

2007-016108

Klamath County, Oregon



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09/13/2007 11:28:34 AM

Fee: \$86.00

MTCT7021-KR

RECORDING COVER SHEET

THIS COVER SHEET HAS BEEN PREPARED
BY THE PERSON REPRESENTING THE
ATTACHED INSTRUMENT FOR RECORDING.
ANY ERRORS IN THIS COVER SHEET DO NOT
AFFECT THE TRANSACTION(S) CONTAINED
IN THE INSTRUMENT ITSELF.

After Recording, Return To:

United States of America, acting through the Commodity Credit
Corporation
C/O Sandra Fife
1201 NE Lloyd Blvd., #900
Portland, OR 97232

1. Name(s) of the Transaction(s): Warranty Easement Deed
2. Direct Party (Grantor): The Nature Conservancy
3. Indirect Party (Grantee): United States of America, acting through
the Commodity Credit Corporation
4. True and Actual Consideration Paid: \$775,000.00
5. Legal Description: See Attached Exhibit "A"

86 AMT

Warranty Easement Deed

WETLANDS RESERVE PROGRAM
AGREEMENT NO. 66-0436-6-131

THIS WARRANTY EASEMENT DEED is made by and The Nature Conservancy, a District of Columbia Non-Profit Corporation (hereafter referred to as the "Landowner"), Grantor(s), and **the UNITED STATES OF AMERICA**, by and through the Commodity Credit Corporation (CCC) (hereafter referred to as the "United States"), Grantee. The Landowner and the United States are jointly referred to as the "Parties". The acquiring agency of the United States is the Natural Resources Conservation Service (NRCS), United States Department of Agriculture.

Witnesseth:

Purposes and Intent. The purpose of this easement is to restore, protect, manage, maintain, and enhance the functional values of wetlands and other lands, and for the conservation of natural values including fish and wildlife and their habitat, water quality improvement, flood water retention, groundwater recharge, open space, aesthetic values, and environmental education. It is the intent of CCC to give the Landowner the opportunity to participate in the restoration and management activities on the easement area.

Authority. This easement deed acquisition is authorized by Title XII of the Food Security Act of 1985, as amended (16 U.S.C. §3837), for the Wetlands Reserve Program.

NOW THEREFORE, for and in consideration of the sum of Seven Hundred and Seventy Five Thousand Dollars (\$775,000) the Grantor(s), hereby grants and conveys with general warranty of title to the UNITED STATES OF AMERICA and its assigns, the Grantee, forever, all rights, title and interest in the lands comprising the easement area described in Part I and appurtenant rights of access to the easement area, but reserving to the Landowner only those rights, title, and interest expressly enumerated in Part II. It is the intention of the Landowner to convey and relinquish any and all other property rights not so reserved. This easement shall constitute a servitude upon the land so encumbered; shall run with the land in perpetuity; and shall bind the Landowner, (the Grantor(s)), their heirs, successors, assigns, lessees, and any other person claiming under them.

SUBJECT, however, to all valid rights of record, if any.

PART I. Description of the Easement Area. The lands encumbered by this easement deed, referred to hereafter as the easement area, are described on EXHIBIT A which is appended to and made a part of this easement deed.

TOGETHER with a right of access for ingress and egress to the easement area across adjacent or other properties of the Landowner. Such a right-of-way for access purposes is described in EXHIBIT B which is appended to and made a part of this easement deed.

PART II. Reservations in the Landowner on the Easement Area. Subject to the rights, title, and interest conveyed by this easement deed to the United States, the Landowner reserves:

- A. Title. Record title, along with the Landowner's right to convey, transfer, and otherwise alienate title to these reserved rights.
- B. Quiet Enjoyment. The right of quiet enjoyment of the rights reserved on the easement area.
- C. Control of Access. The right to prevent trespass and control access by the general public.
- D. Recreational Uses. The right to undeveloped recreational uses, including hunting and fishing, and including leasing of such rights for economic gain, pursuant to applicable State and Federal regulations that may be in effect at the time.
- E. Subsurface Resources. The right to oil, gas, minerals, and geothermal resources underlying the easement area, provided that any drilling or mining activities are to be located outside the boundaries of the easement area, unless activities within the boundaries are specified in accordance with the terms and conditions of EXHIBIT C.

PART III. Obligations of the Landowner. The Landowner shall comply with all terms and conditions of this easement, including the following:

- A. Prohibitions. Without otherwise limiting the rights of the United States acquired hereunder, it is expressly understood that the rights to the following activities and uses have been acquired by the United States and, unless authorized by the United States under Part IV, are prohibited of the Landowner on the easement area:

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1. haying, mowing, or seed harvesting for any reason;
 2. altering of grassland, woodland, wildlife habitat or other natural features by burning, digging, plowing, disking, cutting or otherwise destroying the vegetative cover;
 3. dumping refuse, wastes, sewage, or other debris;
 4. harvesting wood products;
 5. draining, dredging, channeling, filling, leveling, pumping, diking, impounding, or related activities, as well as altering or tampering with water control structures or devices;
 6. diverting or causing or permitting the diversion of surface or underground water into, within, or out of the easement area by any means;
 7. building or placing buildings or structures on the easement area;
 8. planting or harvesting any crop;
 9. grazing or allowing livestock on the easement area; and
 10. disturbing or interfering with the nesting or brood-rearing activities of migratory birds.

- B. Noxious Plants and Pests. The Landowner is responsible for noxious weed control and emergency control of pests as required by all Federal, State, and local laws. A plan to control noxious weeds and pests must be approved in writing by CCC prior to implementation by the Landowner.
- C. Fences. Except for establishment cost incurred by the United States and replacement cost not due to the Landowner's negligence or malfeasance, all other costs involved in maintenance of fences and similar facilities to exclude livestock shall be the responsibility of the Landowner.
- D. Taxes. The Landowner shall pay any and all real property and other taxes and assessments, if any, which may be levied against the land.
- E. Reporting. The Landowner shall report to CCC any conditions or events which may adversely affect the wetland, wildlife, and other natural values of the easement area.

PART IV. Allowance of Compatible Uses by the Landowner.

- A. General. The United States may authorize, in writing and subject to such terms and conditions CCC may prescribe at its discretion, the use of the easement area for compatible economic uses, including, but not limited to, managed timber harvest, periodic haying, or grazing.
- B. Limitations. Compatible use authorizations will only be made if, upon a determination by CCC in the exercise of its discretion and rights, that the proposed use is consistent with the long-term protection and enhancement of the wetland and

other natural values of the easement area. CCC shall prescribe the amount, method, timing, intensity, and duration of the compatible use.

PART V. Rights of the United States. The rights of the United States include:

- A. Management activities. The United States shall have the right to enter unto the easement area to undertake, at its own expense or on a cost-share basis with the Landowner or other entity, any activities to restore, protect, manage, maintain, enhance, and monitor the wetland and other natural values of the easement area. The United States, at its own cost, may apply to or impound additional waters on the easement area in order to maintain or improve wetland and other natural values.
- B. Access. The United States has a right of reasonable ingress and egress to the easement area over the Landowner's property, whether or not the property is adjacent or appurtenant to the easement area, for the exercise of any of the rights of the United States under this easement deed. The authorized representatives of the United States may utilize vehicles and other reasonable modes of transportation for access purposes. To the extent practical, the United States shall utilize the access identified in EXHIBIT B.
- C. Easement Management. The Secretary of Agriculture, by and through CCC may delegate all or part of the management, monitoring or enforcement responsibilities under this easement to any entity authorized by law that CCC determines to have the appropriate authority, expertise and resources necessary to carry out such delegated responsibilities. State or federal agencies may utilize their general statutory authorities in the administration of any delegated management, monitoring or enforcement responsibilities for this easement. The authority to modify or terminate this easement (16 U.S.C. §3837e(b)) is reserved to CCC in accordance with applicable law.
- D. Violations and Remedies - Enforcement. The Parties agree that this easement deed may be introduced in any enforcement proceeding as the stipulation of the Parties hereto. If there is any failure of the Landowner to comply with any of the provisions of this easement deed, the United States or other delegated authority shall have any legal or equitable remedy provided by law and the right:
 - 1. To enter upon the easement area to perform necessary work for prevention of or remediation of damage to wetland or other natural values; and,
 - 2. To assess all expenses incurred by the United States (including any legal fees or attorney fees) against the Landowner, to be owed immediately to the United States.

PART VI. General Provisions.

- A. Successors in Interest. The rights granted to the United States shall accrue to any of its agents, successors, or assigns. All obligations of the Landowner under this easement deed shall also bind the Landowner's heirs, successors, agents, assigns, lessees, and any other person claiming under them. All the Landowners who are parties to this easement deed shall be jointly and severally liable for compliance with its terms.
- B. Rules of Construction and Special Provisions. All rights in the easement area not reserved by the Landowner shall be deemed acquired by the United States. Any ambiguities in this easement deed shall be construed in favor of the United States to effect the wetland and conservation purposes for which this easement deed is being acquired. The property rights of the United States acquired under this easement shall be unaffected by any subsequent amendments or repeal of the Wetlands Reserve Program. If the Landowner receives the consideration for this easement in installments, the Parties agree that the conveyance of this easement shall be totally effective upon the payment of the first installment.

TO HAVE AND TO HOLD, this Warranty Easement Deed is granted to the United States of America and its assigns forever. The Landowner covenants that he, she, or they are vested with good title to the easement area and will warrant and defend the same on behalf of the United States against all claims and demands. The Landowner covenants to comply with the terms and conditions enumerated in this document for the use of the easement area and adjacent lands for access, and to refrain from any activity not specifically allowed or that is inconsistent with the purposes of this easement deed.

Dated this 11th day of September, 2007.

THE NATURE CONSERVANCY

Landowner(s):

[Signature]

By:

Its:

ORZON DIRECTOR

Authorized Signatory for The Nature Conservancy

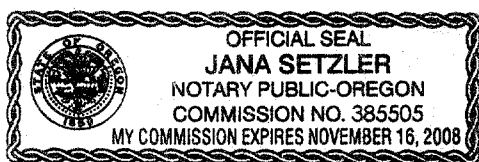
ACKNOWLEDGMENT

STATE OF Oregon

COUNTY OF Multnomah

On this 11 day of September, 2007, before me, the undersigned, a Notary Public in and for said State personally appeared Russell Hoeflich known or proved to me to be the person(s) described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



Jana Setzler
Notary Public for the State of Oregon
Residing at Portland
My Commission Expires 11-16-08

ACCEPTANCE OF PROPERTY INTEREST BY THE NATURAL RESOURCES
CONSERVATION SERVICE

The Natural Resources Conservation Service, an agency of the United State Government, hereby accepts and approves the foregoing conservation easement deed, and the rights conveyed therein, on behalf of the United States of America.

UNITED STATES OF AMERICA

William B. White
By: William B. White

Its: Assistant State Conservationist - Leader for Programs
Authorized Signatory for the NRCS

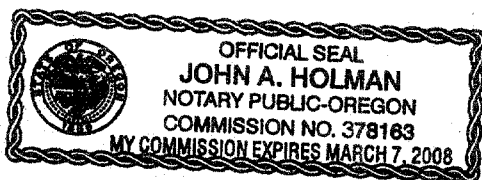
ACKNOWLEDGMENT

STATE OF Oregon

COUNTY OF Multnomah

On this 7 day of September, 2007, before me, the undersigned, a Notary Public in and for said State personally appeared William B. White, know or proved to me to be the person(s) described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



John A. Holman
Notary Public for the State of Oregon
Residing at _____
My Commission Expires March 7, 2008

This instrument was drafted by the Office of the General Counsel, U.S. Department of Agriculture, Washington, D.C. 20250-1400.

OMB DISCLOSURE STATEMENT

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0578-0013. The time required to complete this information collection is estimated to average 0.69 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

NONDISCRIMINATION STATEMENT

The United States Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, or marital or family status. (Not all prohibited bases apply to all programs.). Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (202) 720-5964.

EXHIBIT "A"
LEGAL DESCRIPTION

That portion of Parcel 1 of Map of Partition No. 22-97 for The Nature Conservancy, a District of Columbia Non-profit corporation, said Partition being in Sections 19, 30 and 31, Township 35 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon and Sections 24-28 and 33-36, Township 35 South 7 1/2 East of the Willamette Meridian, Klamath County, Oregon and Sections 1, 2, 3 and 11, Township 36 South, Range 7 1/2 East of the Willamette Meridian, Klamath County, Oregon, described as follows:

A parcel of land situated in Sections 26, 27, 34 and 35, Township 35 South, Range 7 1/2 East of the Willamette Meridian, Klamath County, Oregon, described as follows:

Beginning at a point on the mean high waterline of Agency Lake, from which the Northeast corner of Section 19, Township 35 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, bears North 54° 24' 22" East 13892.67 feet; thence from said point of beginning South 00° 04' 49" East 138.68 feet to a 5/8" pin; thence South 00° 04' 49" East 5132.33 feet to a 5/8" pin; thence North 89° 49' 12" West 6236.40 feet to a 5/8" pin; thence North 00° 04' 45" West 2730.27 feet to a 5/8" pin; thence continuing North 00° 01' 45" West 415.17 feet to the mean high waterline of Agency Lake; thence along the mean high waterline of said Agency Lake Northeasterly 6600 feet more or less to the point of beginning.

Until a change is requested, all tax statements shall be sent to the following address:

THE NATURE CONSERVANCY
821 SE 14th Avenue
Portland, OR 97214-2537
ATTN: Director of Protection

ACCESS EASEMENT

This Easement is created this 6th day of September 2007, by The Nature Conservancy, a District of Columbia non-profit corporation, ("the Grantor"), and the United States of America, by and through the Commodity Credit Corporation ("the Grantee"). The acquiring agency of the United States is the Natural Resources Conservation Service, United States Department of Agriculture.

RECITALS

A. The Grantor is the owner of that certain real estate situated in Klamath County, Oregon, which is more particularly described in **EXHIBIT A**, attached hereto and made a part hereof (the "Property").

B. The Grantee desires access over and across the Property for purposes of exercising the rights granted in a new Wetland Reserve Easement on a portion of the Property. The Grantor desires to allow Grantee to use a portion of the Property for that purpose under the conditions contained in this Easement.

EASEMENT

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor hereby conveys and grants to Grantee a permanent, nonexclusive easement for ingress and egress over and across any and all portions of the Property as reasonably necessary to reach the property described in **EXHIBIT B**. The Easement granted herein shall commence at an existing road located on the Property that intersects Modoc Point Road (Highway 427) at the intersection of Modoc Point Road and South Chiloquin Road. The Easement granted herein is subject to all existing easements, encumbrances, rights, reservations, covenants, and restrictions of record.

The Easement granted herein shall constitute a covenant running with the land and shall be binding upon Grantor's and Grantee's successors and assigns and all future owners of the Property.

EXECUTED as of the day and year first above written.

THE NATURE CONSERVANCY

By: 

Name: Russell Hoefflich

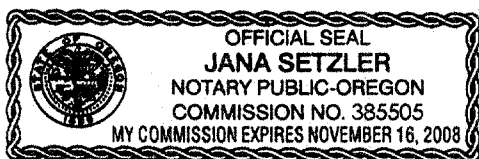
Title: OREGON DIRECTOR

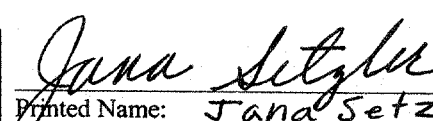
STATE OF OREGON

COUNTY OF MULTNOMAH

} ss.

This instrument was acknowledged before me on this 6 day of September, 2007,
by Russell Hoefflich, the oregon Director of The Nature Conservancy, a non-profit
corporation, who acknowledged such instrument to be the free and voluntary act of such corporation
and deed for the uses and purposes therein mentioned.




Printed Name: Jana Setzler

NOTARY PUBLIC in and for the State of Oregon, residing at
Portland

My Commission Expires 11-16-08

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Parcel 1 of Map of Partition No. 22-97 for The Nature Conservancy, a District of Columbia Non-Profit corporation, said Partition being located in Sections 19, 30 & 31, Township 35 South, Range 7 East of the Willamette Meridian, and in Sections 24-28 & 33-36, Township 35 South, Range 7 1/2 East of the Willamette Meridian, and in Sections 1, 2, 3 & 11 in Township 36 South, Range 7 1/2 East of the Willamette Meridian, all in Klamath County, Oregon.

EXHIBIT A

EXHIBIT B

LEGAL DESCRIPTION OF GRANTEE'S EASEMENT PROPERTY

That portion of Parcel 1 of Map of Partition No. 22-97 for The Nature Conservancy, a District of Columbia Non-profit corporation, said Partition being in Sections 19, 30, 31, Township 35 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon and Sections 24-28 and 33-36, Township 35 South Range 7 1/2 East of the Willamette Meridian, Klamath County, Oregon and Sections 1, 2, 3, and 11, Township 36 South, Range 7 1/2 East of the Willamette Meridian, Klamath County, Oregon, described as follows:

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EXHIBIT B