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09/20/2016 09:52:09 AM

Fee: \$72.00

After recording, return to:

PacifiCorp
c/o Real Estate Management
825 NE Multnomah St. Suite 1700
Portland, OR 97232
ORKL-0555

**DECLARATION OF RESTRICTIONS
FOR THE SNOW GOOSE PROJECT**

Corps permit #NWP-2014-204

THIS DECLARATION is made by PacifiCorp, an Oregon corporation, ("Declarant").

RECITALS

1. Declarant is the owner of Klamath County tax parcel 3909-02000-01200-000, the real property described in Exhibit "A" and depicted in Exhibit "B", attached hereto and by this reference incorporated herein, and has designated a portion of the property (the "Property") as a compensatory mitigation site through the Department of the Army permit #NWP-2014-204 ("Corps Permit") approved by the United States Army Corps of Engineers ("Corps").
2. Declarant intends to provide for the perpetual protection and conservation of the wetland and waterway functions and values of the Property and for the management of the Property and improvements thereon, and to this end will subject the Property to the restrictions hereinafter set forth, each and all of which is and are for the benefit of the Property.

3. The Corps has accepted the mitigation plan for the Property under Section 404 of the Clean Water Act.

**ARTICLE 1
DEFINITIONS**

- 1.1 "Declaration" shall mean this Declaration of Restrictions.
- 1.2 "Declarant" shall mean and refer to PacifiCorp, an Oregon corporation, the owner of the Property, and the owner's heirs, successors and assigns.
- 1.3 "Corps Permit" shall mean the final document approved and issued by the Corps that includes the mitigation plan describing where and how the compensatory mitigation will be completed, monitored, managed, and maintained. A copy of the Corps Permit associated with this

Declaration may be obtained at the office of the US Army Corps of Engineers, Regulatory Branch, 333 SW First Ave., Portland, OR 97208; Phone 503-808-4373.

1.4 "Property" shall mean and refer to a portion of real property subject to this Declaration, as more particularly set forth in Exhibit "A".

ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION

The Property described in Exhibit A is and shall be held, transferred, encumbered, sold, conveyed and occupied subject to this Declaration. Declarant hereby certifies that it is vested with sufficient title and interest in the Property that is the subject of this Declaration.

ARTICLE 3 DECLARANT REPRESENTATIONS

Declarant represents and warrants that after reasonable investigation, and to the best of its knowledge, that no hazardous materials or contaminants are present in the Property that conflict with the conservation purposes intended; that the Property is in compliance with all federal state, and local laws, regulations, and permits; that there is no pending litigation affecting, involving, or relating to the Property that would conflict with the intended conservation use; and that the Property is free and clear of any and all liens, claims, restrictions, easements and encumbrances that would interfere with the ability to protect and conserve the Property.

ARTICLE 4 GENERAL DECLARATION

Declarant, in order to discharge in part its obligations under the Corps Permit, declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the restrictions in this Declaration, in order that it shall remain substantially in its restored, enhanced, preserved, open and natural condition, in perpetuity. The terms and conditions of this Declaration shall be both implicitly and explicitly included in any subsequent transfer, conveyance, or encumbrance affecting all or any part of the Property. No modification or release of this Declaration will be effective unless authorized in writing by the Corps. Any amendments must be signed by the Corps and must be recorded in the official records of the county in which the Property is located.

ARTICLE 5 USE RESTRICTIONS, MANAGEMENT RESPONSIBILITIES, AND RESERVED RIGHTS

5.1 Declarant is and shall be subject to the terms and conditions contained in any and all easements, covenants and restrictions of record affecting the Property, including this Declaration.

5.2 **USE RESTRICTIONS.** Except as necessary to conduct, remediate or maintain the Property consistent with the Corps Permit, the actions prohibited by this covenant include:

- a) There shall be no removal, destruction, cutting, trimming, mowing, alteration or spraying with biocides of any native vegetation in the Property, nor any disturbance or change in the natural habitat of the Property unless it promotes the mitigation goals and objectives established for the Property or is needed for public safety purposes. Hazard trees that pose a specific threat to existing structures including fences or pedestrian trails may be felled and left on site. Dry grass only may be mowed after July 1 to abate fire hazard.
- b) There shall be no agricultural, commercial, or industrial activity undertaken or allowed in the Property; nor shall any right of passage across or upon the Property be allowed or granted if that right of passage is used in conjunction with agricultural, commercial or industrial activity.
- c) No domestic animals shall be allowed to graze or dwell on the Property.
- d) There shall be no filling, excavating, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock minerals or other materials, nor any storage nor dumping of ashes, trash, garbage, or of any other material, and no changing of the topography of the land of the Property in any manner after the wetlands are constructed unless approved in writing by the Corps.
- e) There shall be no construction or placing of buildings, mobile homes, advertising signs, billboards or other advertising material, vehicles or other structures on the Property.
- f) There shall be no legal or de facto division, subdivision or partitioning of the protected Property.
- g) Use of motorized off-road vehicles on the Property is prohibited except on existing roadways.

5.3 MANAGEMENT RESPONSIBILITIES. Declarant shall take reasonable action to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the mitigation purposes of the Property or that are otherwise inconsistent with this Declaration.

5.4 RESERVED RIGHTS. Declarant reserves all other rights accruing from Declarant's ownership of the Property including but not limited to the exclusive possession of the Property, the right to transfer or assign Declarant's interest in the same; the right to take action necessary to prevent erosion on the Property, to protect the Property from losing its wetland or waterway functions and values, or to protect public health or safety; and the right to use the Property in any manner not prohibited by this Declaration and which would not defeat or diminish the conservation purpose of this Declaration.

The Declarant specifically reserves the right to use the Property in the Declarant's mortgage of Morgan Guaranty Trust Company of New York, which reserved rights are deemed to be consistent with the purposes enumerated in the permit.

ARTICLE 6 RIGHT OF ENTRY

Declarant hereby grants to the Corps a right-of-entry over an existing road way located on Klamath County parcel 3909-02000-01100-000 and Klamath County parcel 3909-02000-01200-000 for the purpose of physically accessing the Property at all reasonable times to inspect the Property in order to monitor and to ascertain whether there has been compliance with this Declaration. If any action of the Corps's employees or agents in the exercise of this right-of-entry results in damage to the Property, the Corps will, in its sole discretion, either repair such damage or make an appropriate settlement with the Declarant. In no event shall such repair or settlement exceed the fair market value of the fee title to the Property at the time immediately preceding such damage. The Corps's liability under this clause is subject to the availability of specific or general appropriations that can be used for such payment, and nothing contained in this agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet any deficiencies. The provisions of this clause are without prejudice to any rights the Declarant or its successor may have to make a claim under applicable laws for any damages other than those provided for herein.

ARTICLE 7 GENERAL PROVISIONS

7.1 NOTICE. The Corps shall be provided with a 60-day advance written notice of any legal action concerning this Declaration, or of any action to extinguish, void or modify this Declaration, in whole or in part. This Declaration, and the restrictions contained herein, are intended to survive foreclosure, tax sales, bankruptcy proceedings, zoning changes, adverse possession, abandonment, condemnation and similar doctrines or judgments affecting the Property. A copy of this recorded Declaration shall accompany said notice.

7.2 VALIDITY. If any provision of this Declaration, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Declaration, or the application of such provisions 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.

IN WITNESS WHEREOF, the undersigned being Declarant herein, has executed this instrument on the 15th day of September, 2016.

Declarant:

Curtis Brent Mansfield
PacifiCorp, an Oregon corporation

Printed: Curtis Brent Mansfield
Its: Vice President of Transmission
Distribution Operations

STATE OF OREGON
County of Multnomah

This instrument was acknowledged before me on the 15th day of September, 2016, by Curtis Brent Mansfield as Vice President of PacifiCorp, an Oregon corporation.



Maggie Jean Hodny
Signature of Notarial Officer
My Commission Expires: 02/09/2019

EXHIBIT "A"

A parcel of land situated in SW1/4 of the NE1/4 of Section 20, Township 39 South, Range 09 East of the Willamette Meridian, Klamath County, the following described area being a portion of tax lot R-3909-02000-01200-000;

Commencing at the East one-quarter corner of said Section 20, said point being marked by a Klamath County Two Inch Aluminum Cap; Thence North $88^{\circ}37'38''$ West, 2204.06 feet to the TRUE POINT OF BEGINNING; Thence North $89^{\circ}29'50''$ West, 430.51 feet; Thence North $00^{\circ}33'26''$ East, 287.15 feet; Thence South $47^{\circ}31'11''$ East, 54.89 feet; Thence South $43^{\circ}39'13''$ East, 68.65 feet; Thence South $53^{\circ}22'20''$ East, 46.79 feet; Thence South $55^{\circ}19'37''$ East, 50.08 feet; Thence South $66^{\circ}46'51''$ East, 63.87 feet; Thence South $80^{\circ}54'11''$ East, 57.86 feet; Thence South $89^{\circ}50'22''$ East, 41.75 feet; Thence South $73^{\circ}54'21''$ East, 49.51 feet; Thence South $41^{\circ}40'17''$ East, 28.28 feet; Thence South $16^{\circ}05'18''$ East, 41.76 feet; Thence South $33^{\circ}42'23''$ East, 46.10 feet to the point of beginning. Basis of Bearings is Grid North of the Oregon Coordinate Reference System, Bend-Klamath Falls Zone.

Containing 1.44 acres, more or less.

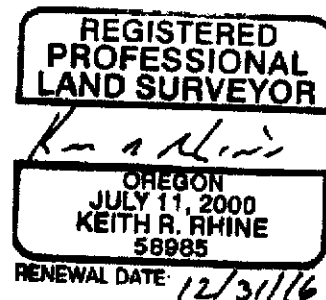
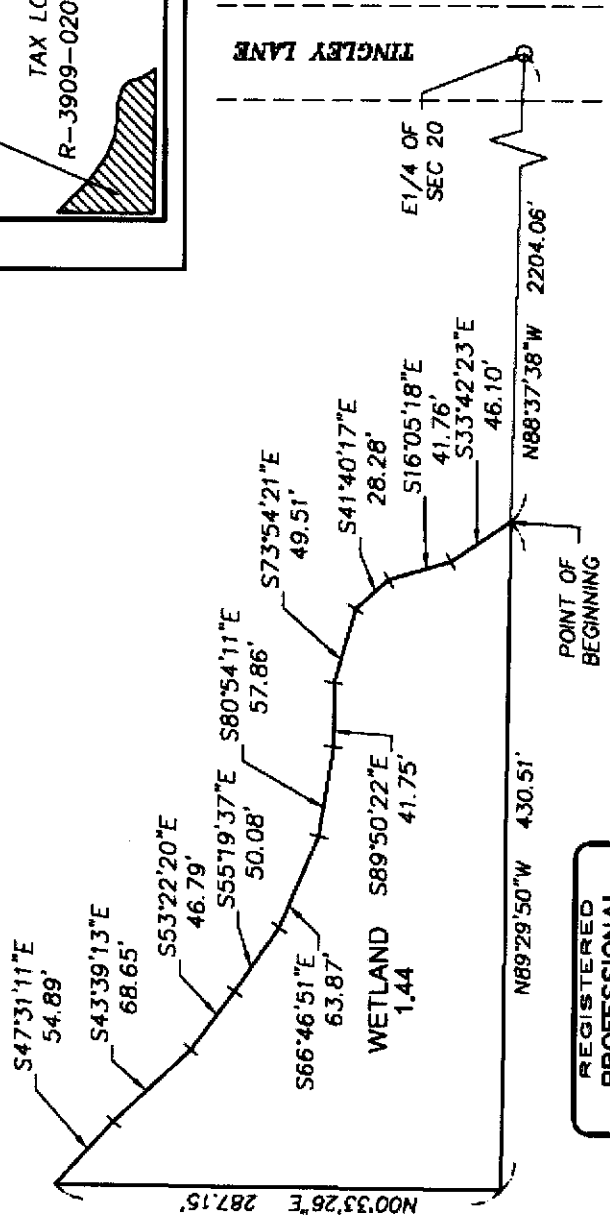


EXHIBIT "B"

SECTION 20, T39S, R09E, WM.
TAX LOT R-3909-02000-1200



1" = 100'



REGISTERED
PROFESSIONAL
LAND SURVEYOR

Keith R. Rhine

OREGON
JULY 11, 2000
KEITH R. RHINE
58985

RENEWAL DATE: 12-31-16

R-C RHINE-CROSS GROUP

ENGINEERING - SURVEYING - PLANNING
112 N 5th - SUITE 200 - P.O. BOX 909
KLAMATH FALLS, OREGON 97601

Phone: (541) 851-9405 Fax: (541) 273-9200 admin@rc-grp.com