured by such prevailing party.
- 11.8. **Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of the Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term 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 Grantors shall impair such right or remedy or be construed as a waiver.
- 11.9. **Waiver of Certain Defenses.** Grantor acknowledges that it has carefully reviewed this Easement and has consulted with and been advised by legal counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Grantor hereby waives any claim or defense it may have against Grantee or its successors in

interest under or pertaining to this Easement based upon abandonment, adverse possession or prescription relating to the Protected Property or this Easement. Except for the foregoing, Grantor specifically retains any and all rights it has under the law as owner of the Protected Property, including, without limitation, the right to bring claims against Grantee for any breach by Grantee of the terms of this Easement.

- 11.10. **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from actions by a trespasser upon the Protected Property or causes beyond Grantor's control, including, without limitation, climate change, fire, flood, storm, pest infestation, and earth movement and from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. In the event the terms of this Easement are violated by acts of trespassers, and Grantor has not undertaken suit itself, Grantor agrees, at Grantee's option, to assign its right of action to Grantee or to appoint Grantee its attorney in fact, for purposes of pursuing enforcement action against the responsible parties.
- 11.11. **Compliance Certificates.** Upon request by Grantor, Grantee shall, as soon as possible and no later than thirty (30) days after receipt of such request, execute and deliver to Grantor any document, including an estoppel certificate, which certifies, to the best of Grantee's knowledge, Grantor's compliance or lack thereof with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as requested by Grantor. Such certification shall be limited to the condition of the Protected Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within forty-five (45) days of receipt of Grantor's written request and payment therefore. Unless the Compliance Certificate is also executed by OWEB or the United States, OWEB or the United States, as the case may be, shall not be estopped from claiming or enforcing a violation of this Easement.

12. COSTS, LIABILITIES, TAXES, AND ENVIRONMENTAL COMPLIANCE

- 12.1. **Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state and local laws, regulations and requirements. Grantor shall keep the Protected Property free of any liens arising out of any work performed for, material furnished to, or obligations incurred by Grantor; provided that the Protected Property shall be deemed to be free of such liens if Grantor or Grantee, as the case may be, is diligently challenging the application of such liens to the Protected Property.

- 12.2. **Insurance.** Grantor shall maintain comprehensive general liability insurance on the Protected Property.
- 12.3. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantee is authorized, but in no event obligated, to make or advance any payment of taxes, upon three (3) 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 shall bear interest until paid by the Grantor at the maximum rate allowed by law.
- 12.4. **Remediation.** If, at any time, there occurs, or has occurred, a Release in, on, or about the Protected Property of a Hazardous Substance, Grantor agrees to take or compel responsible third parties to take all steps required under applicable law and 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 for such remediation. At its discretion, Grantee may assist Grantor in compelling third parties to contain and remediate any such Release.
- 12.5. **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, OWEB or the United States to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of Grantor's activities on the Protected Property, or otherwise to become an operator with respect to the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA").
- 12.6. **Grantor's Indemnification.** Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors together with the United States (collectively "Grantor's Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' and consultants' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter (including the release of hazardous or toxic substances) related to or occurring on or about the Protected Property that is not a consequence of any action or omission of any of the Indemnified Parties on or about the Protected Property.
- 12.7. **Grantee's Indemnification.** Grantee shall hold harmless, indemnify, and defend Grantor and its members, directors, officers, employees, agents, and contractors together with the United States (collectively "Grantee's Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' and

consultants' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property that is a consequence of Grantee's actions or omissions or the actions or omissions of Grantee's members, directors, officers, employees, agents, or contractors on or about the Protected Property. This indemnification requirement shall not apply to the United States if the United States takes title to this Easement as provided for in Section 15.

13. SUBSEQUENT TRANSFER OR EXTINGUISHMENT

13.1. **Extinguishment.** If circumstances arise in the future that 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, and the amount of the proceeds to which Grantee, OWEB and the United States shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Oregon law at the time, in accordance with Section 13.2. Grantee shall use all such proceeds in a manner consistent with the Purpose of this Easement.

13.2. **Valuation.** This Easement constitutes a real property interest immediately vested in Grantee. For the purpose of Section 13.1, the Parties stipulate that this Easement has a fair market value determined by multiplying (a) the fair market value of the Protected Property unencumbered by the Easement (minus any increase in value attributable to improvements on the Protected Property) by (b) the ratio of the value of the Easement at the time of this grant to the value of the Property, unencumbered by the Easement, at the time of this grant.

For purposes of this Section, Grantor and Grantee agree that the ratio of the value of the Easement to the value of Grantor's property unencumbered by the Easement is evidenced by that certain real property appraisal prepared by Bancroft Appraisal Company, dated October 16, 2003, on file with Grantee. This ratio is 0.375 and shall remain constant. Grantor and Grantee agree that the aforementioned appraisal has not taken into consideration and Grantor has not been compensated for the affirmative obligations of Grantor under this Easement.

In the event of condemnation, pursuant to Section 13.3, or extinguishment, pursuant to Section 13.1, of the Easement, the United States is entitled to 50% of any proceeds attributable to the value of the Easement, and OWEB is entitled to 50% of any proceeds attributable to the value of the Easement.

13.3. **Condemnation.** If the Easement is taken, in the whole or in the part, by the exercise of the power of eminent domain, Grantee, OWEB and the United States shall be entitled to compensation in accordance with Section 13.2, for the value of the Easement taken; and the Grantor shall be entitled to compensation in accordance with applicable law for the value of the underlying fee title and improvements taken. In the event that

Section 13.2 violates applicable law, then the proceeds to Grantor, Grantee, OWEB and the United States shall be divided in accordance with applicable law. In the event that Grantee is the recipient of the proceeds from any condemnation, then Grantee shall disburse to OWEB and the United States their respective shares of the proceeds as soon as is practicable.

- 13.4. **Subsequent Transfers.** Grantor agrees to: (1) incorporate by express reference the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property; and (2) describe this Easement in and append it to, any executory contract for the transfer of any interest in the Protected Property. Grantor further agrees to give written notice to the Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the prospective transferee or such transferee's representative. The failure of the Grantor to perform any act required by this Section 13 shall not impair the validity of this Easement or limit its enforceability in any way.

14. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, such as if Grantor and Grantee wish to establish new Conservation Goals as provided for in Section 7.2, Grantor and Grantee are free to jointly amend this Easement; provided that Grantor and Grantee first obtain the written consent of OWEB and the United States. Any such amendment shall be consistent with the Purpose and Objectives of this Easement, shall comply with Section 170(h) of the Internal Revenue Code, ORS §§ 271.715-271.795, or any regulations promulgated in accordance with the foregoing referenced sections, and shall not affect the qualification of this Easement or the status of Grantee under any applicable laws.

15. ASSIGNMENT

- 15.1. **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code, and the applicable regulations promulgated thereunder, and a qualified holder at the time of transfer under ORS § 271.715(3). It is Grantee's intention to assign this Easement at such time as a qualified entity, in Grantee's discretion, is identified or created to hold this Easement. In the event of assignment of this Easement, Grantee shall find an assignee that is mutually acceptable to Grantor, OWEB and the United States (provided that Grantor's, OWEB's and the United State's acceptance of such assignee shall not be unreasonably withheld). As conditions of such transfer, Grantee shall require that assignee (a) continue to carry out the Purpose of this Easement and (b) comply with the terms of that certain watershed acquisition grant agreement (#204-391) between OWEB ("OWEB Grant Agreement"), as described in Section 17, and Grantee. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment. The assignment shall not be valid without such notice; provided, however,

that the failure of Grantee to give such notice shall not impair the validity of this Easement or limit its enforceability in any way.

15.2. **Rights and Obligations Upon Transfer.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Protected Property or this Easement, as the case may be, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

15.3. **Succession.** If at any time it becomes impossible for Grantee to ensure compliance with the covenants contained herein and Grantee has not named a successor organization, or the Grantee shall cease to exist, and the United States declines to exercise its rights set forth herein, then its rights and duties hereunder shall become vested and fall upon OWEB, who shall then assign, with USDA's approval (which shall not be unreasonably withheld), Grantee's rights and duties hereunder to an organization with a similar mission to that of Grantee.

16. CONTINGENT RIGHT IN THE UNITED STATES OF AMERICA

In the event that Grantee or OWEB fail to enforce any of the terms of this Easement, as determined in the sole discretion of the Secretary of the USDA, the said Secretary of Agriculture and his or her successors and assigns shall have the right to enforce the terms of the Easement through any and all authorities available under Federal and State law. In the event that Grantee attempts to terminate or transfer, except as expressly permitted in Section 15.1, or otherwise divests itself of any rights, title, or interests of this Easement without the prior written consent of the Secretary of Agriculture and payment of consideration to the United States then, at the option of such Secretary, all right, title, and interests of this easement (other than those terms relating solely to OWEB or Grantor's affirmative obligation to implement conservation and/or management measures on the Protected property that will provide for incremental but material progress towards the Conservation Goals of this Easement), shall become vested in the United States of America. In such event, notwithstanding any language herein to the contrary, the United States is exempted from following the requirements of Section 10.2 related to mediation, Section 11.7 related to attorneys' and consultants' fees and Section 12.6 related to indemnification.

17. LIMITED THIRD PARTY RIGHT OF ENFORCEMENT

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 in Section 10 above, 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.

This third party right of enforcement will automatically transfer to another State agency charged with maintaining or restoring watersheds, habitat and native salmonids in the event OWEB is dissolved or reorganized. This right of enforcement does not extend to any other third party (other than to a successor agency of the State of Oregon serving similar purposes), or to grant, transfer or convey an additional third party right of enforcement to any other person, organization or entity.

In accordance with OAR 695-020-0053, in the event that the Easement is transferred or assigned without the consent of OWEB, which shall not be unreasonably withheld, OWEB may require that OWEB funds shall be repaid with interest due and payable from the effective date of the OWEB Grant Agreement at the rate provided for in ORS § 82.010, as may be amended from time to time.

In the event that the Protected Property is used by Grantor in a manner that is not consistent with the Purpose and Objectives of this Easement (including but not limited to Grantor making incremental but material progress toward reaching the Conservation Goals of this Easement within 10 years of the Effective Date 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, OWEB shall have the right, in addition to any other remedies described in this Easement, to require that Grantor repay all OWEB funds (such funds having been received pursuant to the OWEB Grant Agreement) with interest due and payable from the effective date of the OWEB Grant Agreement at the rate provided for in ORS 82.010. OWEB agrees that it will follow the dispute resolution process and remedies described in Sections 10 or 11 before exercising this right, unless legally compelled to do otherwise. Any amounts due and owing OWEB under this paragraph shall be due and owing within 120 days of receiving a written demand for repayment by OWEB. Upon repayment of such amount to OWEB, Grantor, Grantee and OWEB agree to prepare and record, with the United States' approval (which shall not be unreasonably withheld), a deed amendment to release Grantor from the following: (a) Its affirmative obligations under this Easement to implement conservation and/or management measures on the Protected Property that will provide for incremental but material progress towards the Conservation Goals of this Easement; and (b) Any further obligations to OWEB under this Easement.

18. JOINT ENFORCEMENT

Before either Grantee, OWEB or the United States exercises its rights to undertake mediation, arbitration or legal action as provided for in Sections 10 and 11, the party contemplating such action agrees to confer with the other parties holding enforcement rights under this Easement as to whether they will join the mediation, arbitration 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,

OWEB or the United States to exercise its enforcement and other rights under this Easement. If Grantee, OWEB and/or the United States 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 and/or extinguishment of the Easement shall be shared equally by OWEB and the United States only after reimbursing such parties for their costs and expenses.

If Grantee, OWEB and/or the United States chooses not to undertake mediation, arbitration or legal action as provided for in Sections 10 and 11, and/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 and/or extinguishment of the Easement shall be shared equally by OWEB and the United States only after first reimbursing any party for its costs and expenses that are not otherwise separately paid as part of any arbitration award or judgment.

19. RECORDATION

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

20. NO MERGER

In the event that Grantee acquires all or a portion of the fee title to the Protected Property, it is the intent of Grantor and Grantee that no merger of title shall take place that would merge the restrictions of this Easement with fee title to the Protected Property and thereby eliminate them, and that the restrictions on the use of the Protected Property, as embodied in the Easement, shall, in the event that all or a portion of title become vested in Grantee, become and remain permanent and perpetual restrictions on the use of the Protected Property. Grantee covenants to do what is required to prevent merger of title, including, if necessary, assignment of the Easement to an appropriate third party pursuant to Section 15.1.

21. LIENS

At the time of conveyance of this Easement, the Protected Property is subject to that certain deed of trust dated SEPTEMBER 29, 2004, which was granted to AmeriTitle, a corporation, for the benefit of Northwest Farm Credit Services, FLCA and recorded under Auditor's File No md4-74201 ("Mortgage"). The beneficiary of the Mortgage has agreed by separate instrument, which will be recorded concurrently with this Easement, to subordinate its rights in the Protected Property to this Easement but only to the extent necessary to permit Grantee, OWEB and the United States to enforce the terms of this Easement in perpetuity and to prevent any modification or extinguishment of this

Easement by the exercise of any rights of the beneficiary under the Mortgage. Notwithstanding anything to the contrary in this Easement, the Parties hereto agree that any and all liens (consensual or non-consensual, judicial or non-judicial) arising from non-performance of the obligations of Grantor under this Easement and charged to Grantor by Grantee or by a third party beneficiary under this Easement, shall be subordinate, junior and subject to the Lien of the Mortgage granted to Northwest Farm Credit Services, FLCA. This Section shall be binding upon the Parties hereto and upon the intended third party beneficiaries, OWEB and the United States.

22. GENERAL PROVISIONS

- 22.1. **Effective Date.** The Effective Date of this Easement shall be the date on which the Grantor executed this Easement.
- 22.2. **Controlling Law.** The laws of the State of Oregon and applicable federal law shall govern the interpretation and performance of this Easement.
- 22.3. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the Purpose and Objectives of this Easement and the policy and purpose of Section 170(4)(A) of the Internal Revenue Code and ORS §§ 271.715 through 271.795. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose and Objectives of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 22.4. **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such 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.
- 22.5. **Entire Agreement.** This instrument 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 Section 14.
- 22.6. **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- 22.7. **"Grantor" - "Grantee".** The terms "Grantor" and "Grantee," wherever used in this instrument, and any pronouns used in the place thereof, shall be held to mean and include, respectively the above-named Grantor and its successors and assigns, and the above-named Grantee and its successors and assigns. The term "Grantor" shall also include any party taking ownership of the Protected Property, or any portion thereof, subsequent to the foreclosure of any mortgage or deed of trust.

- 22.8. **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the Parties and their respective successors and assigns, and to any party taking ownership of the Protected Property, or any portion thereof, subsequent to the foreclosure of any mortgage or deed of trust, and shall continue as a servitude running in perpetuity with the Protected Property.
- 22.9. **Captions.** The captions in this instrument have been inserted solely for convenience and ease of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- 22.10. **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.
- 22.11. **Authority.** The individuals signing below, if signing on behalf of any entity, represent and warrant that they have the requisite authority to bind the entity on whose behalf they are signing.
- 22.12. **Recitals.** Each recital set forth above is fully incorporated into this Easement.

23. SCHEDULE OF EXHIBITS

- 23.1. Exhibit A. Legal Description of Property Subject to Easement.
- 23.2. Exhibit B. Site Map.
- 23.3. Exhibit C. Acknowledgement of Conservation Easement Baseline Documentation.
- 23.4. Exhibit D. Definitions.

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

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this ____ day of October 22, 2004.

Grantor

Taylor Hyde
Taylor Hyde

Becky Hatfield-Hyde
Becky Hatfield-Hyde

STATE OF OREGON)
County of Klamath) ss.

This instrument was acknowledged before me this 22 day of October 22, 2004, by Taylor Hyde.



Lisa Weatherby
Notary Public for Oregon
My Commission Expires: 11/20/07

STATE OF OREGON)
County of Klamath) ss.

This instrument was acknowledged before me this 22 day of October, 2004, by Becky Hatfield-Hyde.



Lisa Weatherby
Notary Public for Oregon
My Commission Expires: 11/20/07

The OREGON WATERSHED ENHANCEMENT BOARD, Third Party Beneficiary, does hereby accept the above Deed of Conservation Easement on this 22 day of October, 2004.

By Kenneth F. Bierly
Acting Director

STATE OF OREGON)
County of Marion) ss.

This instrument was acknowledged before me this 22 day of October, 2004, by Kenneth F. Bierly, as Director of the Oregon Watershed Enhancement Board, on behalf of the Oregon Watershed Enhancement Board.



Maribeth Mattson
Notary Public for Oregon
My Commission Expires: 10-27-04

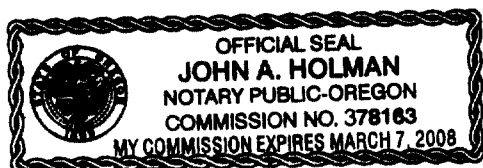
74247

The NATURAL RESOURCES CONSERVATION SERVICE, an agency of the United States government, and Third Party Beneficiary, does hereby accept the above Deed of Conservation Easement on this 22 day of October, 2004.

By William B. White
Authorized Signatory

STATE OF OREGON)
County of Multnomah) ss.


This instrument was acknowledged before me this 22nd day of October 2004, 2004, by _____, as signatory of the Natural Resources Conservation Service, on behalf of the Natural Resources Conservation Service.



[Signature]
Notary Public for Oregon
My Commission Expires: March 7, 2008

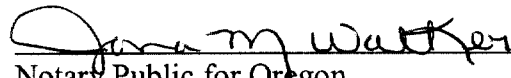
The KLAMATH TRIBES does hereby accept the above Grant Deed of Conservation Easement on this 22 day of October, 2004.

KLAMATH TRIBES, Grantee

By 
Chairman

STATE OF OREGON)
County of Klamath) ss.
Oregon

This instrument was acknowledged before me this 22 day of October, 2004, by Allen Foreman, as Chairman of the Klamath Tribes, on behalf of the Klamath Tribes.


Notary Public for Oregon
My Commission Expires: 1/26/2006



**GRANT DEED OF CONSERVATION EASEMENT
YAINIX RANCH AND YAINIX ANNEX**

EXHIBIT A - LEGAL DESCRIPTION

74249

PARCEL 1:

The following described property located in Township 36 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon;

SECTION 3: The SE1/4, Excepting therefrom a tract of land situated in the N1/2 NE1/4 SE1/4 of Section 3, Township 36 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at an iron pin on the East-West center section line of Section 3, which is South 89° 29' West a distance of 320.00 feet from an iron pin marking the East quarter corner of Section 3; thence South 89° 29' West following the East-West center section line of Section 3 a distance of 527.25 feet to an iron pin on the East bank of the Sycan River; thence South 4° 16' East along the East bank of the Sycan River a distance of 252.50 feet to an iron pin; thence leaving the East bank of the Sycan River, North 89° 29' East parallel to the East-West center section line of Section 3 a distance of 510.22 feet to an iron pin; thence North 0° 24' West parallel to the East line of Section 3 a distance of 251.97 feet, more or less, to the point of beginning.

Government Lots 1 and 2 and the S1/2 NE1/4 of Section 3 (NE1/4).

SECTION 10: Government Lots 1, 2, 7, 8, 9, 10, 15, and 16

EXCEPTING FROM said property any portion thereof lying within the boundaries of Drews Ranch Road and Godowa Springs Road.

PARCEL 2:

A tract of land situated in the N1/2 NE1/4 SE1/4 of Section 3, Township 36 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at an iron pin on the East-West center section line of Section 3, which is South 89° 29' West a distance of 320.00 feet from an iron pin marking the East quarter corner of Section 3; thence South 89° 29' West following the East-West center section line of Section 3 a distance of 527.25 feet to an iron pin on the East bank of the Sycan River; thence South 4° 16' East along the East bank Sycan River a distance of 252.50 feet to an iron pin; thence leaving the East bank of the Sycan River, North 89° 29' East parallel to the East-West center section line of section 3, a distance of 510.22 feet to an iron pin; thence North 0° 24' West parallel to the East line of Section 3 a distance of 251.97 feet, more or less, to the point of beginning.

(Legal description continued)

PARCEL 3:

74250

The NW1/4 SW1/4 and the S1/2 NE1/4 SW1/4, Section 28, Township 36 South, Range 12 East of the Willamette Meridian, in the County of Klamath, State of Oregon.

A portion of the E1/2 NE1/4 Section 29, Township 36 South, Range 12 East of the Willamette Meridian, lying South of Highway 140, in the County of Klamath, State of Oregon.

PARCEL 4:

The West 1/2 of the Northwest 1/4 of Section 28, Township 36 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL 5:

E1/2 NW1/4 and N1/2 NE1/4 SW1/4 of Section 28, Township 36 South, Range 12 East, Willamette Meridian, Klamath County, Oregon; EXCEPTING THEREFROM that portion thereof lying within the boundaries of State Highway 140.

Tax Account No.:	3612-00000-03700-000	Key No.:	352237
Tax Account No.:	3612-00300-00400-000	Key No.:	351835
Tax Account No.:	3612-00300-00500-000	Key No.:	351844
Tax Account No.:	3612-00000-03700-000	Key No.:	352237
Tax Account No.:	3612-00000-03800-000	Key No.:	352219
Tax Account No.:	3612-02900-00100-000	Key No.:	696116
Tax Account No.:	3612-02900-00200-000	Key No.:	358393
Tax Account No.:	3612-02800-00300-000	Key No.:	353584
Tax Account No.:	3612-02800-00400-000	Key No.:	685734
Tax Account No.:	3612-02800-01000-000	Key No.:	353593

74251

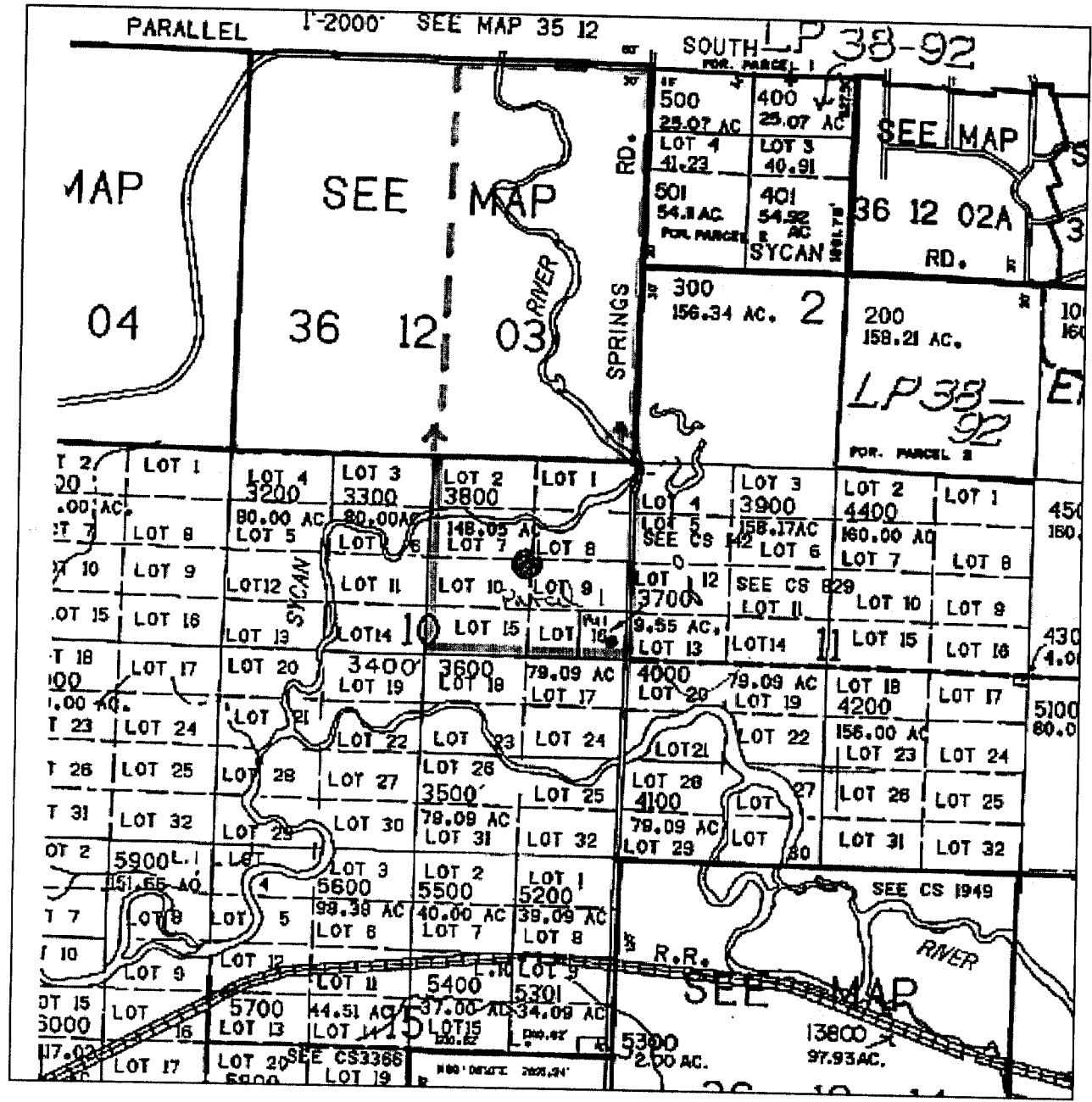
THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY.

SECTION 03 T.36S. R.12E. WM.
KLAMATH COUNTY
T-100

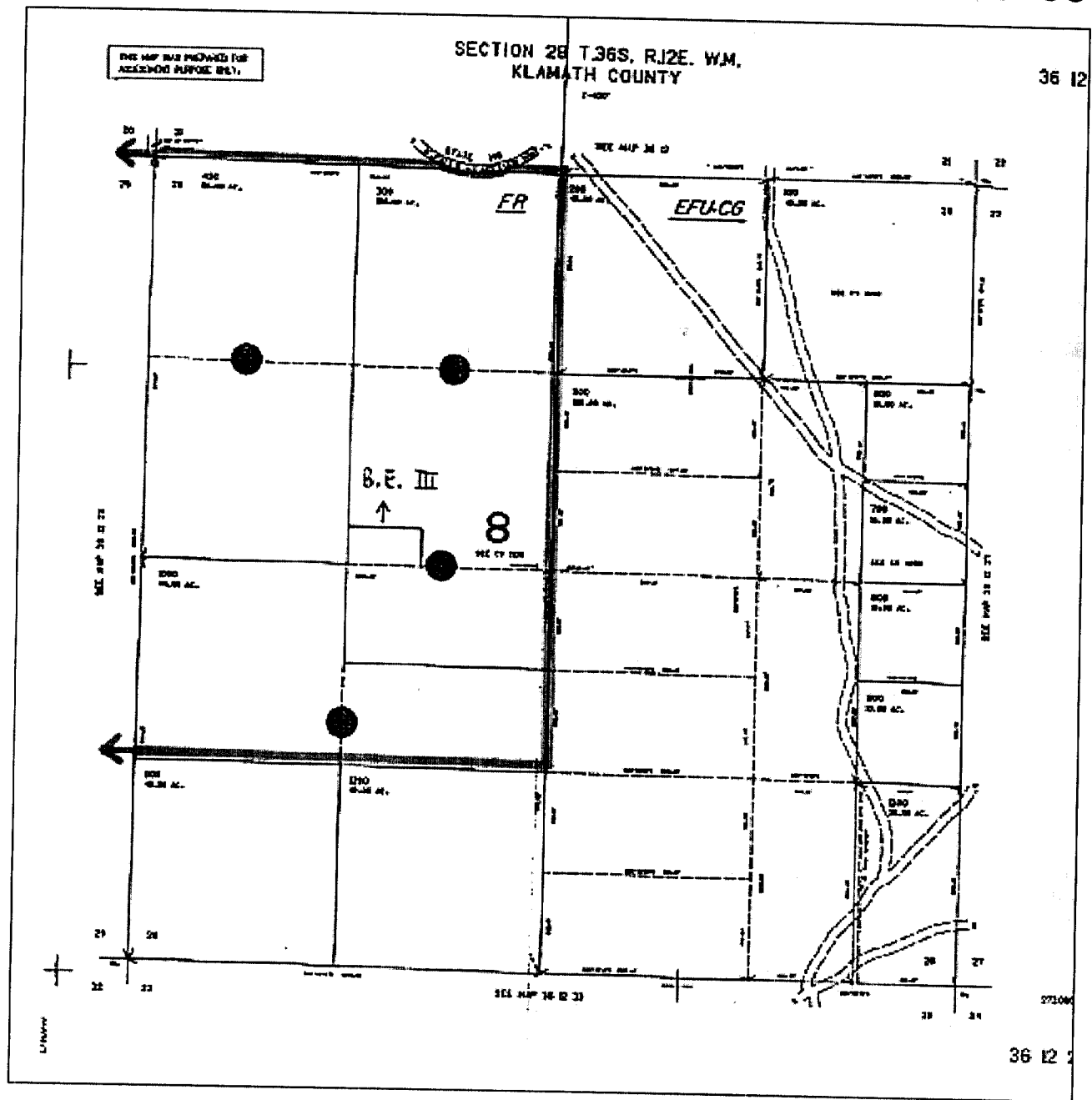
36 12

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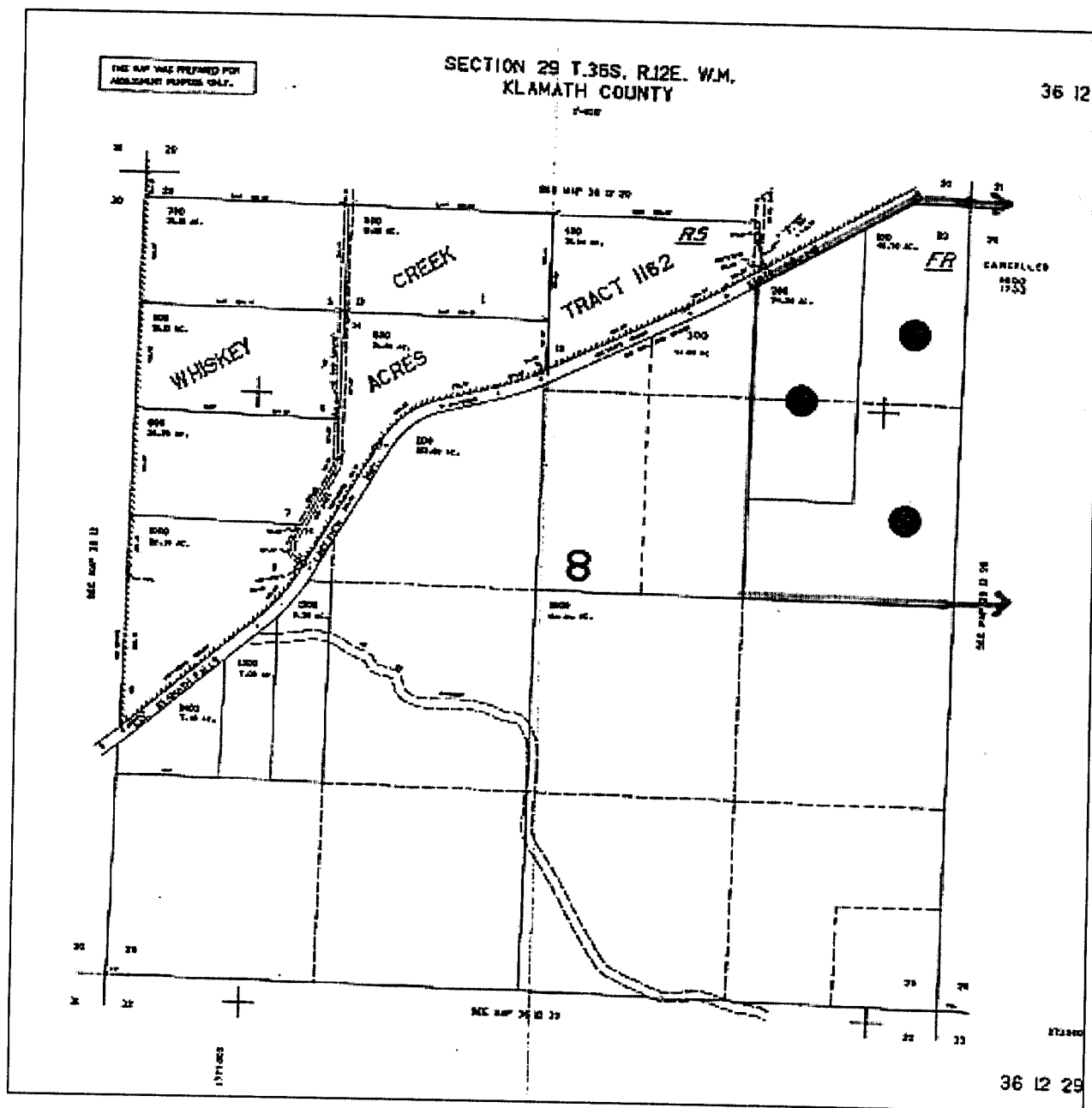


74253



Yainix Annex – eastern 2/3 of property (approx.) showing Building Envelope III

74254



Yainix Annex – western 1/3 of property (approx.)

**GRANT DEED OF CONSERVATION EASEMENT
YAINIX RANCH AND YAINIX ANNEX**

**EXHIBIT C -
ACKNOWLEDGEMENT OF CONSERVATION
EASEMENT BASELINE DOCUMENTATION**

This ACKNOWLEDGEMENT OF CONSERVATION EASEMENT BASELINE DOCUMENTATION ("Acknowledgement") is made by Taylor Hyde and Becky Hatfield-Hyde, husband and wife, having an address of Post Office Box 894, Chiloquin, Oregon 97624 ("Grantor"), the Klamath Tribes, a Federally-Recognized Indian Tribe, having an address of 501 Chiloquin Boulevard, Chiloquin, OR 97624 ("Grantee"), and the United States, by and through the Natural Resources Conservation Service, pursuant to Section 1.10 of the Deed of Conservation Easement, executed on 22 day of OCTOBER, 2004 ("Easement").

I. PURPOSE OF CONSERVATION EASEMENT

As more thoroughly set forth in Section 3 of the Easement, the purpose of the Easement is to: (a) protect the Ranchland Stewardship Values and Conservation Values (as defined below and in Section 1.4 of the Easement) of the Protected Property forever, thereby facilitating the continued use of the Protected Property as a working ranch managed at a sustainable stocking rate; (b) restore and/or enhance the Conservation Values of the Protected Property over time to achieve the Conservation Goals (as defined below and in Section 7.1 of the Easement) on the Protected Property; (c) allow for compatible ranch-related, recreational and educational opportunities on the Protected Property for present and future generations; and (d) prevent any use of the Protected Property that will impair or interfere with its Ranchland Stewardship and/or Conservation Values. Grantor intends that this Easement will confine the use of, or activity on, the Protected Property to such uses and activities that are consistent with this Purpose.

In furtherance of this purpose, as more thoroughly set forth in Section 7 of the Easement, this Easement places an emphasis on Grantor's obligation under the Easement to progressively restore aquatic, riparian and wetland habitat and functions on the Protected Property over time consistent with maintaining a compatible ranching enterprise. Every year Grantor will implement conservation and/or management measures on the Protected Property that are intended to produce observable, biophysical changes to the character of the Protected Property, and that are indicative of and will provide for incremental but material progress toward the Conservation Goals. The Conservation Goals, as set forth in Section 7.1 of the Easement, are:

- A narrower, deeper, more sinuous river channel increasingly connected to an abandoned floodplain;
- A high diversity of aquatic, riparian, and wetland native species (plants, fish and wildlife) with diversity in plant communities, age, structure and composition;

- Healthy and abundant sedge and rush communities in riparian and wetland zones along the length of the Sycan River on the Protected Property;
- Mosaics of woody plants in the riparian and wetland zones, along the length of the Sycan River on the Protected Property;
- Springs that provide high quality water for fish and other aquatic wildlife;
- Wetland and riparian zones that provide nesting and holding habitat for migrating waterfowl and other species;
- Wetland and riparian zones that attain and maintain Proper Functioning Condition (as described in TR 1737-15, *A User's Guide to Assessing Proper Functioning Condition and the Supporting Science for Lotic Areas* [Prichard et al. 1998] ("TR 1737-15") as a structural basis for achieving other Conservation Values, described in Updated Baseline Reports.

Proper Functioning Condition is defined in TR 1737-15 as follows: "Riparian-wetland areas are functioning properly when: (a) Adequate vegetation, land form, or large woody debris is present to: (i) Dissipate stream energy associated with high water flows, thereby reducing erosion and improving water quality; (ii) Filter sediment, capture bedload, and aid floodplain development; (iii) Improve flood-water retention and ground water recharge; (iv) Develop root masses that stabilize streambanks against cutting action; (v) Develop diverse ponding and channel characteristics *to provide* the habitat and the water depth, duration, and temperature necessary for fish production, waterfowl breeding and other uses; and (vi) Support greater biodiversity; and (b) There is adequate stability present *to provide* the listed benefits *applicable* to a particular area."

- On the Yainix Ranch, upland areas managed primarily for livestock forage and perennial grass production, and increasingly exhibiting a compatible diversity of native grasses, shrubs and trees, providing shelter and protection for livestock and wildlife; and
- On the Yainix Annex, protection of the Conservation Values, as described in the baseline documentation acknowledged herein, in particular presence, composition, diversity and vigor of native grasses and shrubs—especially perennial bunchgrasses, sage and bitterbrush.

II. PROPERTY DESCRIPTION

a. Physical Description

The Protected Property, which is also known as the Yainix Ranch, consists of approximately 788 acres in 2 parcels: the Yainix Ranch, with approximately 475 acres of irrigated pastureland and

2 miles of the Sycan River, above its confluence with the Sprague River; and the Yainix Annex, a 313 acre parcel of upland juniper-sage-bunchgrass land grazed for supplementary pasture.

b. Legal Description

PARCEL 1:

The following described property located in Township 36 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon;

SECTION 3: The SE1/4, Excepting therefrom a tract of land situated in the N1/2 NE1/4 SE1/4 of Section 3, Township 36 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

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Government Lots 1 and 2 and the S1/2 NE1/4 of Section 3 (NE1/4).

SECTION 10: Government Lots 1, 2, 7, 8, 9, 10, 15, and 16

EXCEPTING FROM said property any portion thereof lying within the boundaries of Drews Ranch Road and Godowa Springs Road.

PARCEL 2:

A tract of land situated in the N1/2 NE1/4 SE1/4 of Section 3, Township 36 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at an iron pin on the East-West center section line of Section 3, which is South 89° 29' West a distance of 320.00 feet from an iron pin marking the East quarter corner of Section 3; thence South 89° 29' West following the East-West center section line of Section 3 a distance of 527.25 feet to an iron pin on the East bank of the Sycan River; thence South 4° 16' East along the East bank Sycan River a distance of 252.50 feet to an iron pin; thence leaving the East bank of the Sycan River, North 89° 29' East parallel to the East-West center section line of section 3, a distance of 510.22 feet to an iron pin; thence North 0° 24' West parallel to the East line of Section 3 a distance of 251.97 feet, more or less, to the point of beginning.

PARCEL 3:

The NW1/4 SW1/4 and the S1/2 NE1/4 SW1/4, Section 28, Township 36 South, Range 12 East of the Willamette Meridian, in the County of Klamath, State of Oregon.

A portion of the E1/2 NE1/4 Section 29, Township 36 South, Range 12 East of the Willamette Meridian, lying South of Highway 140, in the County of Klamath, State of Oregon.

PARCEL 4:

The West 1/2 of the Northwest 1/4 of Section 28, Township 36 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL 5:

E1/2 NW1/4 and N1/2 NE1/4 SW1/4 of Section 28, Township 36 South, Range 12 East, Willamette Meridian, Klamath County, Oregon; EXCEPTING THEREFROM that portion thereof lying within the boundaries of State Highway 140.

Tax Account No.:	3612-00000-03700-000	Key No.:	352237
Tax Account No.:	3612-00300-00400-000	Key No.:	351835
Tax Account No.:	3612-00300-00500-000	Key No.:	351844
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Tax Account No.:	3612-02900-00100-000	Key No.:	696116
Tax Account No.:	3612-02900-00200-000	Key No.:	358393
Tax Account No.:	3612-02800-00300-000	Key No.:	353584
Tax Account No.:	3612-02800-00400-000	Key No.:	685734
Tax Account No.:	3612-02800-01000-000	Key No.:	353593

III. PURPOSE OF BASELINE DOCUMENTATION

The purpose of the Baseline Documentation is to provide an accurate representation of the Protected Property as of the date of conveyance of the Easement, and every 10 years thereafter, by establishing the then present Ranchland Stewardship and Conservation Values of the Protected Property. The Baseline Documentation is intended to serve as an objective, although not exclusive, information baseline and tool for Monitoring and Compliance Evaluation (as defined in the Easement), including the assessment of material progress toward restoring aquatic, riparian and wetland habitat and functions on the Protected Property over time, consistent with maintaining a compatible ranching enterprise.

IV. UPDATE OF BASELINE DOCUMENTATION

Within twelve (12) months of the execution of the Easement, a collection of additional Baseline Documentation will be compiled by Grantee and, if concurred in by Grantor in writing as an

accurate representation of the Protected Property (which concurrence shall not be unreasonably withheld) through execution of an Acknowledgement of Conservation Easement Baseline Documentation (in a form substantially similar to this Acknowledgment) that is recorded in the official records of Klamath County, Oregon, shall be incorporated herein by this reference. The Acknowledgement of Easement Baseline Documentation shall acknowledge that the additional Baseline Documentation collected within 12 months of the execution of the Easement supplements the documentation found in the Initial Baseline Documentation.

In addition, every 10 years after the Effective Date of the Easement, Grantee shall prepare a new baseline report to update the Baseline Documentation (Updated Baseline Report). The purpose of each Updated Baseline Report is to inventory and assess the condition of the then existing agricultural (including soils) and open space attributes, aquatic, riparian and wetland habitats and ecological functions and upland vegetation on the Protected Property relative to attainment of the Conservation Goals, in order to establish a new and updated baseline for identifying the then current Ranchland and Stewardship and Conservation Values to be protected under the Easement.

The Updated Baseline Report shall be prepared employing results of previous years' Monitoring as documented in Monitoring Reports. If concurred in by Grantor in writing as an accurate representation of the Protected Property (which concurrence shall not be unreasonably withheld), through execution of an updated Acknowledgement of Conservation Easement Baseline Documentation (in a form substantially similar to this Acknowledgment) that is recorded in the official records of Klamath County, Oregon, the Updated Baseline Report shall be incorporated into the Conservation Easement. The Acknowledgement of Easement Baseline Documentation shall acknowledge that the Updated Baseline Report supplants previous baseline reports to serve as the then current Baseline Documentation under the Easement. Failure to timely compile or record any Updated Baseline Report shall not affect the enforceability or validity of any other provisions of this Easement

V ACKNOWLEDGMENT OF EASEMENT BASELINE REPORT

The undersigned acknowledge that each has read the "Yainix Ranch Project Initial Baseline Documentation Report," compiled by James Honey of Sustainable Northwest and dated October 21, 2004, and that such report accurately reflects the currently available baseline data regarding the condition of the Protected Property subject to the Easement as of the date of conveyance of the Easement.

Grantor:

Taylor Hyde
Taylor Hyde

Date: 10-22-04

Becky Hatfield-Hyde
Becky Hatfield-Hyde

Date: 10-22-04

STATE OF OREGON)

County of Klamath ss.

This instrument was acknowledged before me this 22 day of October,
2004, by Taylor Hyde and Becky Hatfield-Hyde.

Lisa Weatherby
Notary Public for Oregon
My Commission Expires: 11/20/07



74261

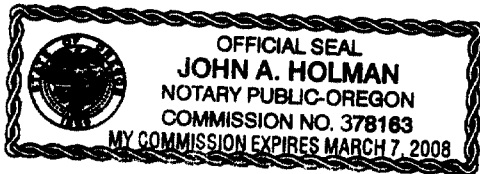
The Natural Resources Conservation Service

By William B. White
Authorized Signatory

Date: 10-22-04

STATE OF OREGON)
County of Multnomah) ss.

This instrument was acknowledged before me this 22nd day of October 2004, 2004, by _____, as signatory of the Natural Resources Conservation Service, on behalf of the Natural Resources Conservation Service.



[Signature]
Notary Public for Oregon
My Commission Expires: March 7, 2008

74262

The Klamath Tribes, Grantee

By

Chairman

Date:

10-22-04

STATE OF OREGON)

) ss.

County of Clatsop

This instrument was acknowledged before me this 22 day of October, 2004, by Allen Foreman, as Chairman of the Klamath Tribes, on behalf of the Klamath Tribes.

Jana M. Walker

Notary Public for Oregon

My Commission Expires:

1/26/2006



**GRANT DEED OF CONSERVATION EASEMENT
YAINIX RANCH AND YAINIX ANNEX**

74263

EXHIBIT D – DEFINITIONS

Baseline Documentation – The Ranchland Stewardship and Conservation Values of the Protected Property that are documented in an inventory of relevant features of the Protected Property, on file at the offices of Grantee, OWEB and NRCS. The Baseline Documentation provides, collectively, an accurate representation of the Protected Property and is intended to serve as an objective, although not exclusive, information baseline for Monitoring and Compliance Evaluation of the terms of this Easement.

Building Envelopes – Those three areas of land, together comprising approximately 9 acres, more particularly shown on the site map of the Protected Property (Exhibit B), on which Grantor may install, build or construct, enlarge, maintain, repair, replace or decommission Improvements not existing as of the Effective Date of this Easement for personal and domestic uses and activities and all Ranch-Management Activities. Further, within these Building Envelopes, Grantor may install, build or construct Improvements not existing as of the Effective Date of this Easement for Ranch-Related Economic Enterprises if Grantor provides Grantee, OWEB and NRCS advance written notice of the proposed Improvements and Grantee consents to such Improvements as provided for in Section 9. All Improvements within the Building Envelopes will be consistent with the Purpose, Objectives and terms of this Easement (e.g., total impervious surface area).

Compliance Evaluation – The process by which Grantee evaluates compliance with the Purpose, Objectives and terms of the Easement. Further, Grantor and Grantee have structured the evaluation process so that decisions regarding the conservation and management measures implemented by Grantor on the Protected Property remain, to the fullest extent possible, within the discretion of Grantor (without limiting the intent of Grantor, Grantee, OWEB and NRCS to maintain on-going communication and a close working relationship under this Easement) unless Grantee determines during its Compliance Evaluation that Grantor's conservation and management measures are not achieving planned Conservation Outcomes, as defined in the Operations Plans, are not making required incremental but material progress toward the Conservation Goals (which in aquatic, riparian and wetland areas shall be evaluated primarily by the assessment of the Protected Property's condition and trend in relation to Proper Functioning Condition), and/or are not protecting those Conservation Values already achieved and documented by Baseline Documentation. The Compliance Evaluation process is in addition to the rights of Grantee, OWEB or the United States under the Easement related to remedies and enforcement generally.

Conservation Goals - Those potential natural attributes of the Protected Property that emphasize Grantor's obligation under this Easement to progressively restore aquatic, riparian and wetland habitat and functions on the Protected Property over time consistent with maintaining a compatible ranching enterprise, and which are described specifically in Section 7.1.1 to 7.1.9.

Conservation Outcomes – The observable, biophysical changes to the character of the Protected Property resulting from implementation of conservation and/or management measures which Grantor shall describe in its Operations Plans, and which may include, for example, changes in the range or quantity, or individual health or vigor of a particular species or community, or character of a particular physical feature such as bank width, riffle length, or pool depth.

Conservation Values – The Conservation Values include existing and future natural attributes of the Protected Property (e.g., upland, aquatic, riparian and wetland habitats and ecological functions, and fish and wildlife species).

Hazardous Substances – Any substances, materials, or wastes that are hazardous, toxic, dangerous, or harmful or are designated as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or which are subject to regulation as hazardous, toxic, dangerous, or harmful or as a pollutant by any federal, state, or local law, regulation, statute, or ordinance, including, but not limited to, petroleum or any petroleum product.

Improvements – Structures, houses, barns, water-pollution-control facilities, water impoundments, fences, corrals, roads, ditches, sloughs, pumps, levees and other permanent improvements or impervious surfaces on the Protected Property. Improvements also include utility systems that support the Improvements, such as electric power lines, septic systems, water storage and delivery systems, telephone and communication cable systems and the like.

Initial Baseline Documentation – The Baseline Documentation dated October 21, 2004, for which Grantee will collect and compile additional Baseline Documentation within twelve (12) months of the execution of the Easement, and, if concurred in by Grantor in writing as an accurate representation of the Protected Property (which concurrence shall not be unreasonably withheld) through execution of an Acknowledgement of Conservation Easement Baseline Documentation (in a form substantially similar to that in Exhibit "C") will be recorded in the official records of Klamath County, Oregon, and shall be incorporated to the Easement by reference.

Monitoring – Those annual activities, including use of a Monitoring Plan, by which Grantee shall gather data to evaluate Grantor's actions and practices undertaken under Grantor's Operations Plans, compliance with the terms of the Easement, and to update Baseline Documentation.

Monitoring Plan – A roster of specific techniques and methods for describing the condition of the Conservation Values Protected Property in relation to the Conservation Goals, for qualifying and quantifying Conservation Outcomes, and for identifying incremental but material progress toward the Conservation Goals, in order to evaluate compliance with the terms of this Easement.

Monitoring Report – A report prepared by Grantee following the conclusion of each monitoring event documenting the condition and trend of the Ranchland Stewardship Values, and the Conservation Values of the Protected Property relative to achieving the Conservation Goals,

including Proper Functioning Condition with respect to aquatic, wetland, and riparian zones. Grantee shall use the Monitoring Report to assist in Compliance Evaluation.

NRCS Conservation Plan (Ranchland Stewardship Conservation Plan) – A component of Grantor's Operations Plans that addresses the ranching and farming uses of the Protected Property which, shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect as of the Effective Date of this Easement, shall receive the approval of the Conservation District within twelve (12) months of the Effective Date of this Easement, and shall be updated according to NRCS local practices thereafter.

Operations Plan – A plan of conservation and management measures on the Protected Property Grantor agrees to implement each year to maintain progress toward and attain the Conservation Goals. The Operations Plans shall consist of an NRCS Conservation Plan and a Restoration Plan. The Operations Plans define, in part, the legally binding actions that Grantor must accomplish for the duration of each successive Operations Plan.

Proper Functioning Condition – Proper Functioning Condition is: (1) a description of the ecological status of an aquatic, riparian and/or wetland area, and (2) an assessment tool to determine this status, as further described in TR 1737-15 *A User Guide to Assessing Proper Functioning Condition and the Supporting Science for Lotic Areas* [Prichard et al. 1998]. As a description of ecological status (1): The element of the Conservation Goals (Section 7.1.1) that is a structural basis for achieving other Conservation Values in aquatic, riparian and wetland areas. As an assessment tool (2): Grantee's assessment tool for evaluating material progress toward the Conservation Goals resulting from implementation of Grantor's Operations Plans, in particular Sections 7.1.2 to 7.1.7 relating to aquatic, wetland and riparian zones.

Ranch Management Activities – All ranch management activities allowable under law that are compatible with the Purpose, Objectives, and terms of the Conservation Easement, including incremental but material progress toward the Conservation Goals.

Ranch-Related Economic Enterprises – Uses and activities apart from ranching practices that contribute to diversified ranch management, that maintain the primacy of, and are subordinate to, the ranchland character and use of the Protected Property, that are compatible with the Conservation Goals, and that provide supplemental income. Ranch-Related Economic Enterprises, include, but are not limited to, fee-based fishing or other on-site nature-based tourism, lodging and hospitality primarily for guest ranching and other on-site recreational or educational activities, supplementary crop production and alternative energy production (including micro-hydro, micro-wind or solar power) primarily for use on the Protected Property.

Ranchland Stewardship Values – Agricultural (agricultural productivity, and protection of agricultural soils of State-wide importance) and open space (scenery) attributes of the Protected Property.

Release – Any release, generation, treatment, disposal, storage, dumping, burying, abandonment, or migration of Hazardous Substances from off-site.

Restoration Plan (Conservation Values Restoration Plan) – A component of Grantor's Operations Plans setting forth Grantor's planned conservation and/or management measures to provide for incremental but material progress toward, and eventual attainment of the Conservation Goals, in particular, attaining and maintaining Proper Functioning Condition in aquatic, riparian and wetland areas.

Review Committee – A committee that may be used by the parties to assist in preventing disputes by facilitating dialogue and mutual understanding between Grantor and Grantee over the evaluation of whether or not incremental but material progress is being made towards the Conservation Goals, the status and trend of the aquatic, wetland and riparian zones on the Protected Property in relation to Proper Functioning Condition, the causes of failure to make material progress toward the Conservation Goals, and whether and how the Operations Plans can be modified to achieve desired Conservation Outcomes. The review committee shall consist of an interdisciplinary technical group, substantially matching the combined disciplines, background, and experience of the National Riparian Service Team or its regional cadres (which may include grazing management, aquatic biology, botany and wildland hydrology), and demonstrating familiarity with the use of Proper Functioning Condition assessments as a tool for facilitating objective understanding of the status and trend of aquatic, riparian and wetland function.

Updated Baseline Report – A new baseline report prepared by Grantee every 10 years after the Effective Date of the Conservation Easement until the Conservation Goals have been achieved, to inventory and assess the condition of the then existing agricultural (including soils) and open space attributes of the Protected Property, and the aquatic, riparian and wetland habitats and ecological functions and upland vegetation relative to attainment of the Conservation Goals. This Updated Baseline Report is intended to serve as an objective, though not exclusive information baseline and tool for Monitoring and Compliance Evaluation. If concurred in by Grantor in writing as an accurate representation of the Protected Property (which concurrence shall not be unreasonably withheld), through execution of an updated Acknowledgement of Conservation Easement Baseline Documentation that is recorded in the official records of Klamath County, Oregon, this Updated Baseline Report shall supplant any previous baseline reports and be incorporated into this Easement as the then current Baseline Documentation by this reference.