

2019-015059

Klamath County, Oregon



00252237201900150590070071

12/30/2019 10:30:38 AM

Fee: \$112.00

AFTER RECORDING, RETURN TO:

Thomas J. Brookins and Paula R. Brookins
3848 Old Military Road
Central Point, OR 97502

TAX STATEMENTS:

No change

(SPACE ABOVE RESERVED FOR RECORDER'S USE)

**DECLARATION OF COVENANTS AND RESTRICTIONS and
ACCESS EASEMENT
FOR THE BROOKINS SITE, FILE NO. 7748-ENF
(T.L. 1300)**

THIS DECLARATION made this 30 day of DECEMBER, 2019, by
Thomas J. Brookins and Paula R. Brookins ("Declarant").

RECITALS

1. WHEREAS, Declarant is the owner of the real property described in Exhibit "A" attached hereto and by this reference incorporated herein as the "Property," and has designated the Property as a compensatory mitigation site in accordance with the Consent Agreement for Enforcement File No. 7748, issued by the Oregon Department of State Lands ("Department");

2. WHEREAS, Declarant desires and intends to provide for the perpetual protection and conservation of the wetland and/or waterway functions and values of the Property and for the management of the Property and improvements thereon, and to this end desires to subject the Property to the covenants, restrictions, easements, and other encumbrances hereinafter set forth, each and all of which is and are for the benefit of the Property;

3. WHEREAS, the Department has accepted the mitigation plan for the Property under ORS 196.800 *et seq.*

ARTICLE 1

DEFINITIONS

1.1 "Declaration" shall mean the covenants, restrictions, access easement, and all other provisions set forth in the Declaration of Covenants and Restrictions.

1.2 "Declarant" shall mean and refer to Thomas J. Brookins and Paula R. Brookins, and their successors or assigns.

Returned at Counter

1.3 "Mitigation Plan for Consent Agreement" shall mean the final document approved by the Department that formally establishes the mitigation site and stipulates the terms and conditions of its construction, operation, and long-term management.

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

ARTICLE 2

PROPERTY SUBJECT TO THIS DECLARATION

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Klamath County, Oregon, and is more particularly described in Exhibit "A."

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 that conflict with the conservation purposes intended; the Property is in compliance with all federal state, and local laws, regulations, and permits and there is no pending litigation affecting, involving, or relating to the Property that would conflict with the intended conservation use. Declarant affirms 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 Mitigation Plan for Consent Agreement, declares that the Property shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, and other encumbrances hereinafter set forth 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 of Covenants and Restrictions shall be both implicitly and explicitly included in any subsequent transfer, conveyance, or encumbrance affecting all or any part of the Property. These restrictions cannot be released nor modified unless authorized in writing by the Department. Any amendments shall be signed by the Department and shall be recorded in the official records of the county in which the Property is located.

ARTICLE 5

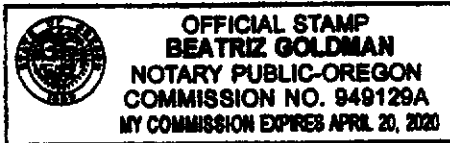
USE RESTRICTIONS, MANAGEMENT RESPONSIBILITIES, AND RESERVED RIGHTS

Declarant and all users of the Property are subject to any and all easements, covenants, and restrictions of record affecting the Property.

STATE OF OREGON)
County of JACKSON)

ss:

This instrument was acknowledged before me this 26 day of December, 2019, by
Paula R. Brookins.



Beatriz Goldman
Signature of Notarial Officer
My Commission Expires: April 20, 2020

GRANTEE: The State of Oregon, Department of State Lands, approves Declarant's
conveyance of an easement in favor of the Department.

By: Hiedi Hand

Title: Aquatic Resource Coordinator

Date: 12/10/2019

Attachments:

Exhibit A, legal description and labeled map of subject Property

EXHIBIT A

Real property situated in the County of Klamath, State of Oregon:

A portion of the following described real property, called the "Mitigation Site":

That portion of Lot 2, Block 17, situated North and West of a point South $01^{\circ}36'38''$ West 900 feet and East 425.30 feet from the Northwest corner of said Lot 2, Block 17; also known as Lot 2A, Block 17, KLAMATH FALLS FOREST ESTATES SYCAN UNIT, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

The Mitigation Site is depicted on the attached diagram, said Mitigation Site comprising 0.250 acres, more or less.

Together with a right-of-way over and across an easement and a private roadway depicted as "Existing Easement" and "Access Route" on the attached diagram.

ARTICLE 6

EASEMENT (RIGHT OF ENTRY)

Declarant grants to the Department an easement and right of entry on the Property 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 and the Consent Agreement. The easement and right of entry are located over and across an easement that lies north of the Property, and a private roadway on the Property, as more particularly described in Exhibit "A."

ARTICLE 7

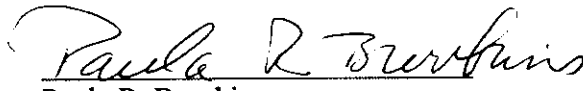
GENERAL PROVISIONS

A. NOTICE. The Department shall be provided with a 60-day advance written notice of any legal action concerning this covenant, or of any action to extinguish, void or modify this covenant, in whole or in part. The restrictive covenant is 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 document shall accompany said notice.

B. 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 this 26 day of December, 2019.


Thomas J. Brookins

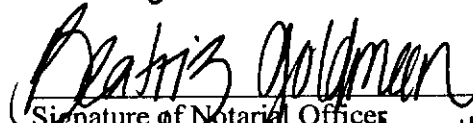

Paula R. Brookins

STATE OF OREGON)
County of JACKSON)

ss:

This instrument was acknowledged before me this 26 day of December, 2019, by Thomas J. Brookins.




Signature of Notarial Officer
My Commission Expires: April 20, 2020



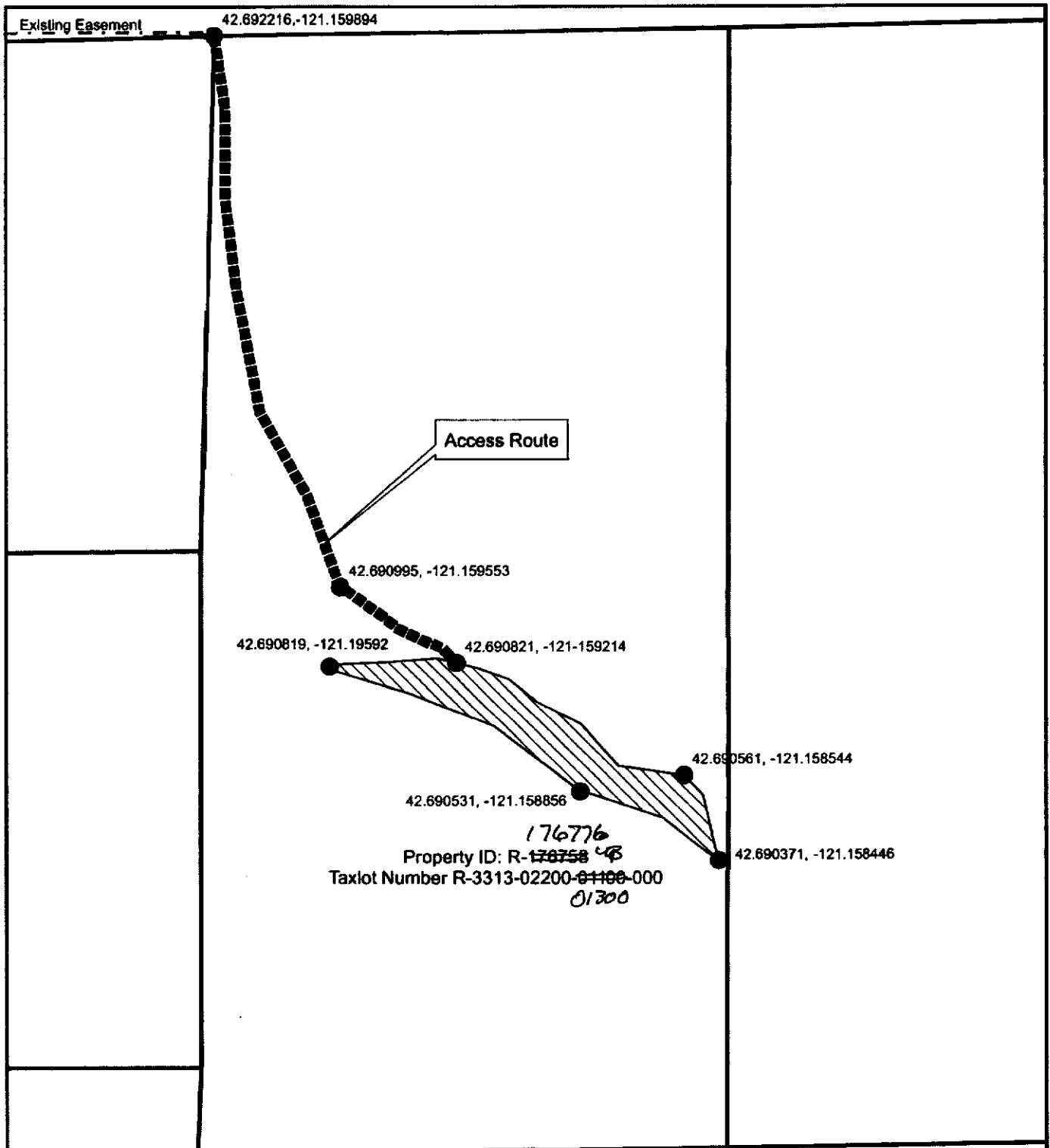
A. **USE RESTRICTIONS.** Except as necessary to conduct, remediate, or maintain the mitigation site consistent with the Mitigation Plan for Consent Agreement, the actions encompassed as prohibited by this covenant shall include:

1. 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 is consistent with the approved Mitigation Plan and promotes the mitigation goals and objectives established for site. 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.
2. 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.
3. No domestic animals shall be allowed to graze or dwell on the Property.
4. 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 once the wetlands are constructed unless approved in writing by the Department.
5. 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.
6. Use of motorized off-road vehicles is prohibited except on existing roadways.
7. There shall be no legal or de facto division, subdivision, or partitioning of the protected Property.

B. **MANAGEMENT RESPONSIBILITIES.** Declarant will take 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.

C. **RESERVED RIGHTS.** Declarant reserves all other rights accruing from its ownership of the Property, including but not limited to the exclusive possession of the Property; the right to transfer or assign its 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.

EXHIBIT A DIAGRAM



Brookins Wetland Mitigation

Mitigation Easement

- GPS points
 - Access Route
 - Klamath County Tax Lot
 - ▨ Mitigation Area 1 (.028 Acres, restored to original wetland)
- Rabe Consulting



0 20 40 80 120 160
Feet

Data Source: GPS plots and polygons acquired using an Ashtech MobileMapper 10 GPS unit with submeter accuracy (0.584m).

Created By: Megan Solus
 Created On: November 2019