

# **Willamette Properties Management Plan Development**

## **Red Hills Land Management Plan**

**Prepared for:**

**The Confederated Tribes of the  
Warm Springs Reservation of Oregon  
1233 Veterans Street  
Warm Springs, Oregon 97761**



**Prepared by:**

**Tetra Tech, Inc.  
19803 North Creek Parkway  
Bothell, WA 98011  
Tel 425-482-7600 Fax 425-482-7652**



**Confederated Tribes of the  
Warm Springs Reservation of Oregon  
Branch of Natural Resources  
1233 Veterans Street  
Warm Springs, Oregon 97761**

**March 2021**

## TABLE OF CONTENTS

<b>1. INTRODUCTION .....</b>	<b>1</b>
<b>2. PROPERTY DETAILS.....</b>	<b>2</b>
2.1 Property Information.....	2
2.2 LMP Description.....	4
2.3 LMP History.....	6
2.4 Purpose and Conservation Values.....	6
2.5 Connectivity and Habitat .....	6
2.6 Land Use.....	7
2.7 Interim Management Activities .....	7
2.8 Land Use Agreements .....	7
2.9 Access Issues .....	8
2.10 Water Rights .....	10
<b>3. CURRENT ECOLOGICAL SETTING.....</b>	<b>10</b>
3.1 Habitat and Cover Types and Conditions .....	10
3.1.1 Grassland (9 acres).....	10
3.1.2 Mixed Deciduous (188.5 acres).....	13
3.1.3 Conifer Forest (43 acres).....	13
3.1.4 Flowing Water and Riparian Habitats (38 acres).....	14
3.2 Special Status, Focal, and Oregon Conservation Strategy Species .....	15
3.3 Invasive Species .....	15
3.4 ESA-Listed or Candidate Species.....	16
3.5 Hydrologic Considerations .....	17
3.6 Historical, Cultural Resources, and Traditional Use Resources .....	17
3.7 Public Access.....	17
3.8 Fire History and Planned Burns .....	20
3.9 Threats .....	20
3.9.1 Encroaching/Invasive Species .....	20
3.9.2 Trespass.....	20
3.9.3 Climate Change.....	20
<b>4. GOALS, OBJECTIVES, AND ACTIONS .....</b>	<b>21</b>
4.1 Desired Future Conditions, Goals, and Objectives .....	21

4.1.1	Property-Wide Goals and Objectives .....	21
4.1.2	Grassland .....	24
4.1.3	Mixed Deciduous and Conifer .....	24
4.1.4	Flowing Water and Riparian Habitats .....	25
4.2	Timber Sale Actions .....	26
4.3	Past and Planned Restoration Funding .....	26
4.4	Conservation Programs .....	26
4.5	Management Partners.....	26
4.6	Evaluation and Monitoring.....	26
4.7	Income Generating Activities .....	27
4.8	Restoration and Management Approach .....	27
<b>5.</b>	<b>EASEMENT RESTRICTIONS AND PROHIBITIONS .....</b>	<b>27</b>
5.1	Prohibited Uses and Exemptions .....	27
5.2	Environmental Regulations .....	30
5.3	Protection from Harm .....	31
5.4	Additional Information .....	31
<b>6.</b>	<b>REFERENCES .....</b>	<b>31</b>

## LIST OF APPENDICES

- Appendix A** Deed of Conservation Easement
- Appendix B** Land Use Agreement Documents
- Appendix C** 2020 Conservation Area Regulations

## LIST OF FIGURES

<b>Figure 2-1.</b>	Property Location .....	3
<b>Figure 2-2.</b>	Parcels .....	5
<b>Figure 2-3.</b>	Agreement Map.....	9
<b>Figure 3-1.</b>	Habitat and Cover Types .....	11
<b>Figure 3-2.</b>	Timber Inventory Map .....	12
<b>Figure 3-3.</b>	Potential Public Access Points.....	19

## LIST OF TABLES

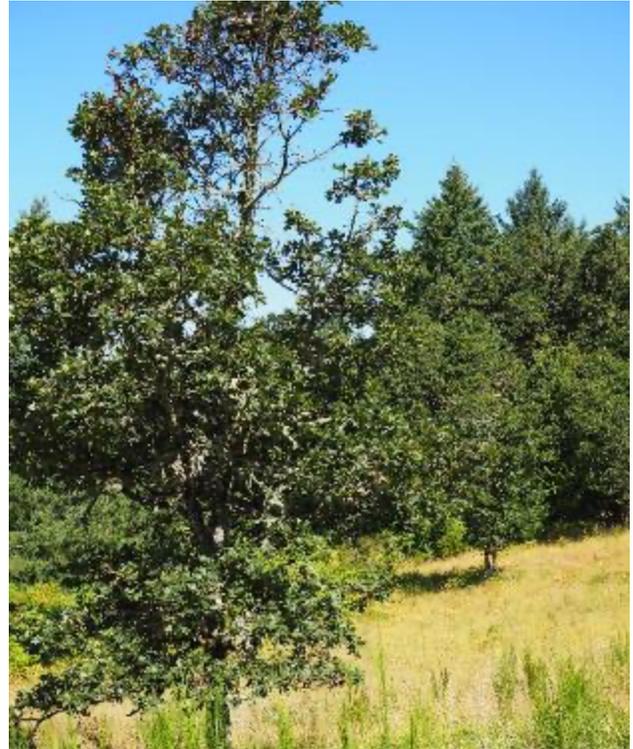
<b>Table 2-1.</b>	Parcel Information .....	4
<b>Table 3-1.</b>	Special Status, Focal, and Oregon Conservation Strategy Species .....	15
<b>Table 3-2.</b>	ESA-Listed or Candidate Species.....	16
<b>Table 4-1.</b>	Desired Future Conditions, Goals and Objectives, and Actions applicable Property-Wide .....	22
<b>Table 4-2.</b>	Desired Future Conditions, Goals and Objectives, and Actions for Grassland Strategy Habitat .....	24
<b>Table 4-3.</b>	Desired Future Conditions, Goals and Objectives, and Actions for Mixed Deciduous and Conifer Strategy Habitat .....	24
<b>Table 4-4.</b>	Desired Future Conditions, Goals and Objectives, and Actions for Flowing Water and Riparian Strategy Habitat .....	25
<b>Table 5-1.</b>	Summary of Easement Prohibitions and Compliance.....	28

## ACRONYMS AND ABBREVIATIONS

BNR	Branch of Natural Resources
BPA	Bonneville Power Administration
CTWSRO	Confederated Tribes of the Warm Springs Reservation of Oregon
ESA	Endangered Species Act
LMP	Land Management Plan
OCS	Oregon Conservation Strategy
ODF	Oregon Department of Forestry
ODFW	Oregon Department of Fish and Wildlife
Property	Red Hills Conservation Area
RMA	Riparian Management Area
SMART	Specific, Measurable, Attainable, Relevant and Time-bound
Tetra Tech	Tetra Tech, Inc.
USACE	U.S. Army Corp of Engineers
USFWS	U.S. Fish and Wildlife Service
WWMP	Willamette Wildlife Mitigation Program

# 1. INTRODUCTION

The Confederated Tribes of the Warm Springs Reservation of Oregon (CTWSRO) Branch of Natural Resources (BNR) makes it their mission to plan and execute a balanced direction for the protection, use, and enhancement to all tribal natural resources. In support of this mission, the CTWSRO acquired the Red Hills Conservation Area (Property) in December of 2014 with funds from the Willamette Wildlife Mitigation Program (WWMP), the first such acquisition by the CTWSRO with the WWMP. The WWMP was established under a 2010 Memorandum of Agreement between the State of Oregon and Bonneville Power Administration (BPA), in coordination with the CTWSRO and other interested Tribes, to mitigate for the wildlife impacts of the federal Willamette River hydropower system (BPA and State of Oregon 2010). The BNR has a shared interest in promoting long-term land conservation to support sustained and enhanced wildlife populations, many with cultural significance to the CTWSRO.



*Red Hills*

This Land Management Plan (LMP) is a required component of the conservation easement funded and held by BPA. It provides Specific, Measurable, Attainable, Relevant and Time-bound (SMART) objectives and follows the format specified by the BPA. This is a new LMP designed to cover a 10-year duration from 2021 to 2031, with the intent to update and revise specific elements after that timeframe based on management actions and monitoring results to facilitate an adaptive management approach. Section 2 provides Property details, followed by a review of the current ecological setting in Section 3. Section 4 outlines the goals, objectives, and actions for the Property. Desired future conditions, goals, and objectives identified in Section 4.1 will serve as the foundation for the development of more specific plans and budgets for individual projects, as well as a basis for grant applications to help with restoration funding. Section 5 details how actions proposed in this LMP comply with the conservation easement restrictions and prohibitions.

Much of the background information presented in this LMP is drawn from existing documentation for the Property, including: 1) the conservation easement (provided in Appendix A), the CTWSRO baseline report (CTWSRO 2014), 2) the Property and timber appraisals (Real Estate Services Group 2014), and 3) the Fiscal Year 2014 WWMP application submitted to the Oregon Department of Fish and Wildlife (ODFW) (CTWSRO 2013). This existing documentation was supplemented with a July 2019 site visit by Tetra Tech, Inc. (Tetra Tech),

desktop research, and updated information from the BNR. Related citations are provided as applicable and listed in Section 6.

## 2. PROPERTY DETAILS

### 2.1 Property Information

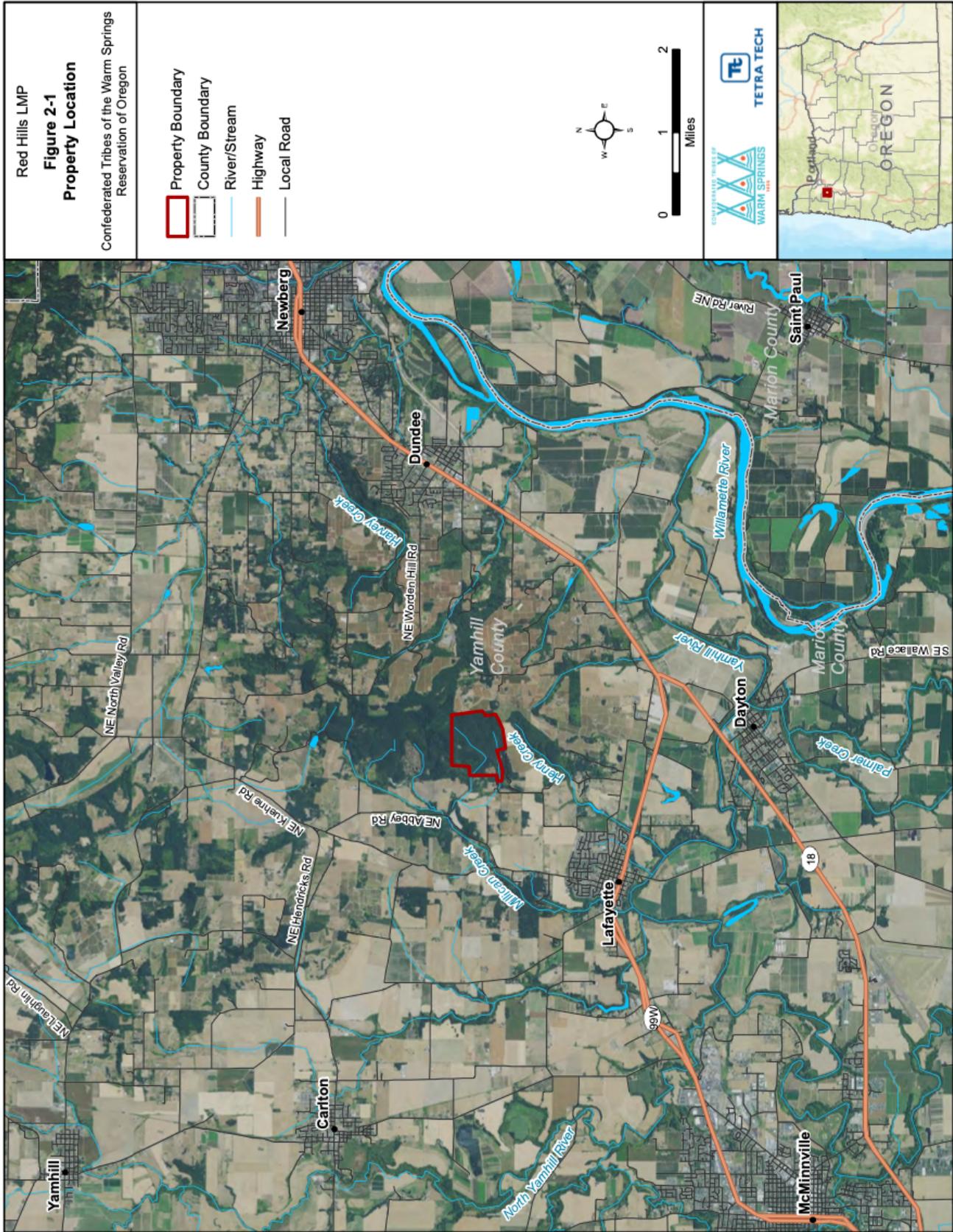
The Red Hills LMP was prepared in fulfillment of Section G of the conservation easement. This LMP encompasses 278.5 acres of grassland, mixed deciduous and conifer, and riparian habitat in Yamhill County, Oregon (Figure 2-1). The CTWSRO is responsible for on-the-ground management and adaptive management including identifying triggers for LMP updates. There is no address associated with the Property. Basic Property information is as follows:

**Management Area Name:** Red Hills Property (“Property”)  
**Easement Date:** December 29, 2014  
**Easement Number:** WILF-WL-18  
**Easement Grantor:** Confederated Tribes of the Warm Springs Reservation of Oregon (CTWSRO)  
**Easement Grantee:** Department of Energy, Bonneville Power Administration (BPA)  
**LMP Prepared by:** Tetra Tech on behalf of the CTWSRO, with all post-draft edits by CTWSRO, BPA, and ODFW.

Chris James  
Program Manager  
Tetra Tech, Inc.  
19803 North Creek Parkway  
Bothell, WA 98011  
(425) 482-7622  
[chris.james@tetrattech.com](mailto:chris.james@tetrattech.com)

Brian Cochran  
Branch of Natural Resources  
CTWSRO  
PO Box C/4223 Holliday St.  
Warm Springs, OR 97761  
(541) 553-2003  
[brian.cochran@ctwsbnr.org](mailto:brian.cochran@ctwsbnr.org)

Figure 2-1. Property Location



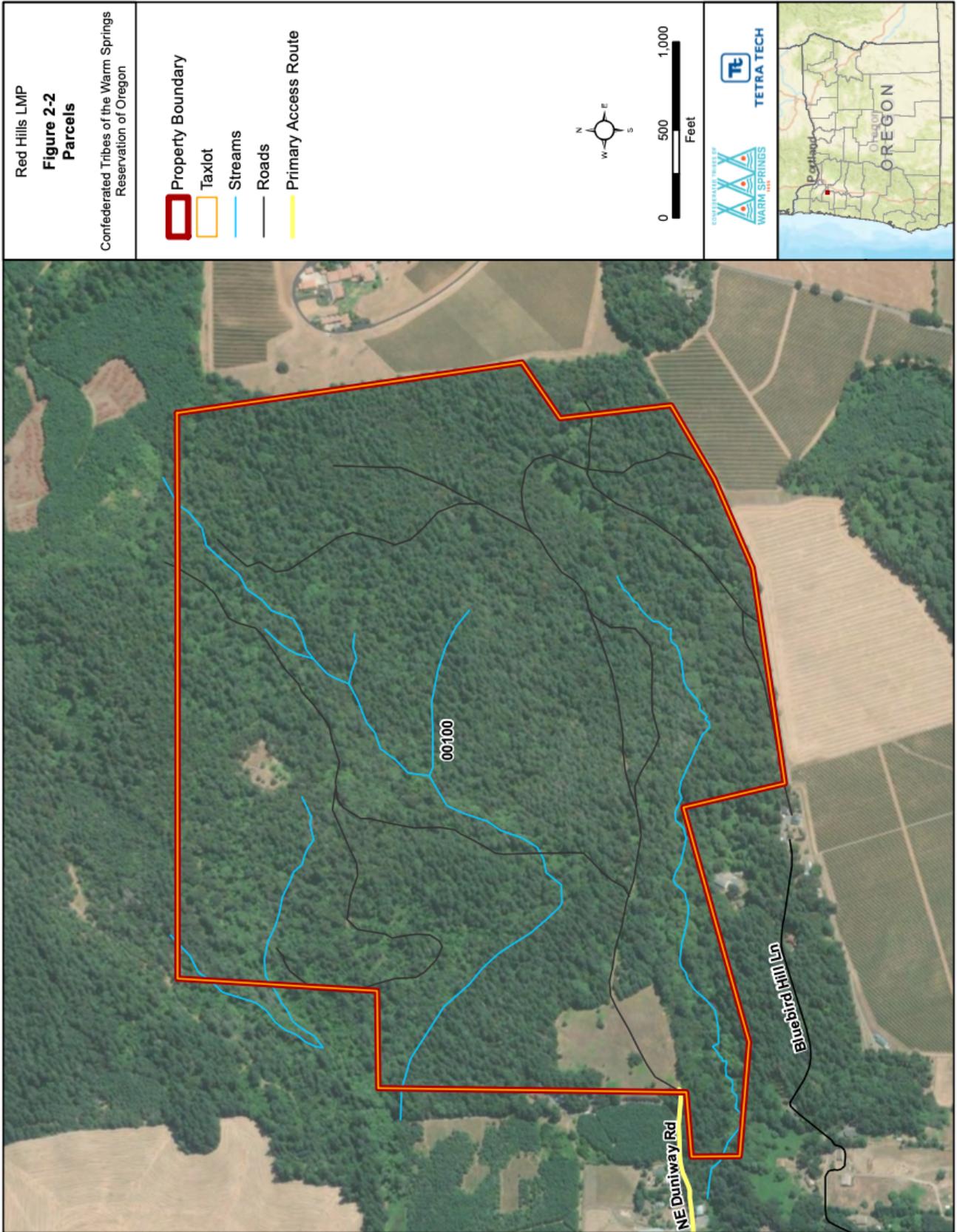
## 2.2 LMP Description

The LMP covers a single property as described in Table 2-1 and shown in Figure 2-2.

**Table 2-1.** Parcel Information

Tax Lot	Township/Range	Date Acquired	Acres
Tax Lot 100	T3S R3W Section 32	December 29, 2014	278.5

Figure 2-2. Parcels



R:\PROJECTS\TWS WILLAMETTE\RED HILLS\MAPS\RH Figure 2-2 Parcels.mxd

## 2.3 LMP History

This is a new LMP intended to cover a 10-year duration from 2021 to 2031. The LMP is intended to be updated and likely revised after ten years (2031) based on the evaluation of progress toward management goals and objectives to facilitate an adaptive management approach, as described further in Section 4.5 – Evaluation and Monitoring. Not all management objectives would necessarily be covered in an LMP update. For example, cultural resource protection and forest management are viewed with a longer time horizon due to inherent differences in legal, logistical, and ecological considerations.

## 2.4 Purpose and Conservation Values

The purpose of the conservation easement is to preserve and protect, in perpetuity, the Conservation Values of the Property, which comprises 278.5 acres of grassland, mixed deciduous and conifer, and riparian forest. The existing Conservation Values of the Property were identified recognizing that such Conservation Values may periodically fluctuate or trend toward long-term change, due to natural events such as wildfire, floods, insect or disease, interdecadal climate events, and long-term climate change, as well as human-initiated enhancement or restoration actions (such as those described in this LMP); these Conservation Values include the following:

1. Strategy Habitats identified in the Oregon Conservation Strategy (OCS) (2016): Grassland (Oak Savanna), Mixed Deciduous Forests, Conifer Forests, and the Flowing Water and Riparian Forest habitat, as well as two intermittent (Cowardin Code R4SBC) streams (NHD 2019).
2. Fish and wildlife species, including but not limited to several migratory and resident species such as: Acorn Woodpecker (*Melanerpes formicivorus*), Streaked-horned Lark (*Eremophila alpestris stigata*), Yellow-breasted Chat (*Ictera virens*), Chipping Sparrow (*Spizella passerine*), Slender Billed Nuthatch (*Sitta carolinenses aculeate*), White-Breasted Nuthatch (*Sitta carolinenses*), and the Western Gray Squirrel (*Sciurus griseus*).
3. Contiguous habitat for locally rare species requiring more range such as cougar (*Puma concolor*) and black bear (*Ursus americanus*) and connectivity to the adjacent 1,343-acre Trappist Abbey Conservation Easement held by BPA, of similar habitat types.

The Streaked-horned lark is unlikely to be found on the property, as it does not match its preferred habitat.

## 2.5 Connectivity and Habitat

The Property is adjacent to the Trappist Abbey, a 1,343-acre property that is also protected through the WWMP. Both properties together make up the majority of the Dundee Oaks Conservation Opportunity Area as defined by the OCS (OCS 2016). This LMP calls for cooperative management of these properties in order to efficiently maximize conservation efforts.

## 2.6 Land Use

The Property is currently an undeveloped forest. The Property has been managed by the previous owners under a long-term, sustainable forestry plan developed by Trout Mountain Forestry. Additional forestry related documents include a timber cruise (Ferguson 2009) and the timber appraisal (Witler 2014). The forestland has been certified by the Forest Stewardship Council as Well-Managed since 1998 (Certificate SCS-FM/COC-00062G).

The previous forest management plan prescribed selective thinning to improve tree quality and vigor, sustain wildlife habitat, and generate regular income (Ferguson 1993). Periodic harvests (every 2 to 4 years) have ranged between 100,000 to 200,000 board feet and have primarily been selective thinning to release oak and reduce the density of Douglas fir (*Pseudotsuga menziesii*) in the mixed stands. Logging has used ground-based methods (cat, skidder, shovel), with operations restricted to dry soil conditions outside of the bird nesting season (April – July). Logging operations have used contract crews. Planting and vegetation control (manual and chemical) have been used to maintain the. This forest management plan is outdated and focuses on harvest and profit. CTWSRO will hire a consulting firm to write a new forest management plan prior to developing the initial timber sale for 2021 or 2022. The forest plan will focus on a series of harvests through 2031 to remove Douglas fir, including plantation stands, and enhancement of existing oak habitat as this is the main goal of the Tribes.

Prior to the purchase of this Property by the CTWSRO in 2014, the land had been in family ownership since 1962. There is no remaining evidence (remnant structures or vegetation) of previous agricultural activities on the site; however, the land was used for grazing cattle prior to the 1962 purchase.

## 2.7 Interim Management Activities

Management activities have been limited to light mowing of grass near the entry gate. No Trespassing signs remain on the entry gate at Duniway Road, but are most likely leftover from the previous landowner.

## 2.8 Land Use Agreements

Several land use agreements are in effect for the Property:

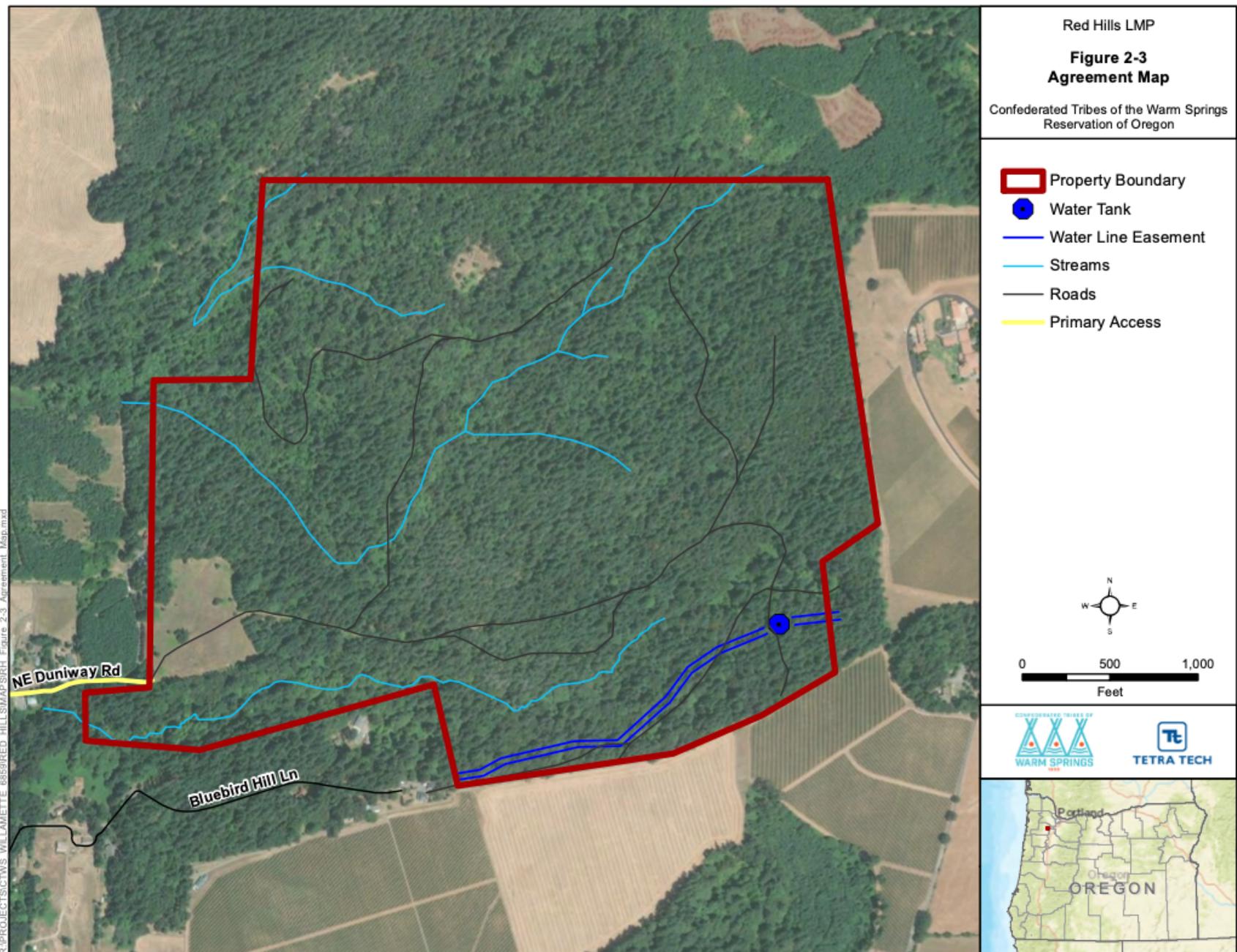
- Three easements granted to the City of Lafayette for access and maintenance to the above-ground water storage tank and associated pipelines for the Bluebird Valley Water District. The waterline runs from a spring, locally known as Bluebird Springs, across the southern end of the Property to the houses on Bluebird Hill Lane.
- One road construction agreement with the Yamhill County Department of Planning and Development recorded in 1991.
- One easement dating back to 1968 held by Portland General Electric Company for a distribution line that lies just inside the Duniway entrance to the Property.

The agreement documents are provided in Appendix B, and Figure 2-3 displays a map showing the locations of the agreements.

## **2.9 Access Issues**

The site is accessible through the gate on Duniway Road. The existing roads within the Property are overgrown with Himalayan blackberry (*Rubus armeniacus*) and will need to be cleared and maintained in order to gain access to the forested areas of the Property.

Figure 2-3. Agreement Map



## 2.10 Water Rights

There are no water rights included in the conservation easement, and there are no plans to acquire water rights for the Property at this time. Section II.D. of the easement (Appendix A) provides the following instruction in the event of future water right acquisition by the CTWSRO:

*To the extent Grantor has or after-acquires water rights, Grantee shall ensure that the Grantor shall not abandon any of the water rights appurtenant to the Protected Property by virtue of non-use and that the Grantor may not transfer, change the point of diversion, change the purpose of use, or otherwise significantly change any Protected Property water right without receiving prior written approval from BPA.*

This section of the LMP will be updated upon any change in the status of water rights for the Property.

## 3. CURRENT ECOLOGICAL SETTING

### 3.1 Habitat and Cover Types and Conditions

The Property encompasses 3 of the 11 Strategy Habitats identified by the OCS (2016); these Strategy Habitats are depicted in Figure 3-1 and are described in the following sections. Figure 3-2 provides the similar but further refined stand areas identified in the 2009 timber cruise (Ferguson 2009).

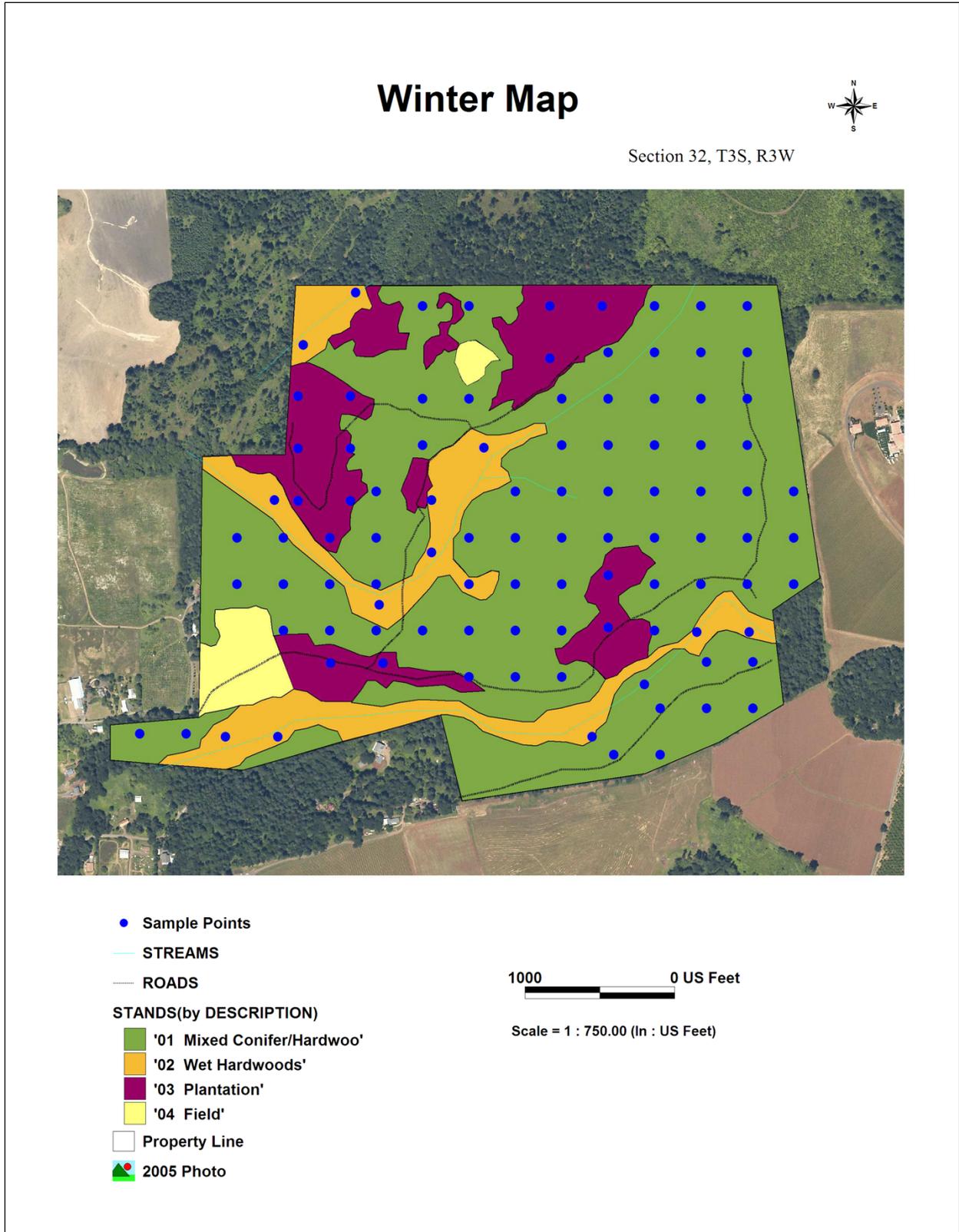
#### 3.1.1 Grassland (9 acres)

There are two grassland habitat areas, one small open area on the northern edge of the Property near the Trappist Abbey lands, and the other (larger habitat) at the entrance to the Property on Duniway Road. The oaks on this Property are Oregon white oaks (*Quercus garryana*). The largest specimen (estimated to be over 200 years old) and the adjacent younger oaks within this grassland are showing signs of decline due to conifer encroachment. The larger grassland area has been mowed in past years to keep the invasive Scotch broom (*Cytisus scoparius*) and Himalayan blackberry from proliferating; mowing will continue to be part of the management strategy, although this has been on hold until management funds are available.



*Oak in the Grasslands*





**Figure 3-2.** Timber Inventory Map before acquisition (“Winter Property”)

### 3.1.2 Mixed Deciduous (188.5 acres)

The mixed deciduous habitats contain an inventory of Oregon white oak. Most of the oaks are at least 80 years old, and in some moist draws and protected areas, large legacy oaks can be found that pre-date the European settlement of the Willamette Valley. Other common deciduous found include bigleaf maple (*Acer macrophyllum*), red alder, Oregon ash (*Fraxinus latifolia*), and non-native cherry (*Prunus spp.*).



Mixed Deciduous

Many of these deciduous habitats contain an increasing component of Douglas fir (*Pseudotsuga menziesii*), which provides a rich mixed species habitat, but also provides the means for continued erosion of oak dominance on the Property. In past years, most of these stands have been thinned to remove some of the competing Douglas fir and sustain the oak trees by increasing light to the crowns. There are varying ages of Douglas fir ranging from 60 to 100 years old. Previous work done by Trout Mountain Forestry has girdled fir trees and created downed woody debris with logs/trees that were not marketable and will benefit species on site. Other conifers include western hemlock (*Tsuga heterophylla*) and western red cedar (*Thuja plicata*) are occasionally found in the understory of both mixed deciduous and conifer forest habitats.

### 3.1.3 Conifer Forest (43 acres)

About 43 acres of the property are conifer forest comprised primarily of Douglas fir. These habitats are actually plantations and will be targeted for harvests to restore oak habitats and raise funding for property management. The timber cruise completed in 2009 identified 2.27 million board feet of merchantable Douglas fir within the Property boundaries, primarily located in the Type 1 (mixed conifer/hardwood) and Type 2 (wet hardwoods) stands shown on Figure 3-2 (Ferguson 2009). These trees range in age from 40 to 110 years with significant defect due to mechanical damage from growing through competing oak. The real estate appraisal report completed in 2014 includes a timber valuation by Jerry Witler of Northwest Forestry Services (Witler 2014). This valuation concluded that the merchantable timber onsite is worth \$756,000 with an additional \$26,000 of pre-merchantable timber (located in stand Type 3, plantation, shown on Figure 3-2). That valuation is based on the clear-cut harvest of all tree species outside of riparian buffers.

### 3.1.4 Flowing Water and Riparian Habitats (38 acres)

These are mostly undisturbed, rich riparian forest habitats that are located in the moist soils adjacent to the two small intermittent streams on the Property. The streams are potential habitat for cutthroat trout (*Oncorhynchus clarkii*) and other aquatic organisms that can use them seasonally. The majority of the trees present in the riparian areas are ash with other species including bigleaf and vine maple (*Acer circinatum*), cottonwood (*Populus sp.*), and occasional oak. These habitats have been effectively buffered from forest management activities and have a diverse, mostly native understory.



*Flowing Water and Riparian Habitats*

### 3.2 Special Status, Focal, and Oregon Conservation Strategy Species

OCS special status (non-Endangered Species Act [ESA]), and conservation easement focal species that currently or may exist within the Strategy Habitats found at the Property are shown in Table 3-1. This species list has been updated from the baseline report. See Section 3.4 for ESA-listed or candidate species that may occur on the Property and benefit from the conservation easement.

**Table 3-1.** Special Status, Focal, and Oregon Conservation Strategy Species

Target Species (Scientific Name) <sup>1/</sup>	Status <sup>2/</sup>	Known to Occur	Unknown, but could occur
Fish and Wildlife			
Acorn woodpecker ( <i>Melanerpes formicivorus</i> )	FSC, SS, OCS		X
Black bear ( <i>Ursus americanus</i> )	CE Focal		X
Black-tailed deer ( <i>Odocoileus hemionus</i> )	CE Focal	X	
Bobcat ( <i>Lynx rufus</i> )	CE Focal		X
California myotis ( <i>Myotis californicus</i> )	SS, OCS		X
Chipping sparrow ( <i>Spizella passerina</i> )	SS, OCS	X	
Coastal cutthroat trout ( <i>Oncorhynchus clarkii clarkii</i> )	FSC, SS, OCS		X
Common nighthawk ( <i>Chordeiles minor</i> )	SS, OCS		X
Cougar ( <i>Puma concolor</i> )	CE Focal		X
Northern red-legged frog ( <i>Rana aurora</i> )	FSC, SS, OCS		X
Olive-sided flycatcher ( <i>Contopus cooperi</i> )	FSC, SS, OCS		X
Purple martin ( <i>Progne subis arboricola</i> )	FSC, SS, OCS		X
Red tailed hawk ( <i>Buteo jamaicensis</i> )	CE Focal	X	
Roosevelt elk ( <i>Cervus canadensis roosevelti</i> )	CE Focal		X
Sharp-shinned hawk ( <i>Accipiter striatus</i> )	CE Focal		X
Silver-haired bat ( <i>Lasiorycteris noctivagans</i> )	FSC, SS, OCS		X
Slender-billed white-breasted nuthatch ( <i>Sitta carolinensis aculeate</i> )	SS, OCS		X
Western bluebird ( <i>Sialia Mexicana</i> )	SS, OCS		X
Western brook lamprey ( <i>Lampetra richardsoni</i> )	FSC, SS, OCS		X
Western gray squirrel ( <i>Sciurus griseus</i> )	SS, OCS	X	
Western meadowlark ( <i>Sturnella neglecta</i> )	SS, OCS		X
Willow flycatcher ( <i>Empidonax traillii</i> )	FSC, SS, OCS		X
Yellow-breasted chat ( <i>Icteria virens auricollis</i> )	FS, SS, OCS		X
Plants			
Common camas ( <i>Camassia quamash</i> )	CE Focal	X	
Hazel ( <i>Corylus sp.</i> )	CE Focal		X

1/ Information from CTWSRO 2013, CTWSRO 2014, and the conservation easement (Appendix A)

2/ CE Focal = Species likely to benefit from conservation easement, no other status; FSC = Federal Species of Concern; MBTA = Migratory Bird Treaty Act (16 U.S.C. Sections 703-712); NPW = Nongame Protected Wildlife, per Oregon Administrative Rule 635-044-0130; OCS = Oregon Conservation Strategy Species; SS = State Sensitive

### 3.3 Invasive Species

Invasive species present on the Property include the following:

- Himalayan blackberry (*Rubus armeniacus*) – found on all of the roads and encroaching on the grassland habitat. A site visit in July 2019 determined that Himalayan blackberry has taken over the access roads and made them impassable by foot or vehicle.
- Scotch broom (*Cytisus scoparius*) – Scotch broom presence has increased considerably since the initial baseline survey in 2014 and is now present in about half of the open grassland as well as along the edges.
- False brome (*Brachypodium sylvaticum*) – scattered throughout the area adjacent to the Trappist Abbey. False brome was found on approximately 30 percent of the inventory plots in the grassland habitat, usually at low levels.
- English hawthorn (*Crataegus mongyna*) – low level presence in oak stands and openings.
- Orchard cherry (*Prunus* sp.) – escaped from cultivation, found mainly in small clumps; widely dispersed and difficult to map.
- Shining geranium (*Geranium lucidum*) – nearly ubiquitous on the forest floor throughout the Property.
- Poison-oak (*Toxicodendron diversilobum*) – though a native species, it can be a nuisance; found mainly in oak and oak/fir stands, but has incidental spread into grasslands.

### 3.4 ESA-Listed or Candidate Species

The following table lists the ESA-listed or candidate species that have been found onsite and/or are likely to occur onsite.

**Table 3-2.** ESA-Listed or Candidate Species

Target Species (Scientific Name)	ESA Status	Known to Occur	Unknown, but could occur
Streak-horned lark ( <i>Eremophila alpestris strigata</i> )	Threatened		
Taylor’s checkerspot butterfly ( <i>Euphydryas editha taylori</i> )	Endangered		X
Kincaid’s lupine ( <i>Lupinus sulphureus</i> )	Threatened		X
Nelson’s checkermallow ( <i>Sidalcea nelsoniana</i> )	Threatened		X
Willamette daisy ( <i>Erigeron decumbens</i> var. <i>decumbens</i> )	Endangered		X

### 3.5 Hydrologic Considerations

The only water onsite are intermittent flows during the rainy season (October to March). The culvert installed (date unknown) under the skid road is failing and unpassable. This culvert will need to be removed or replaced in order to facilitate aquatic organism movement in the stream channel when water is present.

### 3.6 Historical, Cultural Resources, and Traditional Use Resources

The long-term history of the area indicates that mixed deciduous forests and grassland habitat types came to dominate the Willamette Valley 7,800 to 11,000 years ago following a shift to a warm, dry climate (Whitlock and Knox 2002). The persistence of oaks despite a climate shift back to more cool and wet conditions over the past 4,000 years may be largely a result of tribal burning practices to keep the landscape open for travel and hunting. Following the collapse of the Kalapuyan populations and the cessation of burning, there has been an almost 90 percent reduction in prairie and savanna (grassland) acreage in the Willamette Valley between 1850 and the present (Hulse et al. 1998).



*Failing Culvert*

### 3.7 Public Access

In accordance with the goals of the WWMP program, the CTWSRO intends to allow public access to the Property. Initial access will be limited to parking at the Trappist Abbey and walking their trail system onto the Property. This has been discussed and approved by the Abbey.

Public recreation will be limited to trails and skid roads and, depending on the first 2 years of monitoring access and evaluating impacts to the Property, the CTWSRO will consider the development of a parking area at the Duniway Road entrance. The potential public access point is shown in Figure 3-3.

Visitors will be required to contact the CTWSRO Willamette Basin Staff to ensure the appropriate personnel are aware of who is on the Property. The Tribes allow access to most of their Conservation Areas in the John Day and Willamette Basins<sup>1</sup>. Their Lands website ([wslands.org](http://wslands.org)) offers an electronic version of the daily access permit, free of charge. Visitor

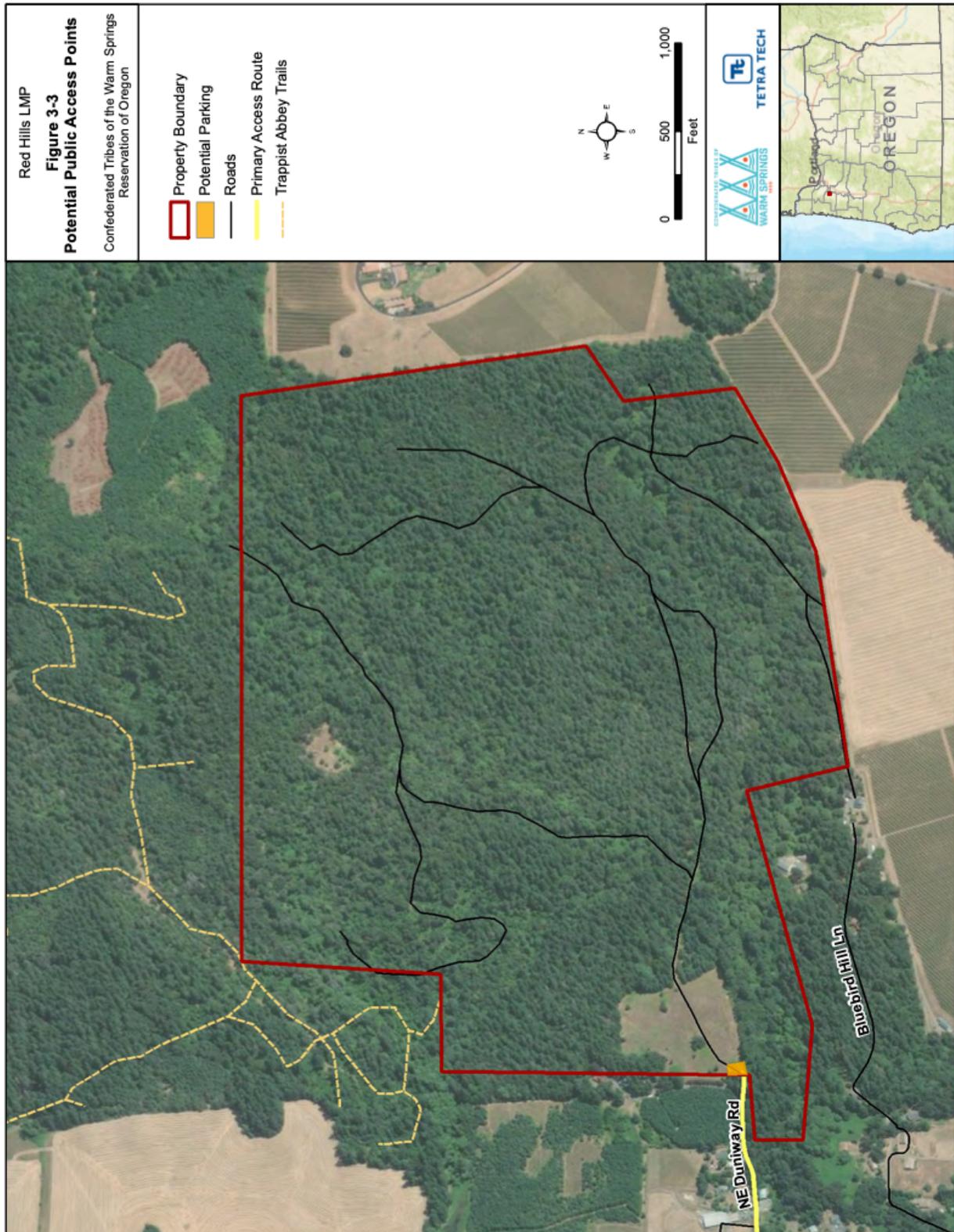
---

<sup>1</sup> In 2020, Tribal Council closed all Conservation Areas to the public due because of COVID-19, and these properties remain closed as of January 2021. Austin Hot Springs is the one exception to Public Access rules, it is not accessible by the public.

information will be recorded, and access permits will be issued to all interested in accessing the Property. Once an onsite kiosk is constructed at Red Hills, paper versions of the permits will be available to fill out upon visit. Permits will ensure neighbors, law enforcement, or other persons of authority that the visitor has proof of permission to access the Property. Access has been at-will, but ongoing monitoring will be required to ensure visitation is not impacting the site.

In 2020, the Regulations for all the Conservation Areas were streamlined for all properties, see Appendix C.

**Figure 3-3.** Potential Public Access Points



R:\PROJECTS\WILMETTE 685\RED HILLS\MAP\SRH Figure 3-3 Public Access.mxd

### 3.8 Fire History and Planned Burns

State and federal records do not show any fires at the Property within recent history (1962 to present). It is well known and discussed in Section 3.6 that Tribes in the area regularly burned these forest openings to keep the grassland habitats intact. The LMP does not call for prescribed burning to release the oak canopy due to the persistent air quality issues within the Willamette Valley (ODEQ 2019). In addition to the potential air quality issues, the Property is located within a smoke-sensitive receptor area (SSRA). The rules for prescribed burning in SSRA zones are described in the Oregon Secretary of State Administrative Rules Chapter 629, Division 48, Smoke Management. In order to meet the State of Oregon’s Air Quality Maintenance Objectives, they ask that all private forestry owners consider methods other than burning for forest fuels reduction. In place of burning, the LMP calls for thinning of Douglas fir and removal of encroaching trees and shrubs.

### 3.9 Threats

#### 3.9.1 Encroaching/Invasive Species

Threats to Conservation Values include the encroachment of Douglas fir grassland and overcrowding of oak in the mixed deciduous and conifer habitat. Threats to the ash (*Fraxinus latifolia*) include the potential invasion of the emerald ash borer (*Agrilus planipennis*).



*Mistletoe in oak branch*

#### 3.9.2 Trespass

Trespassing has been known to occur from the unmonitored northeast corner of the Property. Neighbors have also reported trespass at the main access point. It is hoped that with the establishment of formal access procedures that trespassing will cease.

#### 3.9.3 Climate Change

According to the most recent Oregon Climate Assessment Report, the Willamette Valley and eastern Oregon will see the largest increases in fire risk by mid-century and summer flows may be reduced by as much as 50 percent in some basins (Mote et al. 2019). Drought stress in forests from lower soil moisture in the summer can affect timber productivity (Mote et al. 2019). Each of these stressors could harm the Conservation Values of the Property. Managing the forested habitats for resilience to climate change is an important component of this LMP, which may include sustainable thinning and fuels reduction to support growth of larger trees and reduce the potential for catastrophic burning (see Section 4.1).

## **4. GOALS, OBJECTIVES, AND ACTIONS**

### **4.1 Desired Future Conditions, Goals, and Objectives**

The following sections describe the desired future conditions, goals, and SMART objectives for the Property, starting with those applicable Property-wide followed by the relevant goals and objectives for each applicable habitat type. This initial LMP is written with the intent that there will be a review and revision within 5 years but that some objectives require a longer timescale and therefore are presented with end dates outside of the initial 5 years. This initial LMP is also written with the intent that there will be a forest management plan written by a consulting firm within one year and that habitat types will be updated by that consulting firm. This forest management plan will be drafted in 2021 for BPA and ODFW review. The plan will describe the ten years of oak-release projects with annual or biannual harvests of up to 30-40 acres per year in size, that will aim to generally remove Douglas fir across the property. It will also have strategic prescriptions for fuel-reduction thinning to mix deciduous stands to prevent catastrophic wildfires, without reducing oak presence. The plan will also address landing rehabilitation, post-project planting, weed control, and other details important to land conservation and this LMP.

#### **4.1.1 Property-Wide Goals and Objectives**

In order to acquire the Red Hills Conservation Area, an agreement was reached to forego any Stewardship funding for ongoing property maintenance. Given that a lack of funding has delayed maintenance and management actions, an agreement was reached to use some of the stewardship funds for Little Sweden and Austin Hot Springs to jump-start some activity that will allow development of a timber sale which will create further revenue for management of the Property and to pay for annual property taxes on Red Hills and other WWMP properties. The timber sale will follow the approval of a forest management plan. Maintaining revenue for this Property will be always the primary goal of necessity, as maintaining Conservation Values will be challenging without funding. Periodic, small oak release projects (timber sales) will provide funding for maintenance while restoring oak habitats.

Adequately funded, the overall goals of this Property are to facilitate and manage public access to the Property, enhance CTWSRO ability to exercise treaty rights and access culturally-significant resources, update documentation of existing forest conditions and habitat types, maintain oak habitat by conducting several oak release projects throughout the next ten years, and maintain and improve flowing water and riparian habitats, in accordance with the Conservation Values of the Conservation Easement. The Property will be managed to maintain a mosaic of vegetation communities with an emphasis on preserving, expanding, and enhancing target habitats and associated target plant and wildlife species.

As this plan was written, the COVID-19 pandemic significantly impacted activities and progress at Red Hills. No work was performed on the property at all in 2020. Timeframes below will reflect this lost year.

**Table 4-1.** Desired Future Conditions, Goals and Objectives, and Actions applicable Property-Wide

Goals, Objectives, and Actions	Timeframe	Season
<b>Goal 1: Facilitate and manage public access to the Property</b>		
Objective 1a: Implement public access management rules and actions within three years.	2021-2031	All
Action 1.a.1 – Develop public access rules for the Property (e.g., non-motorized public access only, limited to existing trail and road network). Public access rules shall support CTWSRO treaty rights and all Conservation Values for the Property and be consistent with the conservation easement.	2021-2022	Fall, Spring, Summer
Action 1.a.2 – Design and place informational signs at access points from Trappist Abbey and Duniway Road entrances.	2021-2023	Fall, Spring, Summer
Action 1.a.3 – Install kiosk with liability waivers, Property maps, and Property regulations at the main access point.	2021-2022	Fall, Spring, Summer
Action 1.a.4 – Determine feasibility of installing one parking area for three to four vehicles at the Duniway Road entrance within the Property boundary.	2022-2024	All
Action 1.a.5 – Based on feasibility, install one parking area for three to four vehicles at the Duniway Road entrance within the Property boundary, and install a lockable administrative access gate to the property roads to deter vehicle access.	2022-2024	Spring/ Summer
Action 1.a.6 – Conduct annual monitoring and adaptive management to identify and address public access issues.	2021-2031	Summer
Objective 1b: Maintain the 3.3 miles of existing roads throughout property through mowing and other activities to allow access to equipment to reach forest projects through 2031. Roads serve as pedestrian access trails to the public.	2021-2031	Spring/ Summer
Action 1.b.1 – Remove and monitor invasive species and other vegetation from forest roads to a maximum of a 20-foot width (including the road width) within three years (Figure 4-1, Access Road Clearing), and monitor and manage for adaptive maintenance.	2021-2031	Spring/ Summer
Objective 1.b.2 - Treat invasive species by mowing and herbicide treatments and replace with native understory species to roadsides within the Mixed Deciduous Habitat as forest projects are completed.	2021-2031	All
Action 1.b.3 – Reseed roadsides with native grass/forb mix as-needed after invasive species removal, targeting all areas with invasive species with native grasses by 2031.	2021-2026	Fall, Spring
Action 1.b.4 - Identify and remove any failing culverts within 3 years throughout the Property road system.	2021-2024	
Action 1.b.5 – Add roads to maps posted on website and kiosk maps as a trail system. As timber projects are completed, close un-needed spur roads to maximize habitat on the property.	2022-2031	Fall, Spring, Summer
Action 1.b.6 – Coordinate with Our Lady of Guadalupe Trappist Abbey to explore trail system connection options, in the Northwest corner, may require spur trail development, boundary kiosk to explain differences in landowner regulations.	2028-2031	All

**Table 4-1.** Desired Future Conditions, Goals and Objectives, and Actions applicable Property-Wide (continued)

Goals, Objectives, and Actions	Timeframe	Season
Action 1.b.2 - Monitor for reoccurrence annually and remove as needed.	2023 - 2031	Spring/ Summer
<b>Goal 2: Enhance CTWSRO ability to exercise treaty rights and access culturally-significant resources</b>		

Goals, Objectives, and Actions	Timeframe	Season
Objective 2a: Update LMP within five years based on historical and current fish, wildlife, and plant species known or likely to be present on the Property.	2024-2026	All
Action 2.a.1 – Conduct updated desktop search based on most recently available data for historical and current species’ ranges.	2021-2023	All
Action 2.a.2 – Utilize oral histories and other cultural resources information to identify additional known or likely historical species presence.	2022-2024	All
Action 2.a.3 – Complete regular field surveys to establish current species presence throughout property.	2021-2025	Summer
Action 2.a.4 – Update LMP with desktop and field survey findings.	2026	All
Objective 2b: Update LMP data within five years based on culturally-significant and treaty rights-protected resources on the Property.	2021-2026	All
Action 2.b.1 – Identify, document, and map locations and seasons of historical and current culturally-significant resources and resource gathering on the Property.	2022-2024	All
Action 2.b.2 – Develop public access rules (see Objective 1a) to protect CTWSRO resource gathering at the locations and times identified in Action 2.b.1.	2021-2024	All
Action 2.b.3 – Identify culturally-significant resources that would benefit from restoration actions and develop restoration plans for those resources.	2022-2024	All
Objective 2c: Develop and implement communication and outreach about CTWSRO use of the Property within one year, with outreach continuing for the life of the LMP.	2021-2031	All
Action 2.c.1 – Add informational signs about history and importance of CTWSRO use of the Property to kiosks.	2022-2023	Fall, Spring, Summer
Action 2.c.2 – Communicate to members of the CTWSRO their rights and responsibilities for conducting traditional activities on the Property.	2021-2031	All
Action 2.c.3 – Communicate with management partners (see Section 4.4) regarding the ongoing exercise of treaty rights on the Property and its consistency with the Conservation Values.	2021-2031	All
<b>Goal 3: Update documentation of existing forest and habitat conditions to inform Property-wide management actions.</b>		
Objective 3a – Follow CTWSRO forestry department guidance to assess forest every 10 years by conducting timber cruise within one year, and every 10 years thereafter.		
Action 3.a.1 – Contract with forestry company to create a forest management plan and develop and implement oak release projects over the span of 10 years	2021-2022	Summer, Fall
Action 3.a.2 – Contract with forestry company to conduct a timber cruise of the Property, evaluating timber stands identified in 2009 timber cruise and updating all related data, such as tree species, age class, harvest condition (i.e., merchantable/non-merchantable),	2021-2022	All
Action 3.a.3 – Conduct updated timber cruise every 10 years to provide updated stand information for use in ongoing implementation of the LMP. Update LMP as appropriate with findings.	2030-2031	Summer, Fall
Objective 3b – Update Property maps and GIS layers within 2 years, including habitat cover, roads, weeds, oaks, and other features across the Property.		
Action 3.b.1 – Update habitat mapping, GIS layers, and acreages by re-surveying habitats across the Property	2021-2022	Summer
Action 3.b.2 – Map all mature oak trees on the Property.	2021-2022	Summer, Fall

Goals, Objectives, and Actions	Timeframe	Season
Action 3.b.3 – Map all roads, trails, culverts, and other features of note on the Property.	2021-2022	Summer, Fall

#### 4.1.2 Grassland

Table 4-2 provides the desired future conditions, goals and objectives, and actions to restore the OCS Grassland Habitat on the Property.

**Table 4-2.** Desired Future Conditions, Goals and Objectives, and Actions for Grassland Strategy Habitat

Goals, Objectives, and Actions	Timeframe	Season
<b>Goal 4: Maintain and Improve Grassland Habitat</b>		
Objective 4a: Control at least 80% of invasive scotch broom and other invasive species by annual mowing, burning and/or herbicide treatments in all of the grasslands.	2021-2031	All
Action 4.a.1 – Reduce scotch broom and blackberry area by at least 50% in 5 years through continued treatments.	2021-2026	All
Action 4.a.2 – Conduct annual monitoring for non-native species and implement follow-up treatments as needed using mowing and/or herbicides	2021-2031	All
Action 4.a.3 – If funding, staffing, and conditions allow for a prescribed fire, burn grasslands and treat post fire to convert to native grasses.	2024-2031	All
Objective 4b: Maintain current grassland habitat	2021-2031	All
Action 4.b.1 – Mow field (grasslands) by Duniway Road as needed to control weeds and reduce fuel loads.	2021-2031	All
Action 4.b.2 – Conduct annual monitoring of grassland habitat and implement adaptive management as needed to remove encroaching vegetation using mechanical methods.	2022-2031	All

#### 4.1.3 Mixed Deciduous and Conifer

Table 4-3 provides the desired future conditions, goals and objectives, and actions to restore the OCS Mixed Deciduous and Conifer habitats on the Property.

**Table 4-3.** Desired Future Conditions, Goals and Objectives, and Actions for Mixed Deciduous and Conifer Strategy Habitat

Goals, Objectives, and Actions	Timeframe	Season
<b>Goal 5: Maintain and Improve Mixed Deciduous Habitat</b>		
Objective 5a: Implement oak-release and recovery throughout the forests of the Property as recommended by the forest management plan by removal of Douglas fir by 2031.		
Action 5.a.1 – Following and approved forest management plan and cultural clearances, implement an initial a 30-40 acre timber sale of the plantations and other Douglas fir in the mixed deciduous habitat in adjacent areas in the southwest portion of the Property. Details of this and subsequent treatments will be detailed in the forest management plan.	2021-2022	Fall, Summer

Goals, Objectives, and Actions	Timeframe	Season
<b>Goal 5: Maintain and Improve Mixed Deciduous Habitat</b>	<b>Timeframe</b>	<b>Season</b>
Objective 5a: Implement oak-release and recovery throughout the forests of the Property as recommended by the forest management plan by removal of Douglas fir by 2031.		
Action 5.a.1 – Implement a series of small oak release projects for the rest of the property as per the forest management plan, then use adaptive management techniques to implement subsequent oak release projects in the future. Cuts will be limited to 30-40 acres per year, or as further detailed in the forest plan.	2022-2031	Fall, Summer
Action 5.a.2 – Following the forest management plan recommendations, harvest Douglas fir trees with the goal of increasing the oak canopy and decreasing conifers. Leave snags and large conifers important for wildlife habitat.	2021-2031	Fall, Summer
Action 5.a.3 – Remove non-native trees from habitat, e.g. cherry	2021-2031	Fall, Summer
Action 5.a.4 – Thin stands, as recommended by the forest management plan, to reduce fuel loads to avoid catastrophic wildfires.	2021-2031	All
<b>Goal 6: Reduce and Remove Conifer Habitat</b>	<b>Timeframe</b>	<b>Season</b>
Objective 6: Convert conifer plantations to oak habitat by harvesting and replanting at 30-40 acres per year until plantations are removed from the property and oak habitat is thriving, as per forest management plan.		
Action 6.1 – In accordance with Action 5.a.1, include conifer units in oak release projects and target for removal, limiting to 40 acres per year.	2021-2031	Fall, Summer
Action 6.2 – Replant treated conifer stands with oak and other native deciduous trees and plants.	2022-2031	Spring, fall
Action 6.3 – Control weeds as stands mature post-disturbance.	2022-2031	All

#### 4.1.4 Flowing Water and Riparian Habitats

Table 4-4 provides the desired future conditions, goals and objectives, and actions to restore the OCS Flowing Water and Riparian Habitat on the Property. All oak expansion and enhancement activities will have the Riparian Management Area (RMA) buffer required by the Oregon Administrative Rules (Chapter 629, Division 635). Areas identified on Figure 4-1 for oak expansion and oak stand improvement were conservatively set at least 75 feet away from the stream centerline due to the absence of available spatial data to measure 50 feet from the ordinary high-water mark.

**Table 4-4.** Desired Future Conditions, Goals and Objectives, and Actions for Flowing Water and Riparian Strategy Habitat

Goals, Objectives, and Actions	Timeframe	Season
<b>Goal 7: Maintain and Improve Flowing Water and Riparian Habitats</b>		
Objective 7a: Conduct stream surveys within two years to better understand existing conditions.		
Action 7.a.1 – Survey all streams and springs include geotagging and attribute tables in data sets in order to carefully plan buffered areas.	2021-2023	Fall, Spring, Summer
Objective 7b: Monitor and control invasive plants, targeting 75% annually.		
Action 7.b.1 – Annual monitoring and removal of invasive weeds throughout the entire Flowing Water and Riparian Strategy habitat.	2021-2031	Spring, Summer, Fall

## **4.2 Timber Sale Actions**

As stated in Section 4, funding must be raised to manage the Property. Once approved, the Tribes will solicit proposals from forest consultants. The selected consultant will write a forest management plan and take the lead developing timber sales for at least five years. The initial harvest will be a 40-50 acre sized target. Timber sales will focus harvest on Douglas-fir trees found in both mixed deciduous and conifer forest habitats. These cuts will decrease the conifer forest habitat, allowing for oak establishment. They will also aid in much-needed oak release on the Property.

Subsequent treatments would be annual or as recommended by the forest plan and would continue until the property treatment is complete.

## **4.3 Past and Planned Restoration Funding**

There is no history of restoration funding being used on the Property. Future funding opportunities could come from timber sales, and agencies that have funded oak restoration in the past including Oregon Watershed Enhancement Board, Oregon Wildlife Foundation, and the Natural Resource Conservation Service.

## **4.4 Conservation Programs**

The Property was part of a larger Natural Resource Conservation Service, Regional Conservation Partnership Program grant but withdrew due to staffing and absence of match funding. It is hoped that the CTWSRO will be able to re-enroll in the future.

## **4.5 Management Partners**

Current and potential management partners include the following:

- The Trappist Abbey (management plan review and input)
- Yamhill Partners for Land and Water (management plan review and input)
- ODFW (technical assistance, management plan review, monitoring)
- BPA (management plan review and enforcement)
- U.S. Fish and Wildlife Service (USFWS) Partners for Fish and Wildlife Program (restoration guidance and possible funding)

## **4.6 Evaluation and Monitoring**

The Conservation Values of the Red Hills Conservation Area will be monitored routinely and managed based on the data collected. The Strategy Habitats identified in the Oregon Conservation Strategy (OCS) (2016) will be monitored biennially beginning in 2021 and occur in 2023, 2025, 2027, and 2029 to maintain and monitor desired conditions. The following target species, which are also culturally significant species, will be monitored every three years

beginning in 2021 and occurring in 2024, 2027, and 2031. The following table illustrates this timeline.

**Table 4-5. Conservation Values Monitoring Schedule**

Type of Conservation Value		Monitoring Schedule	
Strategy Habitat	Target Species	Timing of Monitoring	Type of Monitoring
Grassland	Chipping Sparrow, Streak-horned Lark <sup>2</sup> , Taylor’s checkerspot butterfly	Biennial (2022, 24, 26, 28, 30)	Photopoint monitoring, species inventory
Flowing Water and Riparian Habitats	Northern Red legged Frog, Yellow-breasted Chat	Biennial (2022, 24, 26, 28, 30)	Photopoint monitoring, species inventory
Mix Deciduous Forest	Acorn Woodpecker, Blacktail Deer, Roosevelt elk, Slender-billed Nuthatch, Western Gray Squirrel	Every three years (2022, 25, 28)	Photopoint monitoring, species inventory
All	NA	Summer 2024-2025, repeat 2030-2031	Habitat, road, feature mapping

#### 4.7 Income Generating Activities

As detailed in Section 4, the proceeds from planned timber harvest are intended to supply management funding while providing the restoration benefit of releasing the oak canopy.

#### 4.8 Restoration and Management Approach

The restoration and management approach presented in this LMP does not differ from the pre-acquisition discussions.

### 5. EASEMENT RESTRICTIONS AND PROHIBITIONS

#### 5.1 Prohibited Uses and Exemptions

Section II.K of the conservation easement details 15 prohibited uses of the Property (Appendix A). BPA and the CTWSRO acknowledge in the easement that any activity that may materially harm or materially interfere with one or more of the Conservation Values is prohibited, and therefore, the list identified in Table 5-1 is not exhaustive. In general, this LMP is designed to

<sup>2</sup> Not expected to be encountered due to habitat

maintain or enhance the Conservation Values and therefore complies with the conservation easement. LMP compliance with the listed prohibitions is described in Table 5-1 below. Actions described in Section 4.1 of this LMP would comply with 13 of the 15 listed easement prohibitions. The specific conservation purpose for each exception is provided in Table 5-1.

**Table 5-1. Summary of Easement Prohibitions and Compliance**

Summary of Easement Prohibitions	Will actions be in compliance for the duration of the Management Plan? If No, please explain and include mitigating activities.
<p><b>1. Residential, Commercial or Industrial Uses.</b> Any residential, commercial, or industrial uses of the Protected Property is prohibited, including timber harvesting, grazing of livestock, vineyards, and agricultural production, except for sustainable natural forest management practices implemented under a forest stewardship plan prepared by a forestry expert which is intended to maintain or improve the oak savanna, oak woodland and conifer-dominated forest habitats and which is approved by BPA and is incorporated in the Management Plan.</p>	<p><b>Yes</b>, timber harvest will be limited to forest habitat stewardship to improve the oak savanna and oak woodland habitats, and/or targeted sustainable harvest as detailed in a forest stewardship plan prepared by a forestry professional to provide revenue for ongoing management of this protected Property. Actions will be in compliance for the duration of the LMP.</p>
<p><b>2. Construction of Buildings, Facilities, Fences or Other Structures.</b> Construction of new buildings, facilities, fences or other structures is prohibited, except for a boundary fence as deemed appropriate in the Management Plan. Repair, maintenance, or replacement of facilities, fences or structures identified in the Baseline Documentation Report are permitted at the same location and within the existing footprint of such structures.</p>	<p><b>No</b>. In support of reasonable public and tribal access, a small parking area for three to four vehicles may be constructed in the southwest corner of the Property, as described in Sections 3.7 and 4.1 of this LMP. Associated fencing and an access gate may also be added. Once feasibility is assessed, CTWSR will consult with BPA and ODFW by providing details and gaining approval of the parking area.</p>
<p><b>3. Utilities.</b> Except as provided for in Section II.J.2, the installation or relocation of new public or private utilities, including electric, telephone, or other communications services is prohibited except where reasonably necessary to advance the Purpose of the Conservation Easement and subject to Grantee's approval. Existing utilities on, over, or under the Protected Property may be maintained, repaired, removed or replaced at their current location as that location is documented in the Baseline Documentation Report.</p>	<p><b>Yes</b>, no installation or relocation of utilities is proposed. Existing water and electric utility-related agreements are described in Section 2.8 of this LMP. Actions will be in compliance for the duration of the LMP.</p>
<p><b>4. Signs.</b> Except for no trespassing signs, for sale signs, signs identifying the owner of the Protected Property, signs identifying permitted public access, safety and liability waiver as approved in the Management Plan, and signs that may be erected by the Grantee identifying the Purpose of the Protected Property, all other signs, advertisements, and billboards of any nature are prohibited. The permitted signs may not exceed 15 square feet in size.</p>	<p><b>Yes</b>, all existing and planned signs at the Property fall within the allowed exceptions: signs identifying the owner of the Property, signs identifying appropriate public access, safety and liability information, and signs explaining the purpose and conservation values of the protected Property (see Section 4.1). Actions will be in compliance for the duration of the LMP.</p>
<p><b>5. Waste.</b> Dumping, collecting, recycling, accumulating, or storing of trash, refuse, waste, sewage, bio-solids, or other debris is prohibited.</p>	<p><b>Yes</b>, no onsite waste storage or management is proposed. Actions will be in compliance for the duration of the LMP.</p>

**Table 5-1. Summary of Easement Prohibitions and Compliance (continued)**

Summary of Easement Prohibitions	Will actions be in compliance for the duration of the Management Plan? If No, please explain and include mitigating activities.
<p><b>6. Mining.</b> The exploration, development, mining or extraction of soil, sand, loam, gravel, mineral, oil, gas, or other substance from the surface or subsurface of the Protected Property is prohibited.</p>	<p><b>Yes</b>, no mining is proposed, and actions will be in compliance for the duration of the LMP.</p>

Summary of Easement Prohibitions	Will actions be in compliance for the duration of the Management Plan? If No, please explain and include mitigating activities.
<p><b>7. Topography.</b> Altering the existing topography of the Protected Property by digging, plowing, disking, or otherwise disturbing the surface or subsurface is prohibited.</p>	<p><b>Yes</b>, no alteration of the existing topography is proposed. Actions will be in compliance for the duration of the LMP.</p>
<p><b>8. Watercourses/Wetlands.</b> Unless part of a restoration project approved in the Management Plan, draining, dredging, channeling, filling, leveling, pumping, diking, impounding or any other alteration of any watercourses, ponds, seeps, bogs, springs, wetlands, or any seasonally wet area is prohibited, as is altering or tampering with existing water control structures or devices.</p>	<p><b>Yes</b>, no form of water resource alteration is proposed. Actions will be in compliance for the duration of the LMP.</p>
<p><b>9. Vegetation.</b> Unless part of a restoration project approved in the Management Plan or part of approved sustainable natural forest management practices, the cutting, trimming, shaping, killing, or removal of any vegetation from the Protected Property, except for noxious weeds, is prohibited.</p>	<p><b>No</b>. While vegetation management will focus on weed removal, oak habitat restoration, and sustainable forest management as described in Section 4.1 of this LMP, poison oak may also need to be removed. Poison oak control is in support of the health and safety of those working to maintain and enhance the Conservation Values of the Property.</p>
<p><b>10. Exotic Species.</b> The introduction, cultivation, or use of exotic plant or animal species on the Protected Property is prohibited. Exotic plants include non-native invasive plant species.</p>	<p><b>Yes</b>, since no exotic species will be introduced, cultivated, or used on the Property, actions will be in compliance for the duration of the LMP.</p>
<p><b>11. Roads and Impervious Surfaces.</b> Construction of new roads and paving of any existing road not paved or otherwise covered in an impervious material as of the Effective Date is prohibited. Existing roads identified in the Baseline Documentation Report may be maintained and repaired in their current condition and within their existing footprint as identified in the Report.</p>	<p><b>Yes</b>. No paved roads are proposed, and existing unpaved skid roads will only be maintained or cleared as needed for sustainable forest management as set out in a forest stewardship plan. Actions will be in compliance for the duration of the LMP.</p>
<p><b>12. Vehicle Use.</b> The use of motorized vehicles is prohibited, except as necessary to carry out activities approved by the Grantee, or for limited, de-minimus, non-commercial recreational uses such as hunting or bird watching if those activities are approved uses in the Management Plan.</p>	<p><b>Yes</b>. Use of motorized vehicles would be limited to those required for implementation of restoration actions and sustainable forest stewardship as described in Section 4.1 of this LMP. Actions will be in compliance for the duration of the LMP.</p>
<p><b>13. Subdivision.</b> The legal or "de facto" division, subdivision or partitioning of the Protected Property is prohibited.</p>	<p><b>Yes</b>, no legal or "de facto" division, subdivision, or partitioning of the Property is proposed. Actions will be in compliance for the duration of the LMP.</p>
<p><b>14. Grant of Rights.</b> The granting of any property interest or rights in the Protected Property, including easements, permits, licenses, and leases, without the prior written consent of the Grantee is prohibited, which consent shall not be unreasonably withheld.</p>	<p><b>Yes</b>, no granting of Property interest or rights in the Property is proposed. Actions will be in compliance for the duration of the LMP.</p>
<p><b>15. No Effect on Tribal Rights.</b> In providing funding to the Grantor, BPA is not altering, diminishing, modifying or expanding the legal rights, authority, or jurisdiction of any Indian tribe whether with regard to natural resource management or otherwise, and no authority is implied by this Conservation Easement with regard to such rights, authority or jurisdiction. Grantor will not claim in any forum or context that BPA's funding, described in section II.A. above, the United States' acceptance of this grant, or Oregon's recognition of it, bears on the nature or extent of the Grantor's off-reservation rights.</p>	<p><b>Yes</b>, the CTWSRO does not claim that BPA's funding bears on the nature or extent of its off-reservation rights. Actions will be in compliance for the duration of the LMP.</p>

## 5.2 Environmental Regulations

A comprehensive environmental permitting review would be conducted once more detailed restoration plans are completed to ensure compliance with all applicable local, state, and federal laws and regulations. The following provides an overview of primary regulatory considerations:

- **Oregon Forest Practices Act:** All forest management recommendations must comply with the Oregon Forest Practices Act as administered by the Oregon Department of Forestry (ODF). The laws are found in the Oregon Revised Statutes Chapter 527 and the Oregon Administrative Rules contain rules for implementing the laws, found mainly in Chapter 629, Division 600 series. Most forest operations require filing of Notifications of Operations and a 15-day waiting period. The regulations primarily address reforestation requirements after clearcutting and restrictions on harvesting near fish-bearing streams. Restocking of the forest will most likely not be required for the thinning proposed in this plan; however, this would require ODF's concurrence. The streams on this Property are most likely classified as small Type F streams because of the potential for use by cutthroat trout when there are instream flows (OFRI 2018). The RMA adjacent to small Type F streams is set at 50 feet on either side (OAR 629-635-0310). General vegetation retention requirements for Type F streams would also apply (OAR 629-642-0100). The riparian buffer identified on Figure 4-1 is a conservative 75 feet on either side of the stream centerline, because spatial data to measure from the ordinary high-water mark is not available at this time.
- **Clean Water Act:** CTWSRO would consult with the U.S. Army Corps of Engineers (USACE) to determine needed compliance under Section 404 of the Clean Water Act, and any other relevant USACE rules and regulations for in-channel work related to the culvert.
- **ODFW:** All in-water work would follow ODFW in-water work windows as applicable to protect fish and wildlife resources. The in-water work window for upstream tributaries to the Yamhill River is July 15 to September 30 (ODFW 2008).
- **ESA:** Because there are documented and potential ESA-listed species that utilize the Property, the CTWSRO would consult with USFWS and ODFW to comply with Section 7 under the ESA.
- **National Historic Preservation Act:** Prior to ground-disturbing activities, the CTWSRO would consult with Oregon's State Historic Preservation Office and conduct any cultural resource surveys as required to comply with Section 106 requirements under the National Historic Preservation Act of 1966.
- **Migratory Bird Treaty Act:** All grassland-disturbing activities shall take place after the primary bird nesting season, which is April 1 – July 15 in the Willamette Valley.

### 5.3 Protection from Harm

To date, no measures have been needed to protect the Property from harm. Future actions will include the posting of visitor rules and information about the oak habitats and what makes them unique.

### 5.4 Additional Information

No additional information for the LMP is needed at this time.

## 6. REFERENCES

- BPA (Bonneville Power Administration) and State of Oregon. 2010. Willamette River Basin Memorandum of Agreement Regarding Wildlife Habitat Protection and Enhancement between the State of Oregon and the Bonneville Power Administration. Signed by Stephen Wright, Administrator and Chief Executive Officer (BPA), Theodore R. Kulongoski, Governor (State of Oregon), and Roy E. Elicker II, Director (Oregon Department of Fish and Wildlife. October 22, 2010. Available at: [https://www.dfw.state.or.us/wildlife/willamette\\_wmp/docs/Memo\\_of\\_Agreement.pdf](https://www.dfw.state.or.us/wildlife/willamette_wmp/docs/Memo_of_Agreement.pdf).
- CTWSRO (Confederated Tribes of the Warm Springs of Oregon). 2013. Willamette Wildlife Mitigation Program FY 2014 Project Application. Red Hills Conservation Area. Prepared by Kelly Warren, CTWSRO Branch of Natural Resources.
- CTWSRO. 2014. Red Hills Conservation Area. Baseline Documentation Report. Prepared by Kelly Warren, Willamette Basin Coordinator, Branch of Natural Resources, CTWSRO and Scott Ferguson, Trout Mountain Forestry. November, 2014.
- Ferguson, Scott, ITS Management, Inc. 1993. Winter Forest: Stewardship Management Plan. March.
- Ferguson, Scott, Trout Mountain Forestry. 2009. Cruise Report: Winter Property; Section 32, Township 3 South, Range 3 West, W.M. Yamhill County. October 13, 2009.
- Hulse, D., A. Branscomb, J.G. Duclos, S. Gregory, S. Payne, D. Richey, H. Dearborn, L. Ashkenas, P. Minear, J. Christy, E. Alverson, D. Diethelm, and M. Richmond. 1998. *Willamette River Basin: A planning atlas*, ver 1.9. Seattle: University of Washington Press.
- Mote, P.W., J. Abatzoglou, K.D. Dello, K. Hegewisch, and D.E. Rupp. 2019. Fourth Oregon Climate Assessment Report. Oregon Climate Change Research Institute. Available at: <http://www.occri.net/media/1095/ocar4full.pdf>.
- NHD (National Hydrography Dataset). 2019. Geospatial Data Gateway. Accessed online at: <http://datagateway.nrcs.usda.gov/> in July 2019.
- OCS (Oregon Conservation Strategy). 2016. Oregon Department of Fish and Wildlife, Salem, Oregon. Accessed at <http://oregonconservationstrategy.org> in July 2019.

- ODEQ (Oregon Department of Environmental Quality). 2019. Air Quality Monitoring Data. Accessed online at: <https://oraqi.deq.state.or.us/report/SingleStationReport>. Accessed on November 11, 2019.
- ODFW (Oregon Department of Fish and Wildlife). 2008. Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources. June 2008. Available at: [https://www.dfw.state.or.us/lands/inwater/Oregon\\_Guidelines\\_for\\_Timing\\_of\\_%20InWater\\_Work2008.pdf](https://www.dfw.state.or.us/lands/inwater/Oregon_Guidelines_for_Timing_of_%20InWater_Work2008.pdf).
- OFRI (Oregon Forest Resources Institute). 2018. Oregon's Forest Protection Laws, An Illustrated Manual, revised 3rd edition. Accessed at: <https://oregonforests.org/pub/oregons-forest-protection-laws-illustrated-manual>.
- Partners in Flight. 2019. Avian Conservation Assessment Database, version 2019. Available at <http://pif.birdconservancy.org/ACAD>. Accessed on August 15, 2019.
- Whitlock, C., and M. Knox. 2002. Prehistoric Burning in the Pacific Northwest: Human Versus Climatic Influences. In *Fire, Native Peoples, and the Natural Landscape*, ed. T. R. Vale, 195-231. Washington, DC: Island Press.
- Witler, J. 2017. Timber Appraisal. Little Sweden Conservation Area, Marion County, Oregon. By Jerry Witler, ACF. Forester, Northwest Forestry Services. Tigard, Oregon. April 21, 2017.

**APPENDIX A**  
**DEED OF CONSERVATION EASEMENT**

**AFTER RECORDING, RETURN TO:**

Bonneville Power Administration  
Real Property Services, TERR-3  
Re: WILWF-WL-18  
P.O. Box 3621  
Portland, OR 97208-3621

Yamhill County Official Records **201416331**  
DMR-EDMR  
Stn=6 SUTTONS **12/29/2014 03:18:41 PM**  
24Pgs \$120.00 \$11.00 \$5.00 \$20.00 **\$156.00**

I, Brian Van Bergen, County Clerk for Yamhill County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.

Brian Van Bergen - County Clerk

**DEED OF CONSERVATION EASEMENT**

THIS DEED OF CONSERVATION EASEMENT is executed this 29<sup>th</sup> day of December, 2014, by the Confederated Tribes of the Warm Springs Reservation of Oregon ("CTWS" or "Grantor"), headquartered in Warm Springs, Oregon at P.O. Box C, Warm Springs, OR 97761, in favor of the United States of America ("United States" or "Grantee"), acting by and through the Department of Energy, Bonneville Power Administration ("BPA"), headquartered in Portland, Oregon, at P.O. Box 3621, Portland, OR 97208-3621. The Grantor and Grantee together are referred to as the "Parties."

**I. RECITALS**

- A. BPA is a power-marketing agency having legal obligations under the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §§ 839-839h ("Northwest Power Act") to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development and operation of Federal hydroelectric projects of the Columbia River and its tributaries, in a manner consistent with the purposes of the Northwest Power Act, the Fish and Wildlife Program adopted by the Pacific Northwest Electric Power and Conservation Planning Council under subsection 4(h) of the Northwest Power Act (16 U.S.C. § 839b(h)), and other environmental laws, including the Endangered Species Act, 16 U.S.C. §§ 1531-1544 ("ESA"). BPA has the authority pursuant to the Northwest Power Act, 16 U.S.C. §§ 839b(h) and 839f(a), the Federal Columbia River Transmission System Act, 16 U.S.C. § 838i(b), or the Bonneville Project Act, 16 U.S.C. §§ 832a(c) through (f), to acquire real estate or to assist in the acquisition and transfer of real property interests.
- B. BPA and the State of Oregon entered into a programmatic Memorandum of Agreement, dated October 22, 2010 ("MOA"), in which BPA agreed to fund the acquisition of real property interests through the State of Oregon to permanently protect and enhance important fish and wildlife habitat in the Willamette Basin, where it either currently exists or at one time existed, in exchange for supporting BPA's partial fulfillment of Northwest Power Act and ESA obligations, and in exchange for rights of enforcement, entry, and inspection to the United States and its assigns.

FIRST AMERICAN TITLE 2238496

- C. CTWS is a federally recognized tribe and sovereign entity with rights reserved in the Treaty with the Tribes of Middle Oregon of June 25, 1855 (12 Stat. 963) and is a qualified entity under the MOA.
- D. BPA in accordance with the mutual commitments of the MOA, a copy of which is available from the BPA Manager, Real Property Services, P.O. Box 3621, Portland, OR 97208-3621, provided funding to the Grantor to acquire fee title ownership of certain real property, the Red Hills Property (“**Protected Property**”) in Yamhill County, Oregon. The Protected Property has important features that help BPA meet its statutory obligations to the public under the Northwest Power Act and other environmental laws.

## II. AGREEMENT

- A. **Conveyance and Consideration.** The Grantor, for and in consideration of the funding in the amount of three million, six hundred and twenty-one thousand dollars (\$3,621,000.00) in U.S. dollars which BPA provided to acquire fee title ownership of the Protected Property, hereby voluntarily conveys and warrants to the United States of America and its assigns a perpetual easement for conservation purposes (“**Conservation Easement**”) over, under, upon, in and across the Protected Property, legally described in Exhibit A (Legal Description), attached and incorporated by reference, and shown in Exhibit B (Map) attached and incorporated by reference, created and implemented under applicable state and federal law, and creating an interest in property intended to be a conservation easement under ORS 271.715-271.795. The Parties intend this Conservation Easement to be a perpetual and irrevocable easement in gross, and further intend that its terms and conditions, set forth below, create equitable servitudes and covenants running with the land, binding the Grantor and the Grantor’s successors and assigns for the benefit of the United States.
- B. **Purpose.** The purpose (“**Purpose**”) of this Conservation Easement is to protect and conserve, and as appropriate, to allow for the restoration or enhancement of the **Conservation Values** (Section C, below) of the Protected Property. As such, the Purpose of this Conservation Easement includes the prevention of any use of the Protected Property that will materially harm or materially interfere with any of the Conservation Values of the Protected Property. The Grantor intends that this Conservation Easement will confine the use of the Protected Property to activities that comply with the Conservation Easement, including the Purpose of the Conservation Easement and the approved Management Plan. BPA shall have the right, but not the obligation, to enforce any and all terms of this Conservation Easement. Any use of or activities on the Protected Property by the Grantor and by the Grantee as set forth in Section II.L shall be consistent with the Purpose of this Conservation Easement. In the event that there is a conflict between the Grantor’s uses or activities and the Purpose of Conservation Easement, the Purpose of the Conservation Easement shall be construed broadly and shall prevail over any conflicting uses or activities of the

Grantor.

**C. Conservation Values.** The Protected Property, in its present state, comprises approximately 279 acres of native oak woodlands, oak savanna, upland prairie and riparian forest and is managed as wildlife habitat. The Conservation Values of the Protected Property meet the broad definitions of values provided by certain statutes; it has significant natural, aesthetic, scientific and educational values as a “relatively natural habitat of fish, wildlife, or plants or similar ecosystem,” as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code; and has natural, scenic, and open space values as those terms are used in the Oregon Revised Statute 271.715. The Conservation Values of the Protected Property that either existed or currently exist specifically include the following, recognizing that such Conservation Values may periodically fluctuate or trend toward long-term change, due to natural events such as wildfire, insect or disease, and long-term climate change, as well as human-initiated enhancement or restoration actions:

1. Fish and wildlife species, including but not limited to several migratory and resident bird species such as Acorn woodpecker (*Melanerpes formicivorus*), Streaked-horned lark (*Eremophila alpestris strigata*), Yellow-breasted chat (*Icteria virens*), Chipping Sparrow (*Spizella passerine*), Slender Billed nuthatch (*Sitta carolinenses aculeate*), and White-breasted nuthatch (*Sitta carolinensis*) and Western Gray Squirrel (*Sciurus griseus*).
2. Habitat providing biological and physical components to support the fish and wildlife species, including a large block of high quality oak woodland and riparian habitat, a rare plant community identified as a priority habitat for preservation and restoration in the Oregon Wildlife Conservation Strategy adopted by ODFW. The Protected Property has a diversity habitat which currently provides essential habitat for numerous Oregon Conservation Strategy species and has restoration potential for several others.
3. Contiguous habitat for locally rare species requiring more range such as as cougar (*Puma concolor*) and black bear (*Ursus americanus*) and connectivity to the adjacent 1,311 acre Trappist Abbey Conservation Easement held by BPA, of similar habitat types. The White Oak habitat includes both oak savanna and oak woodland microhabitats. Other habitats present include Wet Gallery Forest and Riparian Forest. The forest understory is intact with a healthy native shrub layer.

**D. Water Rights.** To the extent Grantor has or after-acquires water rights, Grantee shall ensure that the Grantor shall not abandon any of the water rights appurtenant to the Protected Property by virtue of non-use and that the Grantor may not transfer, change the point of diversion, change the purpose of use, or otherwise significantly change any Protected Property water right without receiving prior written approval from BPA. At the time of this grant, the Protected Property does not have any appurtenant water rights and there is no known history of water rights associated with the Property. There are two seasonal first-order streams (tributaries of Millican Creek) that originate on the Protected Property and flow west.

- E. Baseline Documentation.** The Grantor and BPA agree that the characteristics and conditions of the Protected Property at the time of this grant are documented in a **Baseline Documentation Report**, signed and acknowledged by the Parties; the acknowledgment is Exhibit C, attached and incorporated by reference.
- F. Reserved Uses.** The Grantor reserves, for itself and its successors and assigns, the right to use the Protected Property in any and all ways which are consistent with the Purpose of this Conservation Easement and which are not otherwise prohibited by this Conservation Easement, including but not limited to: the right to record title, the right to convey, transfer, and otherwise alienate title to these reserved rights in accordance with Sections II.K.14. and II.Q; the right of quiet enjoyment of the rights reserved in Protected Property; and the right to prevent trespass and control access.
- G. Management Plan.** Within 18 months of this grant, the Grantor shall develop a management plan (**Management Plan**) for the Protected Property to describe the uses and activities that the Grantor expects to undertake or allow to be undertaken on the Protected Property, including any restoration, enhancement, operation and maintenance, or any other activities or uses. The Grantor intends to address open space management and oak savanna restoration in the Management Plan. The Grantor shall include in the Management Plan any limitations or prescriptions for these uses and activities necessary to ensure the Purpose of this Conservation Easement. The Grantor shall also identify in the Management Plan the allowable use and access by the public of the Protected Property if public access is appropriate.

In developing the draft Management Plan, Grantor will solicit and incorporate as Grantor deems appropriate the views of ODFW, as well as interested natural resource management agencies, local governments, and parties. Grantor will submit documentation showing the nature and extent of such coordination with any draft Management Plan to BPA and ODFW. BPA shall review that draft Management Plan and any proposed amendments for conformance with the MOA, this Conservation Easement, and applicable laws. BPA must approve the Management Plan or any amendments prior to its implementation. Prior to review of the Management Plan by BPA, the Grantor shall not undertake any ground-disturbing activities on the Protected Property without prior notice to and written approval by BPA. The Grantor shall make the final approved Management Plan, and any approved amendments, available to the public.

- H. Public Access.** The Grantor shall, in the sole judgment of Grantor, provide reasonable access to the Protected Property to the general public, unless the Grantor and BPA determine such access may materially impair one or more of the Conservation Values of the Protected Property or interfere with the Purpose of the Conservation Easement. The Grantor will address access to the Protected Property in the Management Plan.
- I. Annual Report.** The Grantor shall annually submit a report to BPA that describes, at

a minimum any: changes in real property interests (including water rights) in the Protected Property; uses or activities undertaken, in progress, or planned; violations or threatened violations of the Conservation Easement; and enforcement action taken. The Grantor shall provide the initial annual report in the fifteenth month after the closing date of the acquisition of the Protected Property, and then annually on that initial report date anniversary thereafter, unless otherwise agreed by BPA.

## **J. Rights Conveyed to Grantee**

**1. General Rights.** The Grantor has conveyed this Conservation Easement to the United States. BPA is the acquiring federal agency having jurisdiction and control over this Conservation Easement. Subject to valid existing rights of record and those rights specifically reserved to the Grantor, all development rights associated with the Protected Property are vested in Grantee. In addition to any other rights granted to the Grantee pursuant to this Conservation Easement, Grantee has the right to:

- a. Access and inspect the Protected Property at all reasonable times upon reasonable notice (which may be by phone or electronic mail) to assure compliance with this Conservation Easement;
- b. Access the Protected Property upon reasonable notice (which may be by phone or electronic mail) to survey the fish and wildlife habitat and evaluate the status of the Conservation Values;
- c. Prevent any activity on the Protected Property inconsistent with this Conservation Easement the MOA, or the Management Plan and to require the restoration of areas or features of the Protected Property that are damaged by any inconsistent activity; and
- d. Should the Grantor fail to do so, to retain and maintain the right to use any and all of the water rights associated with the Protected Property, and to protect those rights from threat of abandonment or forfeiture under relevant law; Grantee may, after providing 90 days advance written notice to the Grantor enter upon the Protected Property and take actions reasonably necessary to maintain the validity of the water rights.

## **2. Future Negotiations for Transmission Right-of-Way Easement.**

If BPA, after conducting necessary environmental reviews, determines that a transmission right-of-way easement is necessary or appropriate over the Protected Property, Grantor shall negotiate a perpetual transmission right-of-way easement with BPA. BPA represents that any such transmission right-of-way easement will only include transmission lines, poles, and structures (but does not include substations); ancillary communication and transmission equipment appurtenant to those transmission lines, poles, and structures; and access roads only where reasonably necessary. Moreover, a condition of siting a new transmission easement on the Protected Property is that the facility must not have permanent, long-term significant effects on the Conservation Values of the Protected Property.

BPA shall initiate negotiation of the terms and conditions of the transmission right-of-way easement by providing draft transmission right-of-way easement language. In the negotiations and the final transmission right-of-way easement, BPA shall, at a minimum:

- a. Recognize the purposes for which the Protected Property was acquired.
- b. Use reasonable efforts to accommodate Grantor's preferences for siting any transmission facilities.
- c. Use reasonable efforts to accommodate Grantor's preferences for siting, designing, using, and maintaining any necessary access road(s).
- d. Fund appropriate mitigation measures identified during negotiations or as part of the environmental analysis for the transmission right-of-way under NEPA, the ESA, the Clean Water Act, the National Historic Preservation Act, or any other applicable state or federal laws.

The Parties will negotiate the terms and conditions of the transmission right-of-way easement in good faith, in accordance with applicable law. If negotiations fail, or a right-of-way easement is not finalized in a timely manner (where "timely" means enough time to accommodate BPA's need for a final decision, allowing at least 60 business days for negotiation and finalization of a transmission right-of-way easement), then BPA's authorities to pursue a necessary or appropriate transmission right-of-way easement are unaffected by this Conservation Easement.

**K. Prohibited Uses.** The Grantor shall manage the Protected Property to conserve and protect the Conservation Values on behalf of BPA, preventing any and all uses of the Protected Property that are inconsistent with the Purpose of this Conservation Easement. The Grantor may also manage the Protected Property to restore or enhance the Conservation Values, provided the restoration or enhancement activities are approved by BPA, either in an approved Management Plan or by prior written approval. Prohibited uses of the Protected Property include those specifically listed below. The Parties intend that any activity that may materially harm or materially interfere with one or more of the Conservation Values is prohibited, and therefore the list identified below is not exhaustive.

1. *Residential, Commercial or Industrial Uses.* Any residential, commercial, or industrial uses of the Protected Property is prohibited, including timber harvesting, grazing of livestock, vineyards, and agricultural production, except for sustainable natural forest management practices implemented under a forest stewardship plan prepared by a forestry expert which is intended to maintain or improve the oak savanna, oak woodland and conifer-dominated forest habitats and which is approved by BPA and is incorporated in the Management Plan.
2. *Construction of Buildings, Facilities, Fences or Other Structures.* Construction of new buildings, facilities, fences or other structures is prohibited, except for a

boundary fence as deemed appropriate in the Management Plan. Repair, maintenance, or replacement of facilities, fences or structures identified in the Baseline Documentation Report are permitted at the same location and within the existing footprint of such structures.

3. *Utilities.* Except as provided for in Section II.J.2, the installation or relocation of new public or private utilities, including electric, telephone, or other communications services is prohibited except where reasonably necessary to advance the Purpose of the Conservation Easement and subject to Grantee's approval. Existing utilities on, over, or under the Protected Property may be maintained, repaired, removed or replaced at their current location as that location is documented in the Baseline Documentation Report.
4. *Signs.* Except for no trespassing signs, for sale signs, signs identifying the owner of the Protected Property, signs identifying permitted public access, safety and liability waiver as approved in the Management Plan, and signs that may be erected by the Grantee identifying the Purpose of the Protected Property, all other signs, advertisements, and billboards of any nature are prohibited. The permitted signs may not exceed 15 square feet in size.
5. *Waste.* Dumping, collecting, recycling, accumulating, or storing of trash, refuse, waste, sewage, bio-solids, or other debris is prohibited.
6. *Mining.* The exploration, development, mining or extraction of soil, sand, loam, gravel, mineral, oil, gas, or other substance from the surface or subsurface of the Protected Property is prohibited.
7. *Topography.* Altering the existing topography of the Protected Property by digging, plowing, disking, or otherwise disturbing the surface or subsurface is prohibited.
8. *Watercourses/Wetlands.* Unless part of a restoration project approved in the Management Plan, draining, dredging, channeling, filling, leveling, pumping, diking, impounding or any other alteration of any watercourses, ponds, seeps, bogs, springs, wetlands, or any seasonally wet area is prohibited, as is altering or tampering with existing water control structures or devices.
9. *Vegetation.* Unless part of a restoration project approved in the Management Plan or part of approved sustainable natural forest management practices, the cutting, trimming, shaping, killing, or removal of any vegetation from the Protected Property, except for noxious weeds, is prohibited.
10. *Exotic Species.* The introduction, cultivation, or use of exotic plant or animal species on the Protected Property is prohibited. Exotic plants include non-native invasive plant species.

11. *Roads and Impervious Surfaces.* Construction of new roads and paving of any existing road not paved or otherwise covered in an impervious material as of the Effective Date is prohibited. Existing roads identified in the Baseline Documentation Report may be maintained and repaired in their current condition and within their existing footprint as identified in the Report.
12. *Vehicle Use.* The use of motorized vehicles is prohibited, except as necessary to carry out activities approved by the Grantee, or for limited, de-minimus, non-commercial recreational uses such as hunting or bird watching if those activities are approved uses in the Management Plan.
13. *Subdivision.* The legal or “de facto” division, subdivision or partitioning of the Protected Property is prohibited.
14. *Grant of Rights.* The granting of any property interest or rights in the Protected Property, including easements, permits, licenses, and leases, without the prior written consent of the Grantee is prohibited, which consent shall not be unreasonably withheld.
15. *No Effect on Tribal Rights.* In providing funding to the Grantor, BPA is not altering, diminishing, modifying or expanding the legal rights, authority, or jurisdiction of any Indian tribe whether with regard to natural resource management or otherwise, and no authority is implied by this Conservation Easement with regard to such rights, authority or jurisdiction. Grantor will not claim in any forum or context that BPA’s funding, described in section II.A. above, the United States’ acceptance of this grant, or Oregon’s recognition of it, bears on the nature or extent of the Grantor’s off-reservation rights.

**L. Permitted Uses.** Uses or activities otherwise prohibited under Section II.K above may be allowed but only if: (1) in BPA’s sole discretion, the use or activity benefits the Conservation Values, advances the Purpose of this Conservation Easement or is not otherwise inconsistent with the Purpose of the Conservation Easement; and (2) the use or activity and any necessary limits or prescriptions are approved by BPA in advance, either in an approved Management Plan, or by written approval or written consent of BPA.

#### **M. Enforcement**

1. *Notice of Violation, Corrective Action.* If Grantee determines that the Grantor or its representatives, contractors, successors, or assigns violates or threatens to violate this Conservation Easement, and if such determination or dispute is not resolved by negotiation as set forth in Section II.N, Grantee will give written notice to the Grantor and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose, sufficient to restore the portion of the Protected Property so injured to its prior condition in accordance with a

plan approved by Grantee.

2. *Grantor's Failure to Respond.* The Grantee may bring an action as provided in Section II.M.3 if the Grantor fails to cure the violation within thirty (30) calendar days after receipt of a notice of violation, or under circumstances where the violation cannot reasonably be cured within such thirty (30) day period, fails to begin curing the violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.
3. *Grantee's Action.* Grantee may pursue an action in a court having jurisdiction to enforce the terms of this Conservation Easement: (1) to enjoin the violation, ex parte as necessary, by temporary or permanent injunction; (2) to require the restoration of the Protected Property to the condition that existed prior to any such injury; and (3) to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement. The remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing.
4. *Grantor's Action.* In the event that the Grantor seeks a determination as to the legal meaning or effect of this Conservation Easement, or as to any alleged violation hereof by Grantee, and if such determination or dispute is not resolved by negotiation set forth in Section II.N below, then the Grantor shall be entitled to bring judicial action in a court of competent jurisdiction.
5. *Emergency Enforcement.* Notwithstanding the provisions of Sections II.M.1 and M.2, if Grantee determines on the basis of substantial evidence that circumstances require immediate action to prevent or mitigate significant damage to one or more of the Conservation Values, Grantee may undertake reasonable actions to remove, eliminate or mitigate damages to the Protected Property. Grantee shall provide prior notice to the Grantor of such actions to the extent reasonably practicable and may seek Grantor participation in such actions, but may proceed with such actions without permission from the Grantor or without waiting for the Grantor to take any action.

**N. Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Conservation Easement by negotiation between executives or officials who have authority to settle the controversy.

**O. Acts of God/Force Majeure.** Nothing contained in this Conservation Easement entitles the Grantee to bring any action against the Grantor for any injury to or change in the Protected Property resulting from causes beyond the Grantor's control, including, without limitation, naturally caused fire, flood, storm, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. Such excuse from performance will be allowed only if such catastrophic event or other event beyond the Grantor's control has caused a substantial

degradation of the Conservation Values. The Parties shall make all reasonable efforts to resume performance promptly once the force majeure is eliminated.

- P. Waiver.** The failure of any Party to require strict performance of any term of this Conservation Easement or a Party's waiver of performance shall not be a waiver of any future performance or of a Party's right to require strict performance in the future.
- Q. Conveyance and Assignment.** If Grantor chooses to convey the Protected Property, Grantor will first offer it at no cost as follows: first to the State of Oregon; if Oregon declines, then to BPA; and if BPA declines, then to the other tribes identified in the MOA. If Oregon, BPA, and the other tribes decline the Protected Property, then Grantor may assign or transfer its rights to another entity, subject to BPA approval, which shall not be unreasonably withheld.
- R. Proceeds from Activities on the Protected Property.** The Grantor shall use net proceeds generated from activities on the Protected Property (e.g., leases) towards the stewardship and restoration of the Protected Property and shall place net proceeds in a stewardship account for the Protected Property. The funds may roll over from year to year until a stewardship or restoration need arises. If net proceeds exceed the stewardship and restoration needs of the Protected Property, the Grantor may use net proceeds on other BPA-funded properties in the Willamette River Basin owned by Grantor.
- S. Termination or Amendment**
- 1. Termination Standard.** This Conservation Easement may be voluntarily terminated by agreement of the Parties only if a subsequent, unexpected change in the conditions of the Protected Property or the surrounding area makes impossible the continued use of the Protected Property for the Purpose of this Conservation Easement except that: a) changed environmental conditions related to climate change, or other natural events, for example, wildfire, river channel migration, erosion or avulsion, and b) economic conditions in which prohibited uses are more profitable than permitted uses on the Protected Property shall not be grounds for termination).
  - 2. Termination Process.** If the Parties agree to voluntarily terminate this Conservation Easement and have met the above termination standard, the Parties shall terminate this Conservation Easement by executing and recording an instrument appropriate for the purpose.
  - 3. Proceeds after any Termination.** If this Conservation Easement is terminated either voluntarily by the Parties, or by involuntary extinguishment by a court of competent jurisdiction and the termination results in proceeds, BPA is entitled to either (1) a share of such proceeds in proportion to the amount BPA contributed to the fee title acquisition, which is 100 percent or (2) at BPA's election, to review and approve use of the proceeds by the Grantor to acquire new fish and wildlife

habitat for BPA mitigation.

4. **Amendment.** This Conservation Easement may only be amended by agreement of the Parties, and any such amendment shall be properly documented, executed, and recorded. Amendments based on changed conditions may be made only when the Purpose of the Conservation Easement is impossible to achieve, or when the effect of the amendment is to benefit the Conservation Values (for example, amending the Conservation Easement to place further restrictions on the use of or activities on the Protected Property). The Parties may not use amendments to impliedly terminate the Conservation Easement or remove any portion of the Protected Property from its terms, except to the extent consistent with the Purpose of the Conservation Easement.
  
- T. **Control.** The Grantor has ownership and control of the Protected Property and is responsible for all incidents of ownership. Such incidents of ownership include, but are not limited to, maintenance and repair of existing structures, hazardous waste response, endangered species protection, noxious weed and invasive species response, tort liability, compliance with applicable laws, and payment of applicable taxes and assessments.
  
- U. **Trust Status.** The Grantor shall not seek to have the United States acting through the Bureau of Indian Affairs, or any other agency, take the Protected Property into trust for the benefit of the Grantor.
  
- V. **Cultural Resources.** The Grantor is responsible for cultural or historic resource mitigation or preservation on the Protected Property in accordance with applicable cultural resource laws.
  
- W. **Hazardous Substances.** To the best of the Grantor's knowledge, there are no hazardous substances present in, on, or under the Protected Property, including without limitation, in the soil, air, or groundwater, and there is no pending or threatened investigation or remedial action by any governmental agency regarding the release of hazardous substances or the violation of any environmental law on the Protected Property, and that there are no underground storage tanks located on the Protected Property. If, at any time, there occurs, or has occurred a release in, on, or about the Protected Property of any hazardous substances, the Grantor agrees to take all steps necessary to assure its containment and remediation without cost to Grantee, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee will be responsible for remediation in accordance with applicable law. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of the Grantor's activities on the Protected Property, or otherwise become an operator with respect to the Protected Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"). The Grantor specifically agrees to release and hold harmless Grantee

from and against all liabilities for violations or alleged violations of, or other failure to comply with, any federal state or local environmental law or regulation relating to hazardous substances, including, without limitation, CERCLA, by the Grantor in any way affecting, involving, or relating to the Protected Property, except to the extent such violations or alleged violations are caused by the acts or omissions of Grantee.

- X. Notice.** Any notice permitted or required by this Conservation Easement, unless otherwise specified, must be in writing, delivered personally to the persons listed below, or will be deemed given on the date deposited in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any Party may from time to time specify to the other Party in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail. The addresses listed below can be modified at any time through written notification to the other Party.

**Notices to BPA should be sent to:**

Director, Fish & Wildlife Program  
Bonneville Power Administration  
P.O. Box 3621  
Portland, OR 97208-3621

**and to BPA's  
Real Property Services:**

Manager, Real Property Services  
RE: WILWF-WL-18  
Bonneville Power Administration  
P.O. Box 3621  
Portland, OR 97208-3621

**Notices to the Grantor should be  
sent to:**

General Manager  
Branch of Natural Resources  
CTWS  
P.O. Box C  
Warm Springs, OR 97761

**With a copy to:**

Karnopp Petersen LLP  
1201 NW Wall Street  
Bend OR, 97701

- Y. Effective Date.** This Conservation Easement vests when signed by the Grantor, and accepted by the Grantee.
- Z. Schedule of Exhibits.** All exhibits are incorporated and made part of this Conservation Easement.

Exhibit A – Legal Description  
Exhibit B – Map  
Exhibit C – Acknowledgement of Baseline Documentation Report  
Exhibit D – Form Transmission Easement  
Exhibit E – Acceptable Title Encumbrances

**AA. Signature in Counterpart.** This Conservation Easement may be executed in counterparts each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

**BB. GRANT, COVENANTS AND WARRANTIES, SIGNATURE AND ACKNOWLEDGMENTS**

To have and to hold the Conservation Easement herein granted unto the United States and its assigns.

The Grantor warrants and covenants to and with the United States that the Grantor is lawfully seized and possessed of the Protected Property in fee simple, with a good and lawful right to grant the same, including a good and lawful right to grant this Conservation Easement; that the Protected Property is free and clear of all encumbrances and restrictions except the encumbrances and restrictions specifically set forth in Exhibit E, attached and incorporated by reference; that the United States and its assigns shall have the use of and enjoy all the benefits derived from and arising out of this Conservation Easement; that the Grantor shall at the request of the United States execute or obtain any reasonable further assurances of the title to the Property; and that the Grantor will forever warrant the title to the Property and defend the United States against all persons who claim a lawful interest in the Property, except for persons who claim interests under the exceptions described in Exhibit E.

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 23 day of December, 2014.

**THE CONFEDERATED TRIBES OF THE  
WARM SPRINGS RESERVATION OF  
OREGON**



By: Austin Greene  
Title: Tribal Council Chairman

**ACCEPTANCE BY THE UNITED STATES**

\_\_\_\_\_  
Joseph E. Cottrell, II  
Realty Specialist  
Bonneville Power Administration

\_\_\_\_\_  
Date

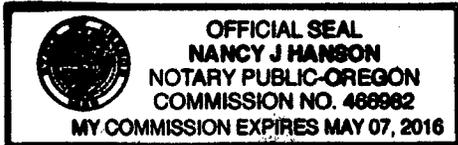
ACKNOWLEDGMENT

STATE OF Oregon )  
County of Deschutes ) ss.

On this 23<sup>rd</sup> day of December, 2014, before me personally appeared Eugene Austin Greene, Jr., known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the Chairman of Warm Spring Tribal Council

acknowledged to me that  he executed the same freely and voluntarily in such capacity; and on oath stated that  he was authorized to execute said instrument in such official or representative capacity.

Nancy J. Hanson  
Notary Public in and for the  
State of Oregon



(SEAL) Residing at 21 NW McKay Ave  
Bend OR 97701  
My commission expires 5/7/2016

**AA. Signature in Counterpart.** This Conservation Easement may be executed in counterparts each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

**BB. GRANT, COVENANTS AND WARRANTIES, SIGNATURE AND ACKNOWLEDGMENTS**

To have and to hold the Conservation Easement herein granted unto the United States and its assigns.

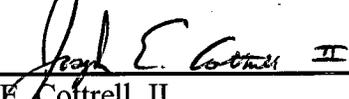
The Grantor warrants and covenants to and with the United States that the Grantor is lawfully seized and possessed of the Protected Property in fee simple, with a good and lawful right to grant the same, including a good and lawful right to grant this Conservation Easement; that the Protected Property is free and clear of all encumbrances and restrictions except the encumbrances and restrictions specifically set forth in Exhibit E, attached and incorporated by reference; that the United States and its assigns shall have the use of and enjoy all the benefits derived from and arising out of this Conservation Easement; that the Grantor shall at the request of the United States execute or obtain any reasonable further assurances of the title to the Property; and that the Grantor will forever warrant the title to the Property and defend the United States against all persons who claim a lawful interest in the Property, except for persons who claim interests under the exceptions described in Exhibit E.

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

**THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON**

\_\_\_\_\_  
By: Austin Greene  
Title: Tribal Council Chairman

**ACCEPTANCE BY THE UNITED STATES**

  
\_\_\_\_\_  
Joseph E. Cottrell, II  
Realty Specialist  
Bonneville Power Administration

12/23/14  
\_\_\_\_\_  
Date

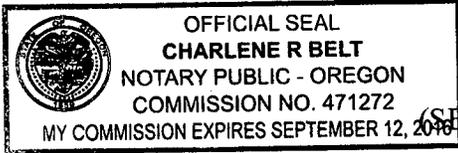
ACKNOWLEDGMENT

STATE OF Oregon )  
County of Multnomah ) ss.

On this 23rd day of December, 2014, before me personally appeared Joseph E. Coffell II, known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the Realty Specialist for Bonneville Power Administration acknowledged to me that - he executed the same freely and voluntarily in such capacity; and on oath stated that - he was authorized to execute said instrument in such official or representative capacity.

Charlene R Belt

Notary Public in and for the State of Oregon



(SPECIAL) Residing at Washouak WA

My commission expires 9-12-2016

## LEGAL DESCRIPTION OF THE PROTECTED PROPERTY

### Exhibit "A"

Real property in the County of Yamhill, State of Oregon, described as follows:

All of that tract conveyed to William Carl Winter, Trustee of the Claire P. Winter Residual Trust per Document No. 199912488, Deed Records of Yamhill County, lying in the Northwest Quarter of Section 33, and all of Section 32, including Government Lots 6 & 7, and a portion of Government Lots 5 & 8, also lying with a portion of Henry Hill D.L.C. No. 55, and a portion of the John S. Pringle D.L.C. No. 54, Township 3 South, Range 3 West, Willamette Meridian, Yamhill County, Oregon, more particularly described as follows:

Beginning at the Northerly Northeast corner of the John S. Pringle DLC No. 54; thence South 88°20'22" West 2322.50 feet to the East line of the Thomas J. Hubbard DLC No. 52; thence along the East line of the Hubbard DLC South 01°56'35" West 1069.20 feet to the Southeast corner per said Claim; thence along the South line of said Claim North 89°45'39" West 556.51 feet to the Northeast corner of that certain tract of land conveyed to Glenn E. and Rachel M. Almond per Film Volume 73, Page 819, said Deed Records; thence along the Almond easterly line South 00°08'08" West 1241.74 feet to a 5/8" iron rod; thence South 03°02'09" West 531.38 feet to a 5/8" iron rod at the center of a private roadway; thence along the centerline of said private road North 88°22'35" West 359.14 feet to a 5/8" iron rod; thence leaving said centerline, and said Almond boundary, South 00°21'21" West 302.57 feet to a 5/8" iron rod at the North line of that certain tract of land conveyed to Robert Allan and Donna Ann Fisher per Film Volume 85, Page 1006, said Deed Records; thence along said Fisher line South 80°58'13" East 242.06 feet to a 5/8" iron rod at the Northwest corner of that certain tract also conveyed to Robert Allen and Donna Ann Fisher per Film Volume 102, Page 391, said Deed Records; thence along said Fisher line South 80°58'13" East 408.61 feet to a 1" iron pipe at the Northwest corner of that certain tract conveyed to April Kyle per Film Volume 85, Page 1006, said Deed Records; thence along said Kyle line North 75°08'45" East 633.62 feet to a 1" iron pipe at the Northwest corner of that certain tract conveyed to James and Frances E. Sutton per Film Volume 96, Page 200, said Deed Records; thence along said Sutton line North 75°08'45" East 400.11 feet to a 5/8" iron rod at the Northwest corner of that certain tract of land conveyed to Thomas G. and Mary P. Morgan per Film Volume 76, Page 1519, said Deed Records; thence along said Morgan line North 75°08'45" East 330.21 feet to a 1" iron rod at the Northeast corner thereof; thence South 12°39'20" East 596.09 feet to a 5/8" iron rod, being the westerly corner of the line adjustment between the Mike and Cathy Uhtoff Trust and with Dee J. Hillberry per Instrument No. 200523868, said Deed Records; thence along said line adjustment North 80°55'39" East 1246.77 feet to a 5/8" iron rod; thence North 65°37'47" East 542.18 feet to 5/8" iron rod at the northeast corner of said line adjustment; thence South 00°08'15" West 29.77 feet to a 5/8" iron rod at the southeast corner of said line adjustment, being the northwest corner of Parcel 3 Partition Plat No. 91-52; thence along the north line of said parcel North 57°55'40" East 515.71 feet to a 5/8" iron rod at the southwest corner of that certain tract conveyed to the City of Lafayette per Film Volume 141, Page 794, said Deed Records; thence along said City tract North 06°51'37" West 675.30 feet to a 3/4" iron pipe at the northwest corner thereof; thence North 60°15'04" East 381.51 feet to a 3/4" iron pipe at the northeast corner thereof, being along the west line of BREYMAN ORCHARD TRACTS; thence along said west line North 07°24'08" West 2007.19 feet to a 5/8" iron rod lying South 07°53'55" East from the corner of Sections 28, 29, 32 and 33, said Township and Range; thence North 88°52'17" West 939.41 feet to the point of beginning.



**EXHIBIT C**

**ACCEPTANCE AND ACKNOWLEDGEMENT  
OF  
BASELINE INVENTORY DOCUMENTATION**

The undersigned hereby accept and acknowledge that the Baseline Inventory Documentation for the Red Hills Conservation Easement, Yamhill County, Oregon, prepared by Scott Ferguson of Trout Mountain Forestry and dated December 15, 2014, is an accurate representation of the Protected Property as of the date of grant of the Conservation Easement. The undersigned have received copies of the Baseline Inventory Documentation.

Grantor:

The Confederated Tribes of the Warm Springs Reservation



Name: Austin Greene

Title: Tribal Council Chairman

12/23/14  
Date

Grantee:

The United States of America

\_\_\_\_\_  
Joseph E. Cottrell, II  
Realty Specialist

\_\_\_\_\_  
Date

**EXHIBIT C**

**ACCEPTANCE AND ACKNOWLEDGEMENT  
OF  
BASELINE INVENTORY DOCUMENTATION**

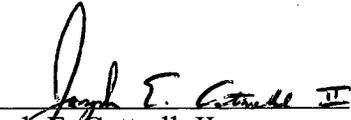
The undersigned hereby accept and acknowledge that the Baseline Inventory Documentation for the Red Hills Conservation Easement, Yamhill County, Oregon, prepared by Scott Ferguson of Trout Mountain Forestry and dated December 15, 2014, is an accurate representation of the Protected Property as of the date of grant of the Conservation Easement. The undersigned have received copies of the Baseline Inventory Documentation.

Grantor:  
The Confederated Tribes of the Warm Springs Reservation

\_\_\_\_\_  
Name: Austin Greene  
Title: Tribal Council Chairman

\_\_\_\_\_  
Date

Grantee:  
The United States of America

  
\_\_\_\_\_  
Joseph E. Cottrell, II  
Realty Specialist

\_\_\_\_\_  
Date 12/23/14

FORM TRANSMISSION EASEMENT

**AFTER RECORDING, RETURN TO  
Bonneville Power Administration  
TERS-3  
P.O. BOX 3621  
PORTLAND, OR 97208-3621**

Legal description: A portion of the \_\_\_\_\_ of  
Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_, .M.,  
County, \_\_\_\_\_, as described in Exhibit(s) \_\_\_\_\_.  
(Affects Tax Account No. \_\_\_\_\_.)

BPA Tract  
No(s):

**U.S. DEPARTMENT OF ENERGY-BONNEVILLE POWER ADMINISTRATION**

**EXCLUSIVE EASEMENT  
Transmission Line and Danger Trees**

THIS AGREEMENT, made between the Confederated Tribes of the Warm Springs Reservation of Oregon, the Grantor, and the UNITED STATES OF AMERICA, Department of Energy, Bonneville Power Administration (Grantee), pursuant to the Bonneville Project Act, of August 20, 1937, as amended, 16 U.S.C. §§ 832 et seq.; the Federal Columbia River Transmission System Act of October 18, 1974, as amended, 16 U.S.C. §§ 838 et seq; the Department of Energy Organization Act, of August 4, 1977, as amended, 42 U.S.C. § 7152; and the Pacific Northwest Electric Power Planning and Conservation Act, of December 5, 1980, as amended 16 U.S.C. §§ 839 et seq,

**WITNESSETH:**

That the parties hereto covenant and agree as follows:

The Grantor, for and in consideration of the sum of the funding Grantee provided to the Grantor to acquire fee title and the provisions contained in this agreement, hereby grants and conveys to the United States of America and its assigns a perpetual easement and right-of-way for electric power transmission purposes in, upon, over and under the following described land (Easement Area), to-wit:

As described in Exhibit(s) \_\_\_\_\_, attached hereto and by this reference made a part hereof.

## Exhibit D

The grant shall include the right to enter and to locate, construct, operate, maintain, repair, reconstruct, upgrade, remove and patrol one or more lines of poles or structures and appurtenances thereto, supporting conductors of one or more electric circuits of any voltage (collectively "Transmission Facilities") and any communication lines or equipment and appurtenances thereto (collectively "Communication Facilities"), together with the present and future right to clear the Easement Area and to keep it clear of all trees, shrubs, brush and other vegetation (collectively "Vegetation"), structures, above and below ground improvements or infrastructures, and fire and electrical hazards. All Vegetation, structures, and fire and electrical hazards presently within the Easement Area shall become the property of the United States on the date of acceptance hereof and may be disposed of by the United States in any manner it deems suitable.

The Grantor also hereby grants and conveys to the United States the present and future right to top, limb, or fell, and to remove, sell, burn, or otherwise dispose of "Danger Trees" located on Grantor's land adjacent to said Easement Area. A Danger Tree is any growing or dead tree, or snag, whether stable or unstable, which the United States at any time determines (1) could within a five-year period fall, bend or swing (a) within 25 feet of the Transmission Facilities or Communication Facilities or (b) within electrical arcing distance of said Facilities; or (2) could interfere with the construction, operation and maintenance of said lines and equipment.

The Grantor covenants to and with the United States and its assigns that the title to (1) Vegetation cut or hereinafter growing within said Easement Area and (2) to all Danger Trees identified, now or in the future, or cut from Grantor's land adjacent to said Easement Area is and shall be vested in the United States and its assigns; and that the consideration paid for conveying said easement and rights herein described is accepted as full compensation for all damages incidental to the exercise of any said rights. At the United States' election title to Danger Trees may revert to the Grantor.

The Grantor also agrees that prior to undertaking any activity (including, but not limited to, building a structure, placing any manmade item, planting, digging, earth-moving, burning, piling or storing materials) within the Easement Area, the Grantor agrees to contact the Grantee to seek a determination from Grantee as to whether the proposed activity is safe and compatible with Grantee's use, and does not interfere with Grantee's current or future needs. The Grantor will not proceed with any proposed activity within the Easement Area without written consent from Grantee.

In addition to the consideration paid hereunder, the United States shall repair or make compensation only for damage caused by the United States that is not incidental to the exercise of any of the above said rights and which results from and during construction, reconstruction, removal, or maintenance activities associated with the purposes of this agreement on and adjacent to the Easement Area. Payment for such damage shall be made on the basis of a damage estimate approved by the United States.

The rights granted herein are subject to easements of record and mineral rights of third parties.

The Grantor agrees to satisfy of record such encumbrances, including taxes and assessments, as may be required by the United States and to obtain such curative documents as may be requested by the United States.

Exhibit D

The United States shall pay all costs incidental to the preparation and recordation of this instrument and for the procurement of any title report and title insurance that it may require.

The Grantor covenants to and with the United States that the Grantor is lawfully seized and possessed of the land aforesaid, with a good and lawful right and power to sell and convey the same; that the land is free and clear of encumbrances, except as herein provided; and that the Grantor will forever warrant and defend the title to the rights granted herein and the quiet possession thereof against the lawful claims and demands of all persons whomsoever.

The provisions hereof shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, and assigns of the Grantor and upon the assigns of the United States.

***FORM ONLY – NO SIGNATURES REQUIRED***

**EXHIBIT E**

**ACCEPTABLE ENCUMBRANCES**

The rights of the public in and to that portion of the premises herein described lying within the limits of streets, roads, and highways

**Easement**

Between: Harry R. Kuehne and Evelien Kuehne, husband and wife and City of Lafayette, Yamhill County, Oregon, its successors and assigns

Purpose: Water Pipeline

Recording Date: April 8, 1947, Volume 141, Page 794

**Easement**

Granted to: City of Lafayette

Purpose: Pipeline

Recording Date: August 25, 1948, Film Volume 150, Page 162, Deed of Records

**Easement**

Granted to: Portland General Electric Company, an Oregon corporation

Purpose: Distribution Line

Recording Date: June 10, 1968, Film Volume 68, Page 688

**Water Supply Agreement**

Between: City of Lafayette, a municipal corporation of the State of Oregon and Bluebird Valley Water Association

Purpose: Water Pipeline

Recording Date: August 25, 1988, In Film Volume 225, Page 806

**Road Construction Agreement**

Between: Lena Winter and Yamhill County Department of Planning and Development

Purpose: Road

Recording Date: August 8, 1991, In Film Volume 258, Page 69

**APPENDIX B**  
**LAND USE AGREEMENT DOCUMENTS**

**EXHIBIT "B"**

- 1) The assessment roll and the tax roll disclose that the premises herein described were specially assessed as Forest Land pursuant to O.R.S. 321.358 to 321.372. If the land becomes disqualified for the special assessment under the statute, an additional tax may be levied for the last five (5) or lesser number of years in which the land was subject to the special land assessment.
- 2) The rights of the public in and to that portion of the premises herein described lying within the limits of streets, roads and highways.
- 3) Reservations in deed, including the terms and provisions thereof; Recording Information: April 8, 1947 in Film Volume 141, Page 794 Between: Harry R. Kuehne and Evelien Kuehne, husband and wife And: City of Lafayette, Yamhill County, Oregon, its successors and assigns.
- 4) Easement, including terms and conditions contained therein: Granted to: City of Lafayette, its successors and assigns For: Right-of-way recording Information: August 25, 1948 in Film Volume 150, Page 162.
- 5) Easement, including terms and provisions contained therein: Recording Information: June 10, 1968 in Film Volume 68, Page 688 In Favor of: Portland General Electric Company, an Oregon corporation For: Distribution line easement.
- 6) Water Supply Agreement, including the terms and conditions thereof: Between: The City of Lafayette, a municipal corporation of the State of Oregon And: Bluebird Valley Water Association Recording Information: August 25, 1988 in Film Volume 225, Page 806 .
- 7) Road Construction Agreement, including the terms and conditions thereof: Between: Lena Winter And: Yamhill County Department of Planning and Development Recording Information: August 8, 1991 in Film Volume 258, Page 69.

**APPENDIX C**  
**2020 CONSERVATION AREA REGULATIONS**

# **Confederated Tribes of Warm Springs Reservation of Oregon Conservation Area Visitor Regulations**

**For Pine Creek, Oxbow, Forrest, Dunstan, Red Hills, Little Sweden, and Austin Hot Springs**

**Austin Hot Springs is CLOSED to Public Access – No Exceptions. Access of other properties is conditioned upon visitors agreeing to comply with these regulations, liability release, and applicable Oregon and Federal laws.** Visitors will comply with any directions or instructions given to them by Tribal staff. Users failing to comply with these regulations and applicable laws are subject to exclusion from the Tribes' Conservation Areas, liable for payment of damages, and may be prosecuted under applicable law. Visitors to the Conservation Areas assume the risk inherent with the activities they undertake. By assuming this risk they agree not to make a claim against or take legal action on the Tribes or their employees for injuries or damages that they incur as a result of the inherent risks of their visit to any Conservation Area.

## **Daily Access Permits**

Individuals or groups wishing to access the properties are required to fill out an access permit, which will also serve as liability releases at designated permit kiosks at each Conservation Area, or online. At Pine Creek, due to its size and overnight use option, has both sign-in and sign-out cards. Sign-out cards are to be filled out when departing the property at kiosks, and are not available online.

## **Group Size**

Groups of 8 or more may visit by prior arrangement only. Some areas may be restricted seasonally or permanently to protect unique biological, cultural, geological, or other values.

## **Access Hours**

The properties are open to the public during daylight hours only **with the exception of Pine Creek Conservation Area**, which allows access for backcountry backpacking and campground use. Parking will be allowed on gravel pullouts or other safe suitable locations. Neighboring private lands may be used to access the conservation areas only with landowner permission.

## **Dogs**

Dogs must be kept under voice and sight control. Dogs are not to harass or run after wildlife and will not be allowed to run at large during bird breeding seasons (Apr. 1 – July 15).

## **Collecting and Woodcutting**

Fossil, rock, antler, and other collecting are prohibited on the Conservation Areas. Researchers may submit proposals to conservation area management. Woodcutting is permitted with written permission of the Tribes under special circumstances related to natural resource management activities.

## **Dumping/Littering**

No dumping of materials or littering is allowed. Visitors will follow a "Leave No Trace" ethic.

## **Vehicular Access**

Vehicles are not permitted away from main access routes crossing or bordering the Conservation Areas. Each Conservation Area kiosk will provide a map of all accessible roads, trails, and parking areas. The general public is not allowed to operate ATVs or over-snow vehicles on the conservation areas. All other roads and access methods are by special permit only.

## **Hunting**

Hunting is allowed only by special permit on the conservation areas, and firearms may only be brought onto the properties by **permitted hunters**. Decisions concerning big game and bird hunting will be determined annually and posted on information boards and website blog posts. Varmint hunting and target shooting is not allowed. Violators will be prosecuted. **Currently, Hunting is not allowed at Red Hills, Little Sweden, or Austin Hot Springs.**

### **Fishing**

**Fishing is not allowed on Conservation Areas except at McHaley Pond at Forrest and John Day River at Pine Creek, subject to ODFW Regulations.**

### **Camping**

**Public camping will not be allowed on any Conservation Area with the exception of the Pine Creek Conservation Area. At Pine Creek, primitive, backpacking or horse-packing backcountry camping is authorized if at least one mile from the highway and Clarno county road. Camps should be out of site of the administrative road-trail system on the property. No river camping above the mean high-water mark of the John Day River. All River Camps are subject to BLM Wild and Scenic river regulations, including the use of a portable toilet.** Campers will observe a “Leave No Trace” ethic. State fire restrictions will be enforced, and additional restrictions may be imposed. Camping at Robinson Campground or Rattlesnake Cabin requires prior reservation and fee collection on the website.

### **Commercial Use**

All commercial uses – including but not limited to classes, guiding, firewood or other wood products removal, or antler collecting – are prohibited on all Conservation Areas, with exception of prescribed management purposes and where allowed under special permit.

### **Cultural Resources**

State, federal and tribal laws prohibit the disturbance or removal of cultural resources. Violators are subject to severe criminal and civil penalties. Cultural resources include but are not limited to foods, pictographs, pottery, basketry, bottles, weapons and projectiles, tools, structures, graves, human skeletal materials, or any portion of the foregoing items. Visitors are required to report suspicious activities or findings to management.

### **Research and Educational Use**

Natural sciences research and educational activities are encouraged. Researchers should contact conservation areas management prior to submitting proposals. Educational groups may visit the Conservation Areas by special permit, with restrictions applied as necessary.

### **Horses and Other Pack Animals**

Visitors are allowed the use of horses and other pack animals with group sizes limited to six animals. Please contact Tribal staff prior to visit. Hay and other livestock feed are allowed at Pine Creek only, must be certified Weed-Free, and visitors must provide documentation upon request. Management reserves the right to limit stock use during certain times of the year to avoid resource damage or disturbance.

### **Other Recreational Activities**

Recreational opportunities on the Conservation Areas are numerous. As these properties are primarily managed for fish and wildlife values, not all activities are compatible with these goals. Requests for uncommon activities will be handled on a case-by-case basis by property management.

### **Protection of Tribal Rights**

*“Fishing, hunting, gathering and Tribal cultural and religious activities on the Project according to Tribal custom and law are neither prohibited nor authorized or given additional status by this Agreement. Tribal members shall be subject to tribal regulation of wildlife harvest. All other persons will be subject to state and federal regulations.*