

AFTER RECORDING, RETURN TO:

West Multnomah Soil & Water Conservation District
Attn: Jim Cathcart/District Manager
2701 NW Vaughn Street, Suite 450
Portland, OR 97210

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT ("Easement") is entered into this _____ day of _____, 2018, by and between Donald G. Young and Martha Berndt, Co-Trustees of the The Young and Berndt Family Revocable Living Trust dated January 25, 2007 ("Grantor") and West Multnomah Soil & Water Conservation District, a Soil and Water Conservation District organized under Oregon Revised Statutes Chapter 568 (Grantee; henceforth referred to as "District").

RECITALS

- A. Grantor is the fee simple owner of that certain real property approximately 11.0 acres in size located in the County of Multnomah, State of Oregon, commonly known as Multnomah County Tax Parcel No. 3N1W35C 00300 with a street address of 23820 NW Gillihan Road, Portland, Oregon 97231, and more particularly described on the attached Exhibit A (the "Property").
- B. The Property is located on Sauvie Island and borders a portion of Dairy Creek, which provides hydrologic connection between the Columbia River and Sturgeon Lake.
- C. Sturgeon Lake is a 2,400 acre water body located to the west of the Property within the Sauvie Island Wildlife Area, which is managed by the Oregon Department of Fish and Wildlife ("ODFW"). The US Army Corps of Engineers constructed levees in approximately 1942 along the southern portion of Sauvie Island that reduced the influence that the Willamette and Columbia Rivers and island interior drainage had on Sturgeon Lake. Due to changes in the hydrologic regime of Sauvie Island caused by these levees, Sturgeon Lake has decreased in size and depth. One of Sturgeon Lake's primary feeders is a channel from the Columbia River called Dairy Creek, which is at river mile 98.5.
- D. In 1989, District and other agencies implemented a project designed to improve the hydrologic connectivity of Sturgeon Lake with the Columbia River by constructing a channel connecting Dairy Creek where it abutted Reeder Road to upper Sturgeon Lake. This construction involved installing tandem 12' culverts underneath Reeder Road to allow flow from the original Dairy Creek underneath Reeder Road to upper Sturgeon Lake. In 1996, the project was inundated with sediment and other debris due to significant high flows and flooding.
- E. As a result of the 1996 flood event, Dairy Creek's confluence with the Columbia River was plugged by silt and debris, and the channel connecting Dairy Creek to Sturgeon Lake has severe flow restrictions due to the two culverts being partially plugged at the NW Reeder Road crossing as well as showing other signs of failure. Consequently, flows from the Columbia River through Dairy Creek into upper Sturgeon Lake are now infrequent and much reduced in power and limited to higher stages, typically in winter and early spring. Without increased water flow from Dairy Creek, silt will continue to accumulate in Sturgeon Lake, resulting in habitat loss for out-migrating juvenile salmon that use the lake as a refuge as well as waterfowl and other wildlife that use the lake as wetland habitat.

F. District is the local sponsor of the Sturgeon Lake Restoration Project ("Project") that is being constructed in conjunction with the Bonneville Power Administration ("BPA"), a federal agency with the U.S. Department of Energy, through its Fish and Wildlife Program, in cooperation with the US Army Corps of Engineers. The Project's purpose is to restore the hydrologic connectivity of the Columbia River to Sturgeon Lake through Dairy Creek, improving ecological function of Sturgeon Lake within the Lower Columbia River estuary, including the ecological function of Dairy Creek, thereby improving fish and wildlife habitat and providing other environmental benefits.

G. The Project intends to restore the hydrological connectivity of Sturgeon Lake with the Columbia River, in part, through replacement of the existing culverts with a bridge that allows for an unconstrained channel underneath NW Reeder Road. The Project will also replace the failed debris boom at Dairy Creek's confluence to keep large material from entering and restricting flow into Dairy Creek. The Dairy Creek channel itself will be configured to have a low flow channel designed to maximize the period of flow throughout the year so as to provide fish passage. Invasive plant species will be removed along the upper and top of banks of the channel and restored with native species to provide shade, organic inputs and improve channel habitat.

Completion of the Project was enabled by a Temporary Construction and Work Area Easement ("Construction Easement") granted to District by Grantor dated _____, a Memorandum of which was recorded on _____ (recording # _____).

H. In order to maintain and enhance the Project including the hydrological connection from the Columbia River to Sturgeon Lake so as to provide significant fish and wildlife habitat values in perpetuity, Grantor desires to grant to District, and District desires to accept from Grantor, a conservation easement.

I. After providing adequate notice and a public hearing pursuant to ORS 271.735, District's board, the governing body for the organization, determined that the Easement will be in the public interest and approved the Easement on _____, 2017.

For valuable consideration, the receipt of which is hereby acknowledged by Grantor, and the mutual covenants, terms, conditions, and restrictions contained herein, the parties hereby agree as follows:

AGREEMENT

1. Grant of Conservation Easement. For and in consideration of the sum of [Insert Dollar Amount] (\$XXXX.XX) and of the mutual promises, restrictions and undertakings herein set forth, Grantor hereby grants to District a perpetual conservation easement, in gross, on, over, under, and across a _____ [TO BE STAKED AND SURVEYED PRIOR TO DETERMINATION OF ACREAGE] acre portion of the Property ("Easement Area") on the terms and conditions set forth herein. The Easement Area is more particularly described on the attached Exhibit B and depicted on the attached Exhibit C. This Easement is being created and acquired in accordance with ORS 271.715 to 271.795, and the provisions herein shall be construed and applied accordingly.

2. Conservation Values. The following Conservation Values shall be preserved, protected, and enhanced under this Easement:

- Hydrologic Connectivity – Dairy Creek provides an important hydrologic connection between the Columbia River to Sturgeon Lake that maintains the ecological function of Sturgeon Lake within the Lower Columbia River estuary for out-migrating juvenile salmon that use the lake as a refuge as well as waterfowl and other wildlife that use the lake as wetland habitat.

- Natural Habitats – The Easement Area provides valuable natural aquatic, riparian and other wildlife habitat protection for native fish and wildlife along approximately 1000 linear feet along the north bank and 960 linear feet along the south bank of Dairy Creek.

District will develop a written Conservation Plan, which shall be subject to the written consent of Grantor, which consent cannot be unreasonably withheld, to document the policies, management and actions District will use to preserve, protect, and enhance the Conservation Values within the Easement Area. A Conservation Plan is one that substantially complies with the Quality Criteria of a full Resource Management System (RMS) level of management as outlined in Title 180 of the United State Department of Agriculture – Natural Resource Conservation Service General Manual Part 409 (180-409-GM, 1st Ed., Amend. 40, Jan 2017) (or any successor provisions then applicable).

3. Purpose. The purpose of this Easement is to ensure that the Easement Area will be maintained and enhanced predominately in a natural condition that protects and supports the Conservation Values as defined herein, and further provides for:

- The “protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem” (as that phrase is used in 26 U.S.C. §170(h)(4)(A)(ii)); and
- Protecting natural or scenic values of real property, protecting natural resources, and maintaining or enhancing air or water quality pursuant to ORS 271.715(1).

4. Grantor’s Rights.

(a) Prohibited Uses. Grantor shall not engage in any activity on, or use of, the Easement Area that is inconsistent with the terms of this Easement or materially interferes with or impairs the Conservation Values. Without limiting the generality of the forgoing, the activities and uses described on the attached Exhibit D are expressly prohibited.

(b) Permitted Uses. Grantor reserves all rights accruing from its ownership of the Easement Area, including the right to engage in or permit or invite others to engage in all uses of the Easement Area that do not impair the Conservation Values or are otherwise consistent with the purpose of this Easement or not expressly prohibited herein. Without limiting the generality of the forgoing, the activities and uses described immediately below are expressly permitted:

- (i) Passive recreation such as walking, hiking, bird watching, fishing and picnicking.
- (ii) Ability to exclude trespassers and post signs indicating “no trespassing”, “no public use or access” and similar messages consistent with the intent of this Easement.
- (iii) For the purposes of accessing Dairy Creek and other publically navigable waterways connected thereto, the launching and pulling out small watercraft, such as canoes, rafts, motorized skiffs, and kayaks, into Dairy Creek, including the use of the Seasonal Access Road as depicted on the attached Exhibit C.

5. District’s Rights

(a) Permitted Activities, Uses, and Access Rights. District, its employees, staff, agents, and invitees, shall have the right to enter upon the Easement Area for the purposes herein, including the following:

- (i) to inspect and monitor Grantor’s compliance with and otherwise enforce the terms of this Easement;
- (ii) to perform habitat restoration and/or maintenance work on the Easement Area as deemed necessary by District to protect, restore, or enhance the Conservation Values of the Easement Area; and

- (iii) to exercise any other rights granted to District pursuant this Easement.

Any fill material generated from the restoration and/or maintenance work on the Easement Area will be disposed of by District, at District's sole expense and in compliance with all applicable law, either within the Easement Area or off-site. Without limiting the generality of the foregoing, District shall have the right to engage in the activities and uses described on the attached Exhibit E.

6. Access.

(a) Ingress and egress to and from the Easement Area by District will occur solely from, over and along the Point of Entry, Main Access Road, and Seasonal Access Road (all as depicted on the attached Exhibit C) and from the publicly navigable waters of Dairy Creek. The Seasonal Access Road is designed to provide District summer, fall, or other "dry season" vehicular and equipment access to the Dairy Creek channel for District's performance of District's express rights and obligations as set forth herein.

(b) District is responsible for the maintenance and repair of the Main Access Road and the Seasonal Access Road at District's expense, except as set forth in the following subparagraph (c).

(c) Grantor may use the Main Access Road and the Seasonal Access Road for ingress and egress and other purposes consistent with the permitted uses set forth herein, but Grantor shall be responsible for repair of any damage to the Main Access Road or the Seasonal Access Road to the extent caused by Grantor's gross negligence, abnormal use, or prohibited use.

(d) District shall provide Grantor seven (7) day written notification prior to performing any restoration, rehabilitation, or maintenance work on this Easement Area, unless exigent circumstances such as a natural disaster requires immediate action or if District is exercising its emergency enforcement rights under Section 7(d) below.

(e) For general site visits, District shall provide a minimum of 72 hours notice to Grantor prior to entry of the Easement Area; such notice may be made in writing, email, text message, verbally in person, or through a telephone call.

(f) District is not allowed to bring dogs or other pets onto the Easement Area.

7. Enforcement and Remedies.

(a) Notice of Violation. Except with respect to the uses expressly permitted for Grantor pursuant to the terms hereof, District shall have the right to prevent any use of, or activity on, the Easement Area that impair the Conservation Values or are otherwise inconsistent with the purpose and terms of this Easement. If Grantor, or third parties under Grantor's authority or permission, are in violation of the terms of this Easement, District shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation. In the event that such violation involves material impairment of the Conservation Values, or otherwise materially injures the Easement Area, resulting from any use or activity inconsistent with the purpose and terms of this Easement, such notice shall demand that Grantor, at Grantor's sole cost and expense, restore the portion of the Easement Area so injured to substantially its prior condition in accordance with a plan approved by District.

(b) Failure to Cure. If Grantor fails to cure a violation under subsection (a) within 30 days after its receipt of notice thereof from District, or under circumstances where the violation cannot reasonably be cured within a 30-day period, fails to begin curing the violation within the 30-day period, the District may bring an action at law or in equity to (i) enforce the terms of this Easement, (ii) enjoin the violation by a temporary, preliminary, and/or permanent injunction, (iii) recover any damages to which it may be entitled for such violation

of the terms of this Easement, and (iv) require the repair of the Easement Area to substantially the same condition and appearance that existed prior to such violation.

(c) Right to Proceed Against Third Parties. District has the right to proceed or join in any action against any third party or parties whose actions threaten or damage the Conservation Values. Grantor and District shall cooperate with the other party in any such proceeding. Grantor reserves the right to initiate and pursue claims against third parties for violations of the terms of this Easement.

(d) Emergency Enforcement. If District, in its reasonable discretion, determines that the circumstances require immediate action to prevent or mitigate significant damage to the Easement Area, District may enter the Easement Area to prevent or mitigate further damage to or alteration of the Easement Area necessary to protect the Conservation Values or otherwise pursue its remedies under this Section 7 without prior notice to Grantor and without waiting for the expiration of the cure period set forth above in subsection (b).

(e) Nature of Remedies. Both parties agree that if a party's remedies at law for any violation of the terms of this Easement are inadequate, then such party shall be entitled to injunctive relief, both prohibitive and mandatory, in addition to such other relief to which such party may be entitled, including without limitation specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Notwithstanding anything to the contrary herein, neither party shall not be entitled to special or consequential damages from the other party in connection with this Easement under any circumstance whatsoever. All available remedies for both parties are cumulative and may be exercised singularly or concurrently.

(f) Costs of Enforcement. Grantor shall reimburse District for any costs or expenses incurred by District in enforcing the terms of this Easement necessitated by Grantor's violation of the terms of this Easement including, without limitation, all reasonable court costs, attorney fees, and expert witness fees, pursuant to Section 10. District shall reimburse Grantor for any costs or expenses incurred by Grantor in enforcing the terms of this Easement necessitated by District's violation of the terms of this Easement including, without limitation, all reasonable court costs, attorney fees, and expert witness fees, pursuant to Section 10.

(g) Discretion to Enforce. Enforcement of the terms of this Easement is at the discretion of each party. Any forbearance by a party to exercise its rights under this Easement in the event of any breach of any terms of this Easement by the other party, its agents, employees, contractors, family members, invitees, or licensees shall not be deemed or construed to be a waiver by such party of such term under this Easement. No delay or omission by a party in the exercise of any right or remedy upon any breach by the other party shall impair such right or remedy or be construed as a waiver. Nothing in this paragraph shall limit District's and Grantor's obligations pursuant to this Easement.

(h) Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle District to bring any action against Grantor to abate, correct, or restore any condition on the Easement Area or to recover damages for any injury to, or change in, the Easement Area resulting from (1) causes beyond Grantor's control including, without limitation, natural changes, fire, flood, storm or earth movement, acts of trespassers, or (2) any reasonable and prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes.

8. Grantor's Specific Right to Petition District's Board of Directors for Grievances. Grantor shall have a right to petition District's board of directors (the "Board") (or equivalent body for any entity assigned this Easement and all responsibilities herein) if District fails to uphold the Conservation Values and maintain in a good workmanlike manner the Easement Area.

(a) The term in a “good workmanlike manner” includes but is not limited to District keeping the area adequately vegetated with native plants suitable for the site and that promote the Conservation Values; and that District adequately maintains for erosion prevention purposes the bank protection features of armored rock and planted vegetation along the slope of Dairy Creek (the “Bank Stabilization Area”).

(b) District will monitor the Bank Stabilization Area for any erosion arising from changing water flow velocities and volumes of the Columbia River and Dairy Creek for the purpose of taking necessary action to control and minimize erosion of the banks of Dairy Creek.

(c) Unless District is using emergency enforcement rights under Section 7(d), District will seek written consent from Grantor prior to undertaking any action affecting the Bank Stabilization Area except for those activities necessary for regular maintenance of the Bank Stabilization Area.

(d) The parties will meet annually on site to discuss the status of the Bank Stabilization Area and District’s overall performance in maintaining or enhancing the Conservation Values, and to agree upon the necessary modification of the Bank Stabilization Area to prevent erosion if it so occurs as well as any necessary modifications to the Conservation Plan for maintaining or enhancing the Conservation Values.

(e) If a dispute arises regarding District’s lack of adequate maintenance of the Easement Area and Bank Stabilization Area, Grantor and District shall meet at a mutually agreed upon time and location within 30 days of notice issued by Grantor to discuss and resolve the dispute. If a dispute pursuant to this paragraph remains unaddressed by District for a period of three (3) months or longer or unresolved by District for a period of six (6) months or longer, Grantor and District agree that either Party may initiate binding arbitration under Section 9 as a means to resolve the dispute. Should the arbitrator rule in favor of Grantor for District’s failure to adequately maintain the Easement Area or Bank Stabilization Area in a good workman like manner, Grantor may petition the arbitrator to have the Easement assigned to another suitable organization as defined in Section 19.

9. Arbitration Required/Mediation First Option. Except for matters pertaining to termination and extinguishment of this Easement pursuant to Section 16 and unless otherwise agreed to in writing by Grantor and District, any dispute or claim that arises out of or that relates to this agreement, or to the interpretation or breach thereof, or to the existence, validity, or scope of this agreement or the arbitration agreement, shall be resolved by arbitration in accordance with the then effective arbitration rules of (and by filing a claim with) Arbitration Service of Portland, Inc. or the American Arbitration Association, whichever organization is selected by the party who first initiates arbitration by filing a claim in accordance with the filing rules of the organization selected, and judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. The parties acknowledge that mediation usually helps parties to settle their dispute. Therefore, any party may propose mediation whenever appropriate through the organizations named above or any other mediation process or mediator as the parties may agree upon.

10. Attorney Fees and Costs. If any arbitration, proceeding, action or suit is instituted to interpret or enforce this Easement, the prevailing party on a claim shall be entitled to recover as determined by an arbitrator or court, in addition to any other relief awarded: (a) the prevailing party’s reasonable attorney fees; (b) other fees, costs and expenses of every kind, including those specified in ORCP 68A(2), incurred in connection with the arbitration, proceeding, action or suit or any appeal or petition for review therefrom; and (c) costs incurred in the collection of the award or the enforcement of the order. For purposes of this Easement, the prevailing party is the party succeeding either affirmatively or defensively on claims, not limited to monetary claims, having the greatest value or importance as reasonably determined by the arbitrator or court.

11. Costs; Taxes. Grantor shall bear all costs related to the ownership of the Easement Area and the Property, including but not limited to all taxes, assessments, fees, and charges levied on or assessed against the Easement Area and the Property by competent authority.

12. Special Assessment. The Easement Area may qualify for a conservation easement special assessment for ad valorem property taxes under ORS 308A.450 to 308A.465. The parties intend that the terms of this Easement are capable of meeting the requirements under section 170(h)(4)(A) of the Internal Revenue Code for the eligibility requirements in ORS 308A.453 AS SUCH PROVISIONS MAY BE MODIFIED, AMENDED, REPLACED, OR SUPPLEMENTED FROM TIME TO TIME. Within sixty (60) days after written notice from Grantor that it intends apply for the special assessment pursuant to ORS 308A.456, District agrees to sign a written certification to the county assessor under ORS 308A.453(c)(B) that will accompany Grantor's special assessment application.

13. Liability and Indemnification.

(a) Liability. The parties acknowledge and agree that because Grantor is the fee owner of the Easement Area, except as specifically provided for under subsection (a) below, the general liability for risks, damages, injuries, claims, or costs arising by virtue of Grantor's ownership and use of the Easement Area shall remain with Grantor as a normal and customary incident of the right of Property ownership. Nothing in this Easement shall be construed as giving rise to any right or ability of District to become an "owner" or "operator" of the Easement Area within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

(b) Indemnification. Each party shall indemnify, defend, and hold harmless the other party (together with its officers, employees and agents, an "Indemnifying Party") from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of the Indemnifying Party and its invitees on the Property. District's indemnity herein is limited to the extent as permitted by the Oregon Tort Claims Act, ORS 30.260 to 30.300.

14. Covenants Running With the Land. The parties acknowledge and agree that the covenants and agreements set forth in this Easement are intended to bind Grantor, District, and their respective successors and assigns. The Property and the Easement Area shall be held, conveyed, mortgaged, pledged as security for a debt, leased, used, and occupied subject to the covenants, conditions, restrictions, and other limitations set forth in this Easement (the "Restrictions"). All and each of the Restrictions are imposed as equitable servitudes upon the Property and every part thereof shall run with the land. Furthermore, all and each of the Restrictions shall be binding upon and burden, and shall inure to the benefit of, all persons having or acquiring any right, title, or interest to either the Property or the Easement Area.

15. No General Public Access; No Liability of Grantor. Nothing contained herein shall be construed as affording the general public physical access to any portion of the Easement Area. Possession of keys to any gates that may be installed by District to restrict access to the Easement Area will be limited to Grantor and District, and other parties as mutually agreed upon. Anyone who accesses the Easement Area, with or without authorization, agrees and acknowledges by their use thereof that they waive any and all claims to any damages by reason of (i) damage to property, and (ii) death or injury to any person using the Easement Area, caused by reason of acts of nature, latent and all other defects of structures and conditions of the Easement Area, roads, trails or any equipment thereon.

16. Termination of Easement.

(a) Judicial Proceeding Required and Grounds for Termination. This Easement can only be terminated or extinguished by judicial proceedings in a court having jurisdiction. There are only two grounds for termination or extinguishment of this Easement: (1) the substantial loss of the Conservation Values on the Easement Area, or (2) by condemnation pursuant to subsection (c) below. Grantor has the right under this Section 16 to petition a court to determine if the District's failure to perform its obligation to maintain and control the natural conditions that protect and support the Conservation Value under this Easement has resulted in a substantial loss of the Conservation Values and seek termination of the Easement.

(b) Valuation. If Grantor receives sales proceeds through a court-ordered termination pursuant to this Section 16, for all or part of the Easement Area, the amount of the proceeds to which District shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Easement Area subsequent to such termination or extinguishment, shall be equal to the fair market value of this Easement at the time of extinguishment, as determined by a competent appraiser, mutually selected by the Parties or by the court if the parties cannot so agree.

(c) Condemnation. District currently is not authorized to exercise eminent domain and if it were to obtain such power, it agrees to not exercise it to acquire the Easement Area. However, if all or any part of the Easement Area is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation by some other, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and District shall act jointly to recover the full value of the interests in the Easement Area subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. As between Grantor and District, District shall be entitled to receive the value of this Easement condemned, determined in accordance with the method set forth above in subsection (b). All expenses reasonably incurred by Grantor and District in connection with the taking shall be paid out of the amount recovered.

17. Subsequent Property Transfers and Encumbrances.

- (a) Transfers. Any subsequent transfer, including, without limitation, conveyance, lease, or mortgage of the Property or the Easement Area, shall be subject to this Easement. Grantor shall incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in the Easement Area. Failure of Grantor to perform any act required by this subsection shall not impair the validity of this Easement or limit its enforceability in any way.
- (b) Estoppel Certificate. Upon written request by Grantor, District shall within 30 days execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, which certifies that to the best of District's knowledge Grantor is in compliance with any obligation of Grantor contained in this Easement or which otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Easement Area as of District's most recent inspection.

18. Amendment. Grantor and District may mutually agree to amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of District under any applicable laws, including ORS 271.715-795. Any such amendment shall (a) be consistent with the purpose of this Easement, (b) either enhance or otherwise not impair the Conservation Values, (c) not affect this Easement's perpetual duration, (d) be in writing and be signed by both parties hereto (or their respective successors or assigns), and (e) be recorded in the official real property records of the county in which the Property is located. In no event shall the "economic hardship" of Grantor constitute a changed circumstance that would allow Grantor to unilaterally amend this Easement.

19. Assignment.

- (a) This Easement is transferable by District, but District may only assign its rights and obligations hereunder to an organization that is authorized to acquire and hold conservation easements under ORS 271.715 to 271.795 (or any successor provisions then applicable). District shall notify Grantor in writing, in advance of such assignment. Unless otherwise specified herein, District's assignment to another holder is subject to the written approval of Grantor, where such approval cannot be unreasonably withheld. When an assignee assumes the obligations of District hereunder, then District shall have no further liability with respect to this Easement.

(b) If District is in the process of dissolution as a government entity or is being terminated for any other reason, District shall notify Grantor of the prospective dissolution or termination and the parties shall work cooperatively to find a replacement holder of this Easement. If the parties cannot agree on the selection of a replacement holder that will accept this Easement within six (6) months after said notice, then the parties agree that this Easement will be transferred to the State of Oregon, where the State of Oregon accepts the terms and conditions and all obligations of the District set forth herein.

(c) District agrees that upon any assignment Grantor shall not be liable for any reimbursement of funds used by District in connection with the acquisition of this Easement. As an absolute condition of such transfer, District shall require that the transferee assumes in writing the obligations of District under this Easement and agrees to exercise its rights under the assignment consistent with the Conservation Values and the terms and conditions of this Easement.

20. Recording. District shall immediately record this instrument in the official records of the county within which the Property is located, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve District's rights in this Easement.

21. Notice and Addresses. Except for general site visits with 24-hour verbal notification as provided in Section 54(a)(i), any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by mail, postage prepaid, to the address set forth below. Any party may change the address to which its notices are to be sent by duly giving notice pursuant to this Section.

To Grantor: Donald G. Young and Martha Berndt, Co-trustees
The Young and Berndt Family Revocable Living Trust dated January 25, 2007
23820 NW Gillihan Road
Portland, Oregon, 97231

To District: West Multnomah Soil & Water Conservation District
Attn: District Manager
2701 NW Vaughn Street, Suite 450
Portland, OR 97210
(503) 238-4775, Ext. 106

22. General Provisions.

(a) Governing Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Oregon.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the Purpose of this Easement and the policy and purpose of ORS Chapter 271. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Conservation Intent. Any ambiguities in this Easement shall be construed in a manner which best effectuates the Conservation Values for the Easement Area.

(d) Changed Circumstances. Grantor and District acknowledge that future conditions may change in the areas neighboring the Property and the Easement Area, including without limitation, increased development, land use, and zoning changes. Grantor and District further acknowledge that such future conditions may result in

various hardships to Grantor by virtue of the restrictions contained in this Easement, including without limitation, restrictions on the ability to develop the Property and the Easement Area. However, Grantor and District expressly intend that this Easement continue in perpetuity regardless of such changes conditions and circumstances and regardless of hardship, whether such hardship is economic or otherwise. In no event shall the hardship of Grantor constitute a changed circumstance that would allow Grantor to unilaterally terminate this Easement.

(e) Severability. If any provision of this Easement, or its application to any person, entity, 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.

(f) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement Area and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement Area, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 18.

(g) No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Grantor's title in any respect.

(h) Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon assignment of that party's interest in the Easement or transfer of the Easement Area, except that liability for acts or omissions occurring prior to transfer shall survive assignment or transfer.

(i) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

(j) Recitals. The statement and information in the Recitals of this Easement are incorporated as if fully set forth herein and shall be used for purposes of interpreting this Easement.

IN WITNESS WHEREOF, the parties have executed this Easement as of the date first set forth above.

GRANTOR:

DISTRICT:

Donald G. Young, Co-Trustee

By: _____
[INSERT NAME OF SIGNER]

Title: Board Chair

Martha Berndt, Co-Trustee

State of OREGON
County of MULTNOMAH

This instrument was acknowledged before me on _____, 2018 by Donald G. Young and Martha Berndt as Co-Trustees of the The Young and Berndt Family Revocable Living Trust dated January 25, 2007.

Notary Public - State of Oregon

My Commission Expires: _____

State of OREGON
County of MULTNOMAH

This instrument was acknowledged before me on _____, 2018 by _____ as Board Chair of West Multnomah Soil & Water Conservation District, a government entity organized under Oregon Revised Statutes Chapter 568.

Notary Public - State of Oregon

My Commission Expires: _____

Exhibit A
Property Description
[TO BE REVISED BASED ON STATE OWNERSHIP OF CREEK BED]

The following described tract of land in the Horace J. McIntire Donation Land Claim in Section 35, Township 3 North, Range 1 West, of the Willamette Meridian, on Sauvie Island, in the County of Multnomah and State of Oregon, to-wit:

Beginning at the Northeast corner of the said McIntire Donation Land Claim, said corner being also the Northeast corner of said certain tract of land conveyed to Maude G. Hudson to Kittie T. Hutchinson by deed recorded November 23, 1905 in Book 348, Page 235; thence South 11° 30' West along the East line of the said Hutchinson tract, 8.41 chains; thence South 19° 45' West, 11.63 chains; thence South 9° West, 0.84 chains to the Southeast corner of said Hutchinson Tract and the true point of beginning of premises herein described; thence West along the Southerly line of the said Hutchinson Tract to the middle of the stream of water known as the "wash"; thence along the middle of the said "wash" Southerly and Easterly to the low water line on the Westerly bank of the Columbia River; thence Northerly along said low water line of the Columbia River to the said true point of beginning;

ALSO

Beginning at low water mark in the middle of the stream known as the "wash", at its confluence with the Columbia River; thence South 12° West along the low water mark of the Columbia River to the intersection of the Southerly low water mark of the "wash" with the low water mark on the Westerly bank of the Columbia River; thence South 12° West along the said low water mark on the Westerly bank of the Columbia River, 600 feet; thence West 1050 feet to the middle of the McIntire Slough emptying from Marquam Lake into the "wash"; thence along the center of the said McIntire Slough, North 42° West, 750 feet, more or less, to the center of the said "wash"; thence North 80° East along the center of the said "wash" to the point of beginning,

TOGETHER WITH an easement for a roadway 15 feet wide, 7 1/2 feet on each side of the following described center line:

Beginning at the most Westerly corner of the George C. McFarland and Mary M. McFarland Tract as described in the Deed recorded May 22, 1946 in Book 1056, Page 343, Deed Records of Multnomah county, said corner being South 88° 28' East 1124.90 feet and South 1° 32' West 768.14 feet and North 88° 28' West 163.34 feet and North 50° 43' West 326.68 feet from the intersection of the West line of Reeder Road and the South line of the Kitty T. Hutchinson Tract described in Deed recorded November 23, 1905 in Book 348, Page 235, Deed Records of Multnomah County; thence along the Westerly line of said McFarland Tract South 50° 43' East 163.0 feet to the true point of beginning of the herein described easement; thence from said beginning point on a curve to the right having a radius of 121.53 feet (the radial point bearing South 17° 08' 03" West) through a central angle of 12° 56' 51" a distance of 27.46 feet (the long chord bearing South 66° 23' 32" East 27.40 feet); thence South 59° 55' 06" East 86.92 feet; thence South 69° 26' 09" East 98.66 feet; thence South 78° 31' 58" East 50.98 feet to a point which is 7.5 feet North 1° 32' East from the South line of said McFarland Tract; thence South 88° 28' East parallel with and 7.5 feet Northerly from said line 36.87 feet to the beginning of a curve; thence on a curve to the left having a radius of 59.66 feet through a central angle of 45° 28' 17" a distance of 47.35 feet (the long chord bearing North 68° 47' 51" East 46.11 feet); thence North 46° 03' 43" East 181.16 feet to the beginning of a curve; thence on a curve to the right having a radius of 95.0 feet through a central angle of 38° 56' 21" a distance of 64.56 feet (the long chord bearing North 65° 31' 53" East 63.33 feet); thence North 85° 00' 04" East 37.03 feet to the beginning of a curve; thence on a curve to the left having a radius of 180.0 feet through a central angle of 16° 52' 35" a distance of 53.02 feet (the long chord bearing North 76° 33' 50" East 52.03 feet) to the terminus of this easement said point being South 88° 28' East 725.29 feet from the most Westerly corner of said McFarland Tract,

ALSO an easement for a roadway 20 feet wide, 10 feet on each side of the following described center line:

Beginning at an iron pipe at the intersection of the West line of Reeder Road and the South line of the Kitty Hutchinson Tract in Section 35, Township 3 North, Range 1 West, of the Willamette Meridian, as described in Book 348, Page 235, Multnomah County Records; thence South 88° 28' East along the South line of said Kitty Hutchinson Tract, 1124.90 feet; thence South 1° 32' West 768.14 feet to an iron rod; thence North 88° 28' West 163.34 feet; thence South 39° 17' West 10.0 feet to the true point of beginning; thence North 50° 43' West 162.81 feet; thence 150.24 feet along the arc of a 100.0 foot radius curve to the left (central angle - 86° 05'); thence South 43° 12' West 532.0 feet; thence South 50° 47' West 170.0 feet; thence South 37° 37' West 90.0 feet; thence South 19° 28' West 119.0 feet, more or less, to the center line of Gillihan Road.

Exhibit B

Easement Area Description

[TO BE INSERTED FROM SURVEY OF EASEMENT AREA OBTAINED BY DISTRICT]

FINAL DRAFT – Subject to Minor Changes Only

Exhibit C

Depiction of Easement Area

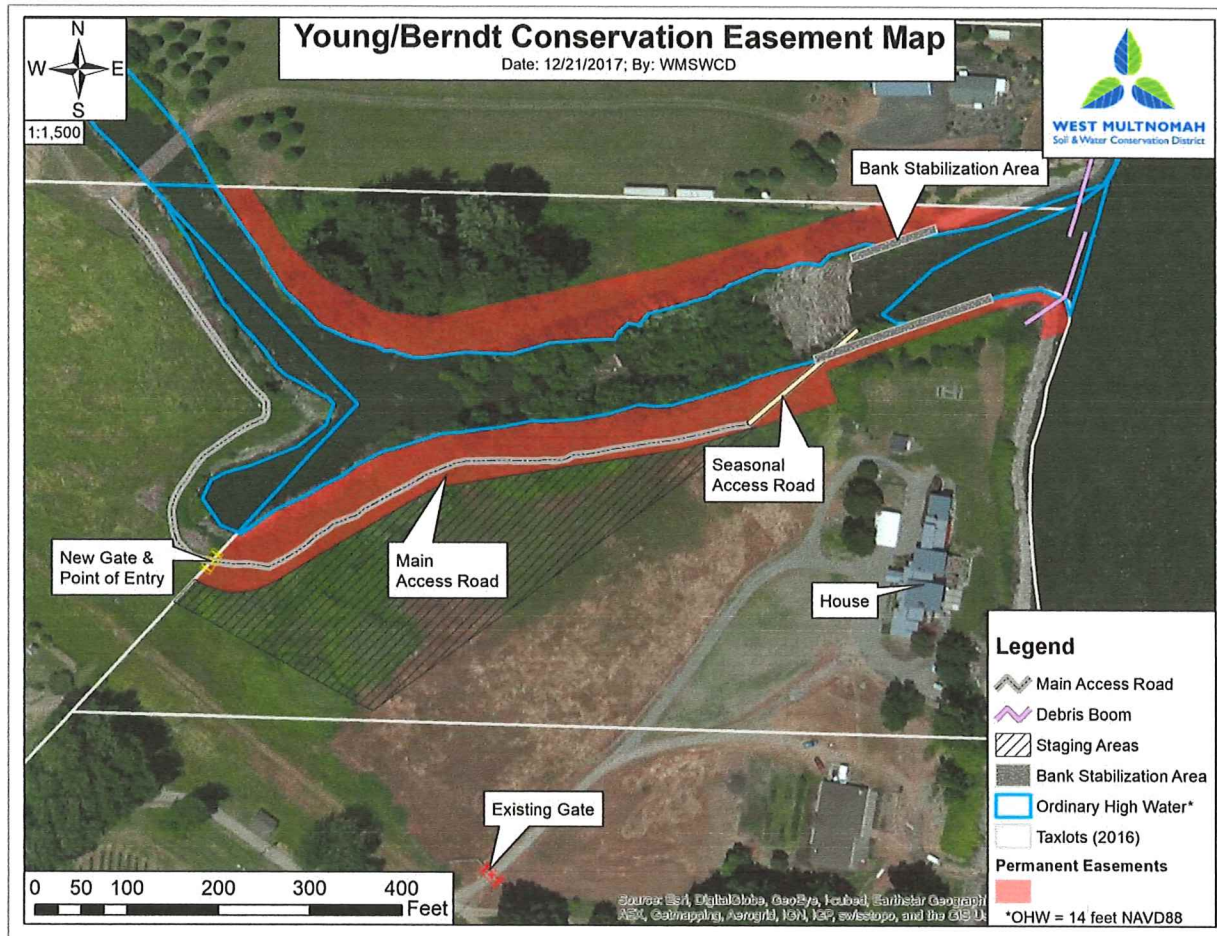


Exhibit D

Grantor's Prohibited Uses and Activities

1. The partition, division, subdivision, defacto division of the Easement Area, other than: (a) a lot line adjustment to effect conveyance of the area north of Dairy Creek to the owner of the adjacent property; or (b) a partition of all or part of the Easement Area, in compliance with all applicable law.
2. Residential use or development of any kind.
3. The filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for extracting of minerals, oil, gas, coal, and other hydrocarbons, soils, sands, gravel, rocks or any other materials on or below the surface of the Easement Area or other grading of the topography of the property.
4. The manipulation or alteration, diminution, or drainage of any natural water course, wetland, stream bank, riparian area, shoreline, or body of water on the Easement Area or any activity that causes or is likely to cause significant pollution of any surface of subsurface waters.
5. Any use or activity that causes or is likely to cause significant soil degradation or erosion.
6. Any commercial or industrial activities of any kind.
7. Agricultural activities of any kind, including, without limitation, the establishment and maintenance of a livestock corral, personal gardens, row crops, haying, grazing, livestock watering, or other pasture uses.
8. Any recreational uses that involve domesticated animals, including, without limitation, using the Easement Area for horseback riding, unless prior written approval is obtained from District.
9. Constructing, placing, or maintaining any building, cabin, garage, barn, shed, greenhouse, mobile home, house trailers, tent facilities, huts, tree houses, play structures, or other temporary or permanent structures of facilities on, above, or below the Easement Area, unless prior written approval is obtained from District.
10. The ability to apply for a permit, seek other applicable permissions or otherwise construct a boat ramp within the Easement Area, including upgrading the Seasonal Access Road as depicted on the attached Exhibit C, except for uses permitted by Section 4(b)(iii).
11. Placing, constructing, or maintaining any signs, billboards, or outdoor advertising structures on the Easement Area other than a reasonable number of signs needed to temporarily advertise the sale or lease of the Easement Area or the Property or signs necessary to post the property is private and closed to public use.
12. Paving or otherwise covering with concrete, asphalt, gravel, or any other paving material of any portion of the Easement Area.
13. The granting of any utility corridor right-of-way easements or cell tower leases, or the construction or installation of above ground water facilities (pumps, pipelines, ponds, ditches, and similar improvements), utility systems or structures, cell towers, septic systems, septic drain fields, communication devices, or aerial lines.

14. The installation of underground storage tanks or placing, filling, storing, processing, dumping, or otherwise disposing on the Easement Area any soil, refuse, trash, rubbish, debris, junk, waste, or other such substance.
15. Dumping, depositing, abandonment, discharging, or release of any gaseous, liquid, solid, or hazardous wastes, substances, materials, trash, or debris of whatever nature on, in, over, or under the ground or into the surface or ground water of the Easement Area.
16. The gathering, harvesting, or removal of any trees, timber, logs, dead or downed wood, or plants on the Easement Area or the cutting, removing, pruning, manipulation or alteration of any vegetation on the Easement Area, unless prior written approval is obtained from District.
17. The introduction or planting of any non-native and/or invasive species.
18. The use of herbicides or pesticides within the Easement Area, unless prior written approval is obtained from District.
19. The disruption of breeding, foraging, migration, movement, and/or nesting activities birds and other wildlife on the Easement Area.
20. The erection of a fence or any other restraining feature, unless prior written approval is obtained from District.
21. The operating of all-terrain vehicles (ATV's), motorcycles, dune buggies, snowmobiles, or any other type of off-road motorized vehicles except for such use of the 12 foot strip from top of bank of Dairy Creek (as depicted on the attached Exhibit C) that will be left graded for use of an access road to the Dairy Creek channel.
22. Any outdoor lighting within the Easement Area, unless prior written approval is obtained from District.
23. The discharge of firearms, bows and arrows, air guns, slingshots or similar devices, unless prior written approval is obtained from District.
24. The use of fire in any form, including without limitation, all fireworks.

Exhibit E

District's Permitted Uses and Activities

1. The removal or alteration of non-native, invasive, and competitive vegetation (including the use of mowing, digging, hand removal, herbicides, or pesticides).
2. The planting and maintenance of native vegetation for the purpose of establishing a native plant community.
3. The alteration of the land surface to restore natural systems and enhance the Conservation Values.
4. The alteration and dredging of water courses to restore natural systems and enhance the Conservation Values.
5. The removal of native species if necessary to meet management objectives (including but not limited to releasing oaks, thinning overstocked stands, creating snags).
6. The installation of monitoring devices as appropriate for scientific survey or management of water, fish, wildlife and associated aquatic and terrestrial habitat.
7. Painting and posting boundaries of the Easement Area.
8. Improving physical access to the Easement Area, including, without limitation, the construction and maintenance of internal trails or roadways within the Easement Area consistent with the Conservation Values
9. Following consent by Grantor on the design for such feature, the erection of a fence or any other restraining feature if the purpose of such feature is to protect the Conservation Values.
10. The use of the 12 foot strip from top of bank of Dairy Creek that will be left graded for use as an access road to the Dairy Creek channel (as depicted on the attached Exhibit C).