


Conservation Easement Case Study

Lower Nehalem Community Trust ↔ Natural Resource Conservation Service
Alder Creek Farm, Nehalem, OR

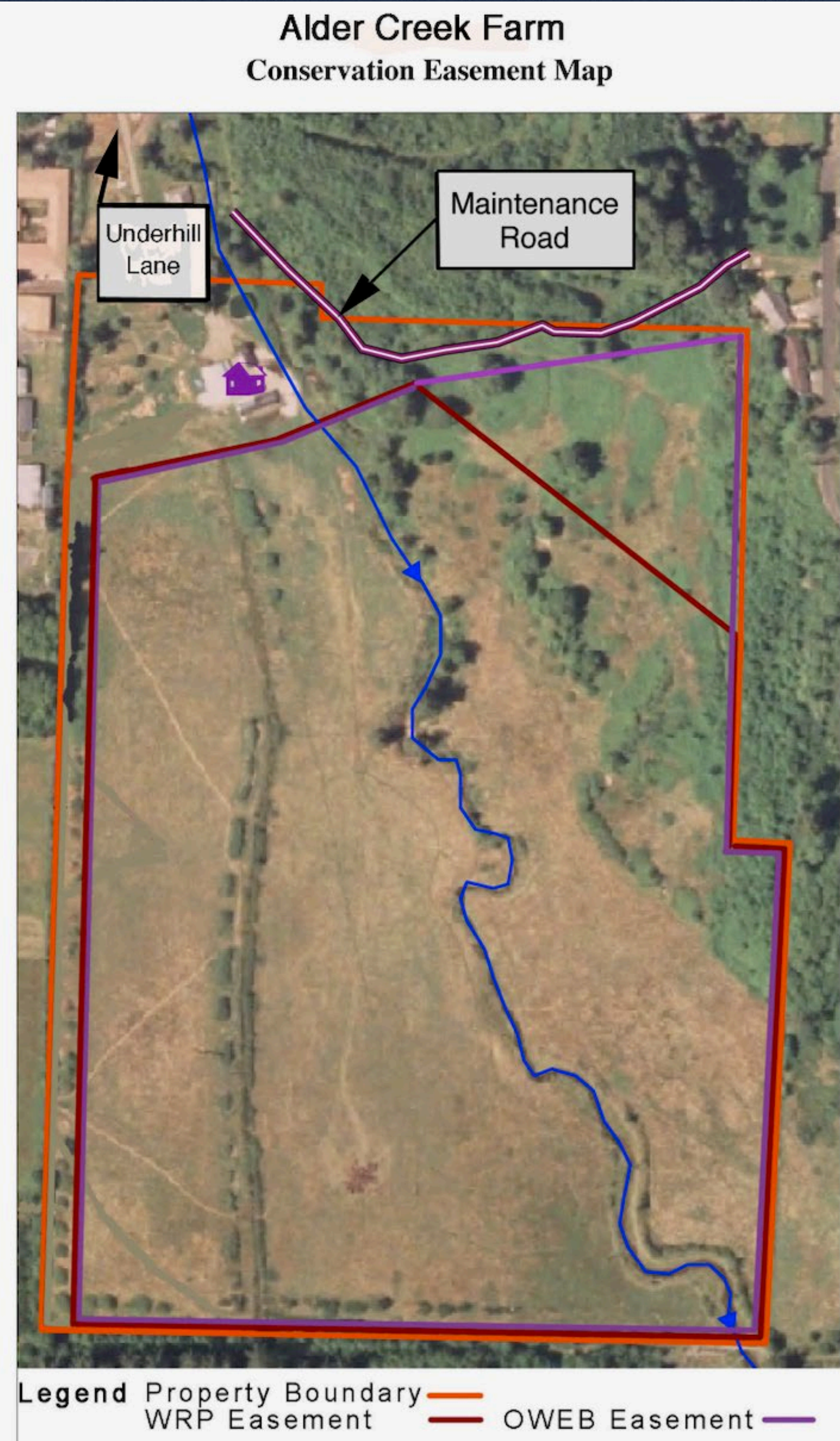


Ben Pittenger
Lower Nehalem Community Trust
ben@nehalemtrust.org

CONSERVATION EASEMENT

- Voluntary agreement
- Re specified/defined land area
- Transfers interests in real property (land) ...
- Landowner sells/donates enforceable powers/rights → Easement holder
 - Easement holder = trust or gov't
 - Rights of landowner ↓
 - Rights of easement holder ↑
- Express goal = achieve defined conservation purposes
- Runs with the land - applies to present *and future* owners
- Recorded at the county recorder of deeds office.

- **SAMPLE EASEMENT**
- Transferred interests in land:
 - From private party owners at the time
 - to U.S. (Administered through NRCS)
- Re: Defined portion of Alder Creek Farm
- Enforceable powers/rights → NRCS
- ↓ the rights of owners
- Goals = Restore, protect, manage, maintain, enhance:
 - Wetland values
 - WRP = Wetland Reserve Program
 - Fish / wildlife & their habitats
 - Various water resources/characteristics
 - Open Space
 - Aesthetic Values
 - Environmental Education



LAND OWNERSHIP

Purchased by Private Individuals

Private individuals → LNCT

EASEMENT

Sold by Private Individuals to U.S.

- *Runs with the Land* -

Now applicable to LNCT

TERMS OF THIS EASEMENT

- Specifically applicable to the parties, but ...
- Similar terms/model can be incorporated into private party easements
- As a negotiated agreement, terms are subject to amendment by agreement of the parties
 - Especially shared costs & management plan particulars. But other terms as well.

Return To:

TICOR TITLE INSURANCE COMPANY
P.O. BOX 519
TILLAMOOK, OR 97141

00039916200500103290070078
I hereby certify that the within
instrument was received for record and
recorded in the County of Tillamook,
State of Oregon.
Tassi O'Neil, Tillamook County Clerk

CCC-1255
6-25-00
OMB No. 0578-0013

Warranty Easement Deed

WETLANDS RESERVE PROGRAM
AGREEMENT NO. 66-0436-5-015

THIS WARRANTY EASEMENT DEED is made by and between Viviane P. Tallman, as to an undivided 1/3 interest and Gareth S. Ferdun and Georgenne M. Ferdun, as tenants by the entirety, as to an undivided 1/3 interest, and Thomas G. Bender and Lane M. deMoll, as tenants by the entirety, as to an undivided 1/3 interest, all as tenants in common (hereafter referred to as the "Landowner"), Grantor(s), and the UNITED STATES OF AMERICA, by and through the Secretary of Agriculture, Washington D.C. 20250 (hereafter referred to as the "United States"), Grantee. The Landowner and the United States are jointly referred to as the "Parties". The acquiring agency of the United States is the Natural Resources Conservation Service (NRCS), United States Department of Agriculture.

Witnesseth:

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

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

NOW THEREFORE, for and in consideration of the sum of Seventy Thousand and Seven Hundred and Seventy Three DOLLARS (\$70,773), the Grantor(s), hereby grants and conveys with general warranty of title to the UNITED STATES OF AMERICA and its assigns, the Grantee, forever, all rights, title and interest in the lands comprising the easement area described in Part I and appurtenant rights of access to the easement area, but reserving to the Landowner only those rights, title, and interest expressly enumerated in Part II. It is the intention of the Landowner to convey and relinquish any and all other property rights not so reserved. This easement shall constitute a servitude upon the land so encumbered; shall run with the land in perpetuity; and shall bind the Landowner, (the Grantor(s)), their heirs, successors, assigns, lessees, and any other person claiming under them.

- recorded at the county records office.

Recorded by Ticor
Title Ins. Co. 29- 70932

- Granted by private individuals to the U.S.A.
 - Land transferred to LNCT
 - Terms now applicable to LNCT
- Expressed goal to achieve defined conservation purposes
- Transferred (in this case sold)
 - Runs with the land
 - Encumbers the land
 - Perpetual

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

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

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

- Defined area
- Right of ingress/egress across LNCT land
- for implementation
- Creates additional easement across other Trust property

Rights reserved to the Trust

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

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

Basic rights
of any
landowner

-
That do not
compromise
the purpose
of the
easement

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

A. Prohibitions. Unless authorized as a compatible use under Part IV, it is expressly understood that the rights to the following activities and uses have been acquired by the United States and are prohibited of the Landowner on the easement area:

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

B. Noxious Plants and Pests. The Landowner is responsible for noxious weed control and emergency control of pests as required by all Federal, State, and local laws. A plan to control noxious weeds and pests must be approved in writing by NRCS prior to implementation by the Landowner.

C. Fences. Except for establishment cost incurred by the United States and replacement cost not due to the Landowner's negligence or malfeasance, all other costs involved in maintenance of fences and similar facilities to exclude livestock shall be the responsibility of the Landowner.

OBLIGATIONS (enforceable):

Prohibitions

- Rights transferred to U.S.
- Amendable by CUA (i.e. with agreement of NRCS)
- Also provides us with backup for conservation policies

Noxious weed control - LNCT

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

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

EXPRESS RIGHTS OF US

RIGHTS → NRCS include:

A. Management, with access

A. \$ subj. to negotiation

B. Impound add'l H₂O for wetland/natural purposes

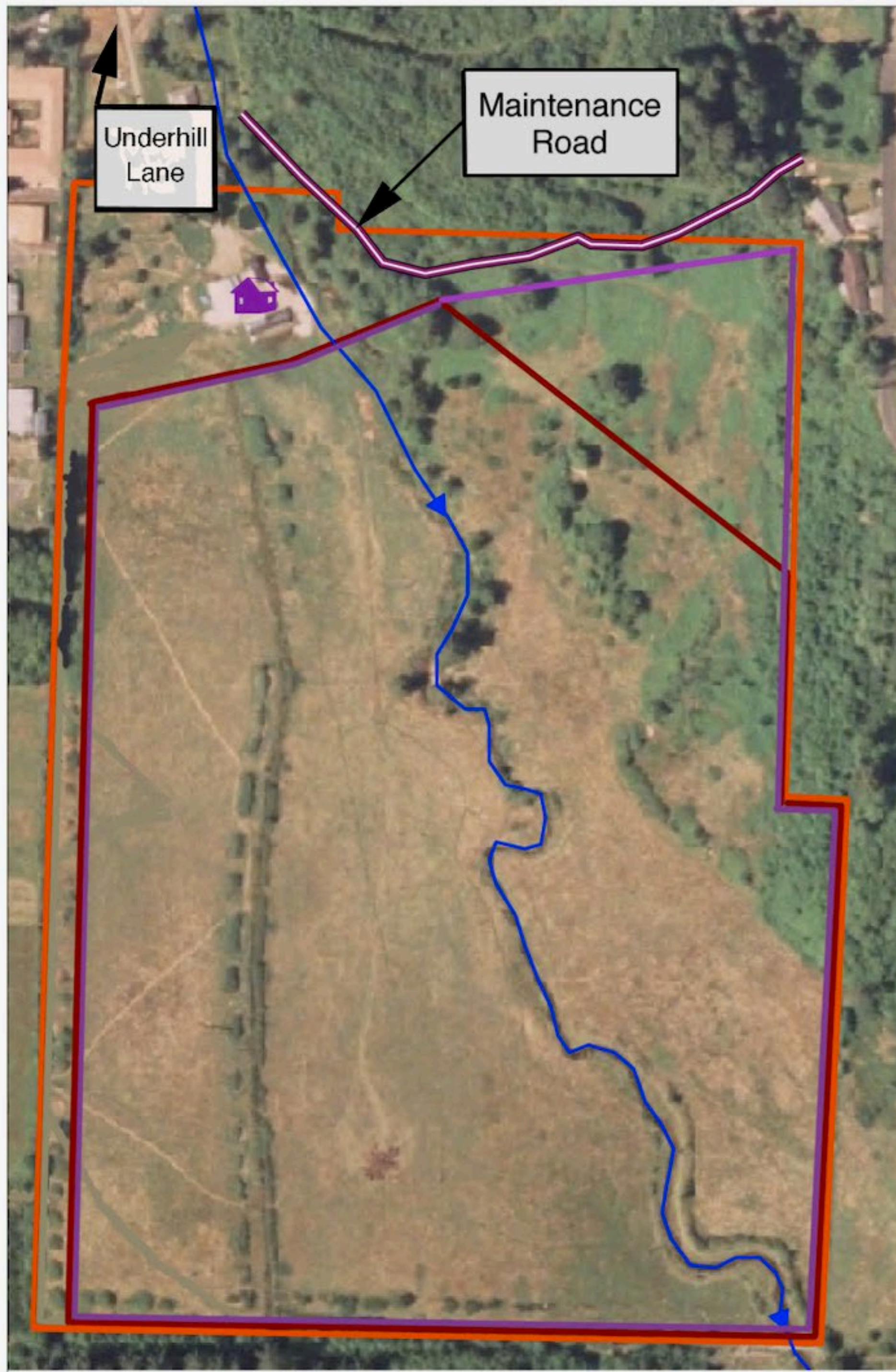
B. Access - Ingress/Egress & *over any other Trust prop'y*

C. Mgmt. responsibilities may be delegated

D. Violations may be enforced

A. Agreement = Evidence

B. Legal/equitable remedies (\$ or injunction)



CURRENT EFFORTS

- Protect/enhance/restore riparian zone
- Restore/enhance tidal wetlands
- Remove exclosure fences
- Control blackberries, and other invasives
- Determining particulars regarding costs and cost sharing for invasives control and fence removal.

Practical impacts:

- Regular, meaningful consultation on intended work/goals
- Regular management plans shared with NRCS
 - Written/Negotiated to be compatible with Easement
 - Helpful expert input
- Any restoration activity
 - Notice to NRCS, and consent
 - Compatible Use Agreements (show)
 - For work not covered in previously authorized plan
 - Form 643 Restoration of Rare or Declining Natural Communities Conservation Practice Specification Sheet (show)

Questions?

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