



Oregon

Kate Brown, Governor

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Department of State Lands

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State Land Board

STATE LAND BOARD

February 14, 2017

10:00 am – 12:00 pm

Oregon Department of State Lands

Land Board Room

775 Summer St NE

Salem, Oregon

Kate Brown

Governor

Dennis Richardson

Secretary of State

Tobias Read

State Treasurer

AGENDA

Consent Items

1. a. Request for approval of the minutes of the December 13, 2016 State Land Board meeting.
- b. Request for approval to initiate the review and determination of the potential sale of approximately 40 acres of state-owned filled lands in Multnomah County.

Action Items

2. Request for approval to grant a 20-year easement for a fiber optic communication cable across state-owned submerged and submersible lands in the Territorial Sea in Tillamook County.
3. Request for approval to quitclaim approximately 1.54 acres of submerged and submersible land to The Marine Salvage Consortium in Multnomah County.

Informational Items

4. Elliott Property Ownership Transfer Opportunity Status Report.
5. Other.

This meeting will be held in a facility that is accessible for persons with disabilities. If you need assistance to participate in this meeting due to a disability, please notify Lorna Stafford at (503) 986-5224 or lorna.stafford@state.or.us at least two working days prior to the meeting.

Public Testimony - The State Land Board places great value on information received from the public. The Board accepts both oral and written comments on **consent and action agenda items only**.

When providing testimony, please:

- Provide written summaries of lengthy, detailed information
- Recognize that substance, not length, determines the value of testimony or written information
- Endorse rather than repeat the testimony of others

Written comments may be submitted before or during the meeting for consideration by the Board. Please bring 10 copies for distribution. To speak at the meeting, you must sign in on the sheet provided at the information table located near the meeting room's entrance. The standard time limit is three minutes for each individual. The Board cannot accept testimony on a topic for which a public hearing has been held and the comment period has closed.



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The State Land Board met in regular session on December 13, 2016, in the Iris B Conference Room at the Keizer Community Center, 930 Chemawa Road, Keizer, Oregon.

State Land Board

Kate Brown
Governor

Present were:

Kate Brown
Jeanne P. Atkins
Ted Wheeler

Governor
Secretary of State
State Treasurer

Jeanne P. Atkins
Secretary of State

Land Board Assistants

Jason Miner & Richard Whitman
Molly Woon
Kristin Dennis

Governor's Office
Secretary of State's Office
State Treasurer's Office

Ted Wheeler
State Treasurer

Department Staff

Jim Paul Bill Ryan
Chris Castelli Lorna Stafford

Julie Curtis Stephanie Hallock Cummins
Sabrina Foward Anne Friend

Department of Justice

Matt DeVore
Chris Matthews

Governor Brown called the meeting to order at 10:13 a.m. The topics discussed and the results of those discussions are listed below.

Governor Brown welcomed Jason Miner, who replaced Richard Whitman as her Land Board Assistant. She also thanked Richard Whitman for his service to the Board and his continued service at the Department of Environmental Quality as the Interim Director.

CONSENT AGENDA

1. a. **Request for approval of the minutes from the October 11, 2016 State Land Board meeting.**
- b. **Request for approval of a permanent bridge easement over the Willamette River on Broadway Street in Multnomah County.**
- c. **Request for approval of a permanent bridge easement over the Willamette River on Morrison Street in Multnomah County.**
- d. **Request for approval of a permanent bridge easement over the Willamette River on Burnside Street in Multnomah County.**

Director Paul reviewed the items on the consent agenda. He explained that the three requests for bridge easements are for existing bridges over the Willamette River in Portland. He explained that the requests are a continuation of the Department's effort to bring existing bridges under authorization.

Secretary Atkins made a motion to approve the consent agenda. Treasurer Wheeler seconded the motion. The consent agenda was approved.

Action Items

2. Report on the status of implementing the order of the State Land Board dated August 13, 2015 regarding the Common School Lands within the Elliott State Forest.

Director Paul updated the Board on the status of identifying potential comprehensive ownership transferees for the Elliott State Forest, and requested input and direction on proceeding with developing an offer of direct sale to a potential comprehensive ownership transferee and possible additional partners.

Director Paul provided background information related to the Elliott State Forest and the issues the Board has faced over the past several years. He explained that since the early 1990s, when the spotted owl and marbled murrelet were listed under the Endangered Species Act, the revenues from the forest significantly declined. He noted that the Department worked with the Department of Forestry and the federal government to obtain a habitat conservation plan (HCP) that went into effect in 1995. From 1995 to 2001, the HCP was in place. In 2000, the Department began work on updating the HCP because coverage for the murrelet had expired under the existing HCP.

In 2008, litigation was filed against the U.S. Fish and Wildlife Service (USFWS) opposing the existing HCP. In 2009, negotiations on a new HCP reached an impasse and, at their December 2009 meeting the Board was provided with options for moving forward. A few months later the Board directed the Department to continue working on a new HCP, but take no longer than two years. Agreement was not achieved and, in 2012, the Board approved a new management plan for the forest that would generate revenue at an appropriate level. Soon after the plan was adopted, a lawsuit was filed against the Department. In 2013, the Board gave approval for staff to perform due diligence on the sale of three parcels in the Elliott to see what the marketability might be, should the Board decide to pursue an ownership transfer. At the end of 2013 and into early 2014, the Department made adjustments to murrelet protections in the forest and the lawsuit against the Department was dismissed as moot. Revenue projections following these actions showed a deficit in future revenue.

In the spring of 2014, the Department initiated the Elliott Alternatives Project at the direction of the Board. This project examined a range of alternatives to resolve the issue. During implementation, the Department sought out extensive input in the spring of 2014 through August 2015. Four options were presented to the Board at its December 2014 meeting. Two options pursued continuation of ownership and management by the Department; and two looked at the potential transfer of ownership. In December 2014, the Board also directed the Department to make one final effort with the federal services to determine if an HCP might be possible. That effort was unsuccessful. At its August 2015 meeting, the Board determined that the transfer of the Elliott property was appropriate because it was in the best interest of the Common School Fund and its beneficiaries.

The Elliott Transfer Opportunity and Protocol, approved by the Board in August 2015 included five key requirements for proposed acquisition plans. First and second, a plan must be for the purchase of the entire property, at fair market value, in all cash closing. Third, the proposed offer must be made by a lead participant. Fourth, the plan must include specific commitments with enforceable mechanisms to protect public benefits. And, fifth the plan must be without any contingencies for the benefit of the transferee.

Several meetings were held and 49 expressions of interest were received. A comprehensive timber and resource inventory was conducted and shared with the public. An extensive title review was also conducted and a tour of the property was held. The Department also contracted with multiple,

certified, independent timberland appraisers to conduct a comprehensive appraisal of the property to determine the fair market value, which was made public in July 2016.

One proposal was received by the deadline of November 15, 2106. The proposal was submitted by Lone Rock Timber Management Company as the lead participant; the Cow Creek Band of Umpqua Tribe of Indians; and the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians; with the support and advice of The Conservation Fund; Dr. John Gordon with the College of Forestry at Oregon State University; the Oregon Department of Forestry; the Confederated Tribes of Siletz Indians; and the Confederated Tribes of the Grand Ronde.

Director Paul stated that the Department has reviewed the plan and found that the primary goal of the protocol was achieved and that it contains both clear demonstrations of financial viability, as well as proposals for enforceable mechanisms for enhanced public benefits sufficient to demonstrate responsiveness. He explained that this finding was based on three general areas: 1) the plan demonstrates adequate equity investment and financing to acquire the property at the established fair market value; 2) it proposes enhanced public benefits that exceed those required by law; and 3) the plan recites enforceable mechanisms required for providing the enhanced public benefits in perpetuity.

Director Paul noted that the plan does have some gaps, uncertainties and ambiguities. However, he said that, under section seven of the protocol, he has deemed the plan responsive, despite these concerns. The rationale for his decision are: 1) only one proposal was received and therefore, fairness between competitors is not an issue; 2) the Board's discretion has placed a priority on moving forward in a timely fashion due to the ongoing economic losses associated with the property; and 3) the plan meets the basic requirements of the protocol and the gaps, uncertainties and ambiguities can, and will be addressed prior to a future offer of direct sale.

Director Paul provided an overview of the proposed plan. The owner would be a limited liability company (LLC) called the Elliott Forest LLC. The Elliott LLC would have two members at closing, Lone Rock and the Umpqua Indian Development Corporation. The plan proposes to meet the fair market value price of \$220.8 million in all cash at closing with a combination of equity investments for half the value and the other half provided by Northwest Farm Credit Services, PCA. He added that the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians has expressed interest in holding a conservation easement as the enforceable mechanism for three of the four enhanced public benefits. The lead participant has also identified a diverse team of supporters and advisors.

Director Paul went through the proposed public benefits required by the protocol. First, the plan proposes free public recreational access in perpetuity on at least 41,250 acres. He noted that the map included with the proposal indicates public access on the entire property and the plan states the condition of having the right to close certain areas at certain times. Second, the plan proposes to provide 40 jobs per year from the property over a 10-year period. Third, the plan proposes to manage 20,625 acres (25% of the forest) for older forest characteristics. The plan also proposes that adjustments can be made to the protection areas in the future. Fourth, the plan proposes to protect and enhance all streams where Coho salmon, steelhead and bull trout occur on the property. In addition, the lead participant has expressed interest in opportunities for developing ecosystem services and continuing conversations with others interested and experienced in diverse ecosystem service markets.

Director Paul discussed the gaps, uncertainties and ambiguities related to the public protection requirements. The Department needs more details regarding:

- how the proposal will ensure public access on at least fifty percent of the property in perpetuity, and the potential closure of portions of the forest;
- potential adjustments to harvest protection areas protected for older forest structure; and
- allowable activities in riparian management areas.

Director Paul discussed the proposed enforceable mechanisms and additional information that is needed. The plan proposes two mechanisms: 1) a conservation easement for three of the four required public benefits; and 2) an easement in gross for the fourth. The Department needs the following:

- confirmation that there will be one conservation easement over the entire property addressing the public recreational access, the harvest protection and riparian management areas;
- firm identification of the conservation easement holder and terms of the easement ensuring that they are enforceable to the satisfaction of the state;
- if proceeding with the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians, pursuant to their letter of intent, additional issues need to be clarified that are included in the staff report; and
- details regarding reporting processes under the conservation easement, including the level of public involvement and oversight.
- Identifying a holder of the easement in gross to ensure the required number of jobs to satisfy the economic benefit requirement

Director Paul told the Board that the Department proposes to work under the protocol toward developing an offer of direct sale. The offer will seek to close the gaps, clarify uncertainties and resolve the ambiguities identified. Director Paul will also direct staff to commence discussions with the proposers of the plan and possible additional partners prior to making an offer of direct sale. He said his expectation is to return to the Board in February 2017 to update them before making an offer and prior to finalizing a purchase and sale agreement.

Director Paul stated the recommendation from staff, which was that the Land Board provide input and direction on proceeding with the development of an offer of direct sale for a comprehensive ownership transfer of the Elliott property; and on exploring additional options with the potential comprehensive ownership transferee and possible additional partners.

Michael Rondo, CEO of the Cow Creek Band of Umpqua Tribe of Indians; Toby Luther, President and CEO of Lone Rock Timber Management Company; and Chief Warren Brainard of the Coos, Lower Umpqua and Siuslaw Indians spoke to the Board. Chief Brainard said the partnership reflects the multiple perspectives and values shared by the organizations. He said this partnership worked long and hard to develop the proposal and is committed to working with the Department through the process that the Board has outlined.

Michael Rondo explained the Cow Creek Tribe's rich connection to Southern Oregon as being the reason for participating in the proposal. He told the Board that the Cow Creek Tribe was one of the first two treaty tribes to secure a treaty with the US Government in the 1850s. However, like many treaties, this treaty was deficient and the result was that the Cow Creek became landless. The treaty was essentially ignored for more than 100 years until the official termination act of the 1950s that caused federal relations with more than 60 tribes and bands in western Oregon to cease to exist. The Cow Creek never received the reservation that the treaty promised, but they remained in their homeland and continued to hold council.

In the early teens and twenties, the Cow Creek were successful in getting bills entered into Congress for recognition. However, it wasn't until the 1950s that the Cow Creek was again recognized, but only for the purpose of termination. In the 1970s the Tribe began the path toward restoration, and in 1982, the Cow Creek was the second Oregon tribe to receive recognition from the federal government. The Act, however, did not restore any of the Tribe's ancestral lands. Since that time, the Tribe has pursued a land restoration policy and economic development strategy that focuses both on the direct purchase of land, as well as repatriation through Congressional acts. They are currently trying to restore the reservation that was originally promised in the Treaty of 1953.

Mr. Rondo told the Board that the Cow Creek were interested in the purchase of the Elliott State Forest property because it aligned with their long-term land acquisition management and investment goals. They wanted to see that ownership of the forest remained local. He explained that after the fair market value was announced, the Tribe began looking for investment partners that shared their commitment and values. They met with many parties, but when they met with Lone Rock Timber Management Company, they knew they were the right entity to join efforts. He stated that Lone Rock is a local company with a record of sustainable and responsible forest management. They are committed to upholding ecological and environmental protections and their roots in Oregon are deep. He also said that the Cow Creek was pleased to partner with the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians.

Toby Luther discussed the history of Lone Rock Timber Management Company that started as a sawmill in 1950. They sold their mills in 2001, and have since focused on managing timberland sustainably. Lone Rock manages 130,000 acres of timberland in southwest Oregon. Their logging operations have been recognized by the Oregon Department of Forestry as Operator of the Year on three separate occasions. Mr. Luther said they take managing their lands seriously and manage them to the highest of standards. In addition, their lands are certified as sustainable, which requires a review on an annual basis. Mr. Luther explained that Lone Rock will use their staff to manage the Elliott lands, but it will be done in conjunction with the partners and the others listed as supporters and advisors. He said they are still talking with other interested parties and experts to form the best coalition to meet the needs specified by the Land Board.

Chief Brainard discussed the proposed conservation easement and the protections that would be ensured under the easement.

Secretary Atkins thanked the proposers for bringing a plan forward. Governor Brown added her appreciation and thanked them for their hard work and time spent on the proposal.

The Board received public comments from approximately seventy people, including beneficiaries of the Common School Fund and local county commissioners, who expressed support for the proposal. Other commenters expressed concern for keeping the forest under public ownership and open to the public, as well as protecting the wildlife, habitats and other natural resources in the forest. Regional economic prosperity and employment were also discussed.

Governor Brown thanked the Cow Creek Band of Umpqua Tribe of Indians and the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians for their leadership in seeking out a possible partnership for managing the forest to preserve its public values while also meeting the needs of Oregon's schoolchildren. She clarified that the Board would not be making any decisions at the meeting. She noted that this was the last meeting for the Treasurer and Secretary of State and asked them for their input before leaving the Board.

Treasurer Wheeler thanked everyone for their participation; and Lone Rock Timber Company and the Tribes for bringing forth a proposal. He summarized what he has heard during his tenure on the Board. He said he heard clear testimony from a broad spectrum of stakeholders that the Elliott State Forest represents a very unique asset for the state. He particularly appreciated testimony related to the history and traditions on the public lands in the Elliott State Forest. He said that with leadership and vision, future generations of Oregonians can continue to benefit from the forest. Treasurer Wheeler commented that we are headed in the right direction, but are not there yet. He discussed the failed attempt to obtain an HCP, the management plan that was put in place as a result of the lack of an HCP, and the introduction of legislation during the 2015 session that did not succeed. Treasurer Wheeler said that the Board has heard a clear consensus from Oregonians that the Elliott should be separated from school funding. He also heard that Oregonians want public recreational access to the forest guaranteed and also want to maintain public control over the forest. He said that it is up to the majority to step forward with public funds in order to ensure these values remain. He discussed Governor Brown's offer of using general obligation bonding capacity and other proposals that are being developed.

Treasurer Wheeler said he supports the Governor and knows she is committed to finding a solution, but said she cannot do it alone. The public needs to contact the legislature to let them know they are serious about this issue. He said he is disappointed that the task of finding a solution for the Elliott was not completed during his tenure on the Board. However, he said that it is more important to do it right than to do it quickly. He added that this is a once in a multi-generational opportunity to bring Oregonians together in support of a grand vision that will protect the environmental, recreational and economic benefits for generations to come. He said he would continue to support the Governor and the incoming Board on this effort, in any way he can.

Secretary Atkins discussed how she has encouraged advocates for keeping the forest under public ownership, to focus their attention on legislative action. She noted that there is a lot of competition for bonding money and that people need to be diligent during the budget process. Secretary Atkins encouraged the Governor and incoming Board members to not allow the protocol process to die of discussion and debate. She said she admires the Cow Creek for seeking out partners for the proposal and that the Board should respect their leadership and decision and move the proposal forward. She specifically discussed the job creation requirement of the protocol and the means by which it will be measured. She noted that it can be a difficult thing to maintain and hopes that there is more clarity around how that will be enforced and measured. She discussed the disparity of opinions that range from the Board is neglecting their fiduciary responsibilities, to the Board is not protecting the intrinsic values of the forest enough. She said the Board has tried to come to a balance and appreciates the efforts of DSL staff for helping to find a balance.

Governor Brown thanked both Treasurer Wheeler and Secretary Atkins for their time on the Board.

Governor Brown asked that the Department worked towards the development of an offer of direct sale that will seek to close the gaps, clarify the uncertainties and resolve the ambiguities described in the staff report. In addition, she also asked the Department to commence discussions with the potential comprehensive ownership transferee and possible additional partners, prior to making an offer of sale. She said it is her expectation that the Department return to the Board in February 2017, prior to making any offer of direct sale and prior to finalizing a purchase and sale agreement.

She said it is very clear that, in Oregon, our public lands are irreplaceable assets – our beaches, our forests, and our open spaces. And, in the face of very challenging public policy issues, she believes that these values that Oregonians hold so dear, must be protected. She also believes that natural resource jobs, that are critical to rural economies, must be protected as well.

Governor Brown said that it is appropriate for the Board to have another option to consider and proposed that the state use up to \$100 million in bonding authority to pay into the Common School Fund and relieve a portion of the Elliott from its fiduciary responsibility. She said this is only part of the solution and that she calls upon the public to use their creativity, passion and time to pursue options for the Elliott that will craft a solution that will balance public ownership, rural natural resources jobs, conservation and recreational values. Specifically, the option should decouple the purpose and ownership of the Elliott from the Common School Fund and should keep it in public ownership, which could be state or tribal ownership. This could include aspects of the proposal already submitted, including both tribal forest management, as well as private forest management. She said she is adamant about creating jobs, particularly in Coos and Douglas Counties, maintaining public access and preserving endangered species and their habitat. She told the audience that this is their opportunity to bring another option forward and encouraged thoughtful collaboration among everyone.

Governor Brown adjourned the meeting at 2:05 p.m.

Kate Brown, Governor

James T. Paul, Director



Oregon

Kate Brown, Governor

Department of State Lands

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State Land Board

State Land Board

**Regular Meeting
February 14, 2017
Agenda Item 1b**

Kate Brown
Governor

Dennis Richardson
Secretary of State

SUBJECT

Tobias Read
State Treasurer

Request for approval to initiate the review and determination of the potential sale of approximately 40 acres of state-owned filled lands in Multnomah County.

ISSUE

Whether the State Land Board should authorize the Department to initiate the review and determination of the potential sale of approximately 40 acres of state-owned filled lands in Multnomah County, located on Sauvie Island (Appendix A).

AUTHORITY

Oregon Constitution, Article VIII, Sections 2 and 5; pertaining to the Common School Fund and land management responsibilities of the State Land Board.

ORS 273.055; relating to the power to acquire and dispose of real property.

ORS 273.171; relating to the duties and authority of the Director.

ORS 274.915; relating to the sale, lease or trade of submersible and submerged lands.

ORS 274.960 through 274.985; pertaining to investigation of state's interest.

OAR 141-068; relating to the sale, exchange or reservation of new lands.

SUMMARY

The Department of State Lands received an application in November 2016, for the purchase of approximately 40 acres of state-owned filled lands on Sauvie Island, just to the south of the Sauvie Island Wildlife Management Area. The applicant, Campbell Isaac Kidd IV, owns land adjacent to the parcel. Upon approval of this agenda item, the Department would initiate the formal due diligence process to compile the information needed towards a potential future decision on whether or not to sell the parcel.

As part of this due diligence, letters are sent to adjacent landowners and lessees (if any) to inform them of the potential sale. Local, state and federal agencies and tribal interests will also be notified, and asked to offer information concerning their areas of interest. Any significant concerns identified as a result of the public review notices will be thoroughly evaluated and thoughtfully considered prior to moving forward with a recommendation on the sale process.

After comments are received from the public and other agencies, and following other additional due diligence work, the Department will determine whether or not to recommend the sale of this parcel. If such a recommendation is made, it will be brought to the State Land Board at a future public meeting.

RECOMMENDATION

The Department recommends that the State Land Board authorize the Department to initiate the review and determination of the potential sale of approximately 40 acres of state-owned filled lands in Multnomah County, located on Sauvie Island.

APPENDICES

A. Map of the parcel

State of Oregon
Department of State Lands



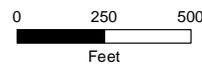
Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, and the GIS user community. Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

EXHIBIT A

**59541-LS AUTHTYPE
T3N, R1W Section 23
Multnomah County**

 DSL Properties

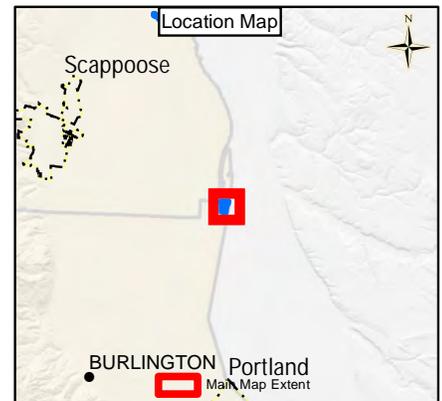
This map depicts the approximate location and extent of a Department of State Lands Proprietary authorization for use. This product is for informational purposes only and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.



Map Projection:
Oregon Statewide Lambert
Datum NAD83
International Feet

State of Oregon
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Date: 1/10/2017





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State Land Board

State Land Board

**Regular Meeting
February 14, 2017
Agenda Item 2**

Kate Brown

Governor

Dennis Richardson

Secretary of State

Tobias Read

State Treasurer

SUBJECT

Request for approval to grant a 20-year easement for a fiber optic communication cable across state-owned submerged and submersible lands in the Territorial Sea in Tillamook County.

ISSUE

Whether the State Land Board should approve a request from Microsoft Infrastructure Group LLC for an easement to operate, maintain, repair and replace a fiber optic communication cable across state-owned submerged and submersible lands in the Territorial Sea in Tillamook County.

AUTHORITY

ORS 273.045; provides that the Department establish administrative rules as necessary to carry out its duties.

ORS 390.715; provides that permits for cable lines in the submerged land adjacent to the ocean shore may be issued upon payment of just compensation by the permittee.

ORS 758.010; provides that communication line easements across all state-owned submerged and submersible land are statutorily granted.

ORS 141-083-0800 through 141-083-0870; establishing procedures for granting fiber optic and other cable easements and rights-of-way across state-owned submerged and submersible land, and requiring Land Board approval of easements in the Territorial Sea.

BACKGROUND

The easement is for the right to construct, maintain, operate and replace a fiber optic communication cable over, upon, and under Oregon's Territorial Sea. Appendix A

shows the approximate location of the proposed cable across the Territorial Sea, landing near Pacific City in Tillamook County.

The Department received an application from Microsoft Infrastructure Group, LLC ("Microsoft ") on May 2, 2016, proposing to install the New Cross Pacific (NCP) Cable Network, a new Trans-Pacific undersea fiber optic telecommunications cable system, linking the United States (at Pacific City, Oregon) to Asia. The NCP comprises a trunk route from Chongming in China to Pacific City in the USA, with branches to Nanhui in China, Busan in Korea, Toucheng in Taiwan and Maruyama in Japan.

Microsoft Infrastructure LLC entered into an agreement with Oregon Fishermen's Cable Committee (OFCC) that encourages the use of cable installation and maintenance techniques that minimize interference with commercial fishing activities. In addition, this agreement also provides an annual fund for committee expenses and replacement of cable-related fishing gear losses; provides a 24-hour toll free hotline for reporting cable snags; and releases participating fisherman from liability for cable damages (Appendix B).

Microsoft Infrastructure LLC proposes a \$300,000 payment to satisfy the just compensation requirement for the use of the state-owned land for the initial 20-year term of the easement in exchange for the certainty provided by removing the 'prevailing law/future consideration' clause. This payment is consistent with compensation received for other similar types of easements granted by the Department in the past.

The Department circulated the application for public review and received one comment. The Oregon Department of Fish and Wildlife (ODFW) commented that the proposed construction timing of March 1 to June 30, 2017 encompasses the typical timing of the state endangered gray whale migration in the area between April 1 and June 15. ODFW recommended that construction activities in the ocean be conducted outside that window to the extent possible, and that for activities required during the migration window, procedures be in place to monitor for the presence of whales and delay or suspend operations while whales are in the vicinity. The Microsoft Infrastructure LLC response to the ODFW comment and recommendation is attached (Appendix C).

The draft easement has been reviewed and approved by the Oregon Department of Justice (Appendix D).

RECOMMENDATION

The Department recommends that the State Land Board approve the granting of a 20-year easement to Microsoft Infrastructure LLC for a fiber optic communication cable across state-owned submerged and submersible land within and adjacent to the Territorial Sea, landing near Pacific City in Tillamook County.

APPENDICES

- A. Site map
- B. Oregon Fishermen's Cable Committee agreement
- C. Microsoft Infrastructure LLC response to ODFW comment and recommendation
- D. Draft easement (55874-EA)

State of Oregon
Department of State Lands



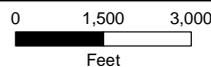
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Appendix A

59081-EA Waterway Easement
360,340.86 Square Feet
Tillamook County

- ▲ Description Points
- Description Lines
- ▨ Authorization Area

This map depicts the approximate location and extent of a Department of State Lands Proprietary authorization for use. This product is for informational purposes only and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.



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Oregon Statewide Lambert
Datum NAD83
International Feet

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www.oregon.gov/DSL

Date: 1/17/2017



**AGREEMENT BETWEEN THE OREGON FISHERMEN'S
CABLE COMMITTEE, INC. AND MICROSOFT**

AS RELATES TO THE NEW CROSS PACIFIC CABLE SYSTEM

This Agreement is entered into on the date noted below between and among: The Oregon Fishermen's Cable Committee, Inc. ("OFCC" or "Oregon Committee" or "the Committee"), an Oregon non-profit corporation with a business address at 2021 Marine Drive, Suite 102, Astoria, Oregon 97103, and Microsoft Infrastructure Group, LLC, ("MICROSOFT"), with a business address at One Microsoft Way, Redmond, WA 98052. The OFCC and MICROSOFT are at times referred to collectively as the "Parties".

The OFCC is constituted of representatives of both the Oregon commercial fishing industry and the sub-sea telecommunications industry and sub-sea scientific observation representatives. The fishing representatives are from the areas near and the waters off Astoria/Columbia River, Garibaldi, Newport/Yaquina Bay, Charleston/Coos Bay and Brookings/Harbor in the State of Oregon. The current telecommunications and scientific cable representatives are from ACS Cable Systems, Inc. ("ACS"), MFS Globenet, Inc. ("Verizon"), Tata Communications (America) Inc. ("Tata"), General Communication, Inc. ("GCI"), The Consortium for Ocean Leadership, Inc. ("Ocean Leadership") and GU Holdings ("GOOGLE").

The Oregon Accord (established on July 9, 1998 between Certain Oregon Commercial Fishing Interests and WCI Cable, Inc.) was the first agreement between the Oregon commercial fishing industry and the sub-sea telecommunications industry. The Oregon Accord established the OFCC along with basic principles, understandings, and procedures to follow for the shared use of the seabed off the Oregon coast. Among the other Goals set forth below, the Oregon Accord seeks to minimize risks to, interference with, and/or interruption of commercial fishing activities and of submarine fiber optic cable operations.

MICROSOFT intends to install the NEW CROSS PACIFIC cable ("NCP") from near Pacific City, Oregon to Asia through commercial fishing grounds in the waters off the State of Oregon. This Agreement reflects the basic principles of the Oregon Accord as modified and amended to date by the OFCC. MICROSOFT agrees to adhere to the terms and conditions of this Agreement. If there is a conflict between the Oregon Accord and this Agreement, the terms and conditions of this Agreement take precedence.

GOALS OF THE PARTIES

To continue communication, coordination, and cooperation between members of the Oregon commercial fishing and fiber optic cable industries so that they can amiably discuss and resolve concerns;

To encourage the employment of commercially reasonable cable installation and maintenance techniques to minimize interference with and/or interruption of commercial fishing activities;



To distribute to US West Coast trawl fishermen the 24-hour toll free hotline numbers maintained by individual cable owners who are a party to the OFCC;

To establish a Fund to compensate commercial fishermen for the replacement of cable-related fishing gear losses;

To form a committee constituted of Oregon commercial fishermen and fiber optic cable representatives who oversee Committee funds and administer the Committee's related activities;

To release participating commercial fishermen from liability for damage to member fiber optic cable systems; and

To educate and encourage the West Coast US trawl fleet to follow safe practices around OFCC member fiber optic cables and to protect those cables from damage.

SHARED UNDERSTANDINGS

The Oregon Accord was the first effort by representatives of the commercial fishing and telecommunications industries to discuss, describe, and delineate their shared use of a community resource – the coastal continental shelf and slope. The Oregon Accord and this Agreement are a refinement of the rights and duties set forth in and under international and national law. These agreements are private compacts between and among individuals and entities. These agreements are not intended to, nor do they create, any rights in third parties other than the individual Participating Fisherman who executes the "Individual Fisherman's Agreement And Mutual Release", a copy of which is attached to this Agreement as Attachment 2. These agreements are intended to be implemented with a minimum of government involvement and interference. These agreements are not intended to be and should not be interpreted or enforced by an agency or court except as set forth in the Dispute Resolution section of this Agreement. These agreements are not intended to be disclosed in any administrative or judicial proceeding except as otherwise required by law.

The Parties acknowledge and agree that this Agreement covers only the NEW CROSS PACIFIC fiber optic cable running from the shoreside near Pacific City, Oregon seaward to a water depth of 1500 meters. The NEW CROSS PACIFIC cable will be buried to a water depth of 1,300 meters or a mutually agreed point in the Seaward of 700 Fathoms Essential Fish Habitat ("700 Fm EFH") area established by the National Marine Fisheries Service ("Burial End Point"). All cable segments that are located shoreward of the 700 Fm EFH shoreward boundary shall be buried excepting at those mutually agreed locations. The Parties also acknowledge and agree that because the fiber optic cable is intended to remain buried, all current fishing activities undertaken by (a) Class A limited entry groundfish permit holders with trawl endorsement, and (b) Washington, Oregon and California pink shrimp permit holders, may continue in the area where the NEW CROSS PACIFIC cable is buried. The Parties also acknowledge and agree that this Agreement is limited to the traditional fisheries and current gear and technology in the fishing industry. This Agreement expressly does not cover or protect the fishermen who utilize clam dredges, scallop dredges, and/or any other sub-benthic technology.



24-HOUR TELEPHONE HOT LINE

MICROSOFT shall provide and maintain, either individually or in collaboration with other cable entities a 24-hour toll free telephone hot line for fishermen to call who believe they have snagged their gear on the NEW CROSS PACIFIC fiber optic cable. There shall always be one person on duty at all times who (1) has the authority to make a decision and (2) the background and experience to make the most prudent decision under the circumstances. The individual shall have the authority to make a quick decision to cut the snagged fishing gear based on limited information if a failure to cut the gear could jeopardize lives or other property, including the NEW CROSS PACIFIC fiber optic cable.

FUNDS

Installation Costs

The Parties entered into a Memorandum of Understanding ("**MOU**") dated July 13, 2015 governing pre-installation and installation activities and funds for such activities.

In the unlikely event that the NEW CROSS PACIFIC cable system is not installed with an Oregon landing, the Parties agree this Agreement shall be terminated without further liability, provided that MICROSOFT shall be responsible for payment of actual costs for pre-installation and installation activities incurred by the Oregon Committee up to the date of termination.

Annual Costs for OFCC Expense

MICROSOFT shall share in the Committee's expenses with the other cable entities on a pro rata basis according to the following:

Determination of Pro Rata Share: The OFCC pro rata share calculation is 1 share for the first cable segment and $\frac{1}{2}$ share for each additional cable segment forming a part of the same cable system. Presently, GCI, Verizon (the Southern Cross segment), Google and Verizon (the Trans-Pacific Express segment), each have 1 cable under agreement and, therefore, are each obligated for 1 share of the expenses. ACS has 2 cables under agreement and is obligated for $1 \frac{1}{2}$ shares of the expenses. Tata has 3 cables under agreement and is obligated for 2 shares of the expenses. The Consortium For Ocean Leadership, Inc. has 3 continental shelf cable segments and is obligated for 2 shares of the expenses. There are a total of $9 \frac{1}{2}$ shares currently under agreement. With the addition of the NEW CROSS PACIFIC cable, there will be $10 \frac{1}{2}$ shares. MICROSOFT will be responsible for 1 out of a total of $10 \frac{1}{2}$ shares, or 9.52381% of the OFCC's expenses. Should MICROSOFT install additional NEW CROSS PACIFIC cable segments in Oregon, an additional $\frac{1}{2}$ share will be allocated to MICROSOFT for each NEW CROSS PACIFIC cable segment.

Timing and Amount of Payments: The OFCC shall approve an annual budget for OFCC operations for the fiscal year commencing July 1. MICROSOFT will be invoiced semi-annually for its share of the OFCC expense up to a maximum of \$75,000 per period. The budget will be reconciled semi-annually with credits applied or payments owed reflected in the invoice for a subsequent six month period. MICROSOFT's payment obligation shall become effective upon MICROSOFT's execution of this Agreement. The initial invoice shall



be prorated from the effective date to the end of the applicable invoice period. All invoices will be paid within 60 days of receipt. In the unlikely event that the NEW CROSS PACIFIC cable system is not installed with an Oregon landing, the Parties agree this Agreement shall be terminated without further liability. In the case of termination, the OFCC shall retain all payments made by MICROSOFT for its pro rata share of the OFCC operations budget for the then current invoice cycle.

Sacrificed Gear Fund

The OFCC maintains a Sacrificed Gear Fund of \$150,000 which is funded by the member cable owners. An equal share of this \$150,000 shall be borne by each cable owner that is a member of the OFCC. This fund will only be used to pay sacrificed gear claims, provide sacrificed gear bridge loans, and pay related expenses. Related expenses shall include the cost of OFCC fishermen representatives (in accordance with the OFCC Rate Schedule in effect at the time) involved with the investigation, processing or review of a claim for sacrificed gear. If payments from this fund are made in connection with gear sacrificed to protect the NEW CROSS PACIFIC cable, then the OFCC shall invoice MICROSOFT for the amounts paid from the fund and MICROSOFT shall replenish the fund by paying those amounts into the fund within 60 days of receiving said invoice. In addition, if a sacrificed gear claim on the NEW CROSS PACIFIC cable exceeds the amount available in the Sacrificed Gear Fund, MICROSOFT agrees to deposit into the Sacrificed Gear Fund the amount of the OFCC approved claim, including the amount that exceeds the fund, within 60 days. The initial payment shall be due upon commencement of cable placement operations.

RESOLUTION OF CLAIMS

The OFCC has established a claims review procedure. A Participating Fisherman shall submit a written claim for compensation pursuant to the claims review procedure and on approved forms including the "Sacrificed Gear Claim Form And Release And Settlement" within the time set by the OFCC. The OFCC shall review and then approve or deny a claim in accordance with its claim review procedure. As part of its review, the OFCC may review any available information relating to the sacrificed gear claim, including an inspection of the cable by an underwater remote operated vehicle ("ROV"). If the OFCC approves a claim, the OFCC waives any right to collect from the claimant amounts OFCC paid for the replacement gear related to that claim. In addition, the OFCC shall pay from the Sacrificed Gear Fund an amount equal to fifty percent (50%) of the value of the replacement gear to the Participating Fisherman. This sum represents liquidated damages in settlement and satisfaction of any and all claims or possible claims for loss of business, lost profits, or any other damages incurred by the Participating Fisherman. If the OFCC denies a claim because of fraud, misrepresentation, or failure to follow the required procedures, the authorization to the approved suppliers for the sacrificed gear is treated as a bridge loan to the fisherman that must be repaid by the fisherman.

THE OREGON FISHERMEN'S CABLE COMMITTEE

Voting Members



The size, structure, and membership of the OFCC are set forth in the Bylaws of the Oregon Fishermen's Cable Committee, Article III, Section 2 as amended.

Non-Voting Members

There shall be one non-voting director as set forth in the Bylaws of the Oregon Fishermen's Cable Committee, Article III, Section 3 as amended: There shall be one (1) non-voting Director selected by the voting Directors, who shall be a specialist in undersea telecommunications construction and maintenance.

OFCC Fishermen Board Member Costs

Each fisherman Board Member shall be paid for duties agreed by the OFCC in accordance with the OFCC Rate Schedule in effect at the time. In addition, each fisherman Board Member will be reimbursed for all reasonable expenses incurred in performing his or her duties. Payments made to fishermen Board Members will be made from the OFCC Expense operating funds.

RELEASE OF LIABILITY

MICROSOFT agrees to release any claims against vessel owners and operators and refrain from taking any administrative, legal or other action to sanction and/or recover damages against vessel owners and operators who honor the procedure established by the Committee pursuant to this Agreement. MICROSOFT further agrees to encourage all administrative, legal and other authorities to honor the procedure established by the Committee pursuant to this Agreement. Microsoft will not be deemed to have released claims against vessel owners or operators who engage in fraud, misrepresentation or failure to substantially follow the OFCC procedures. In such case, Microsoft will be entitled to pursue any and all legal and equitable remedies available to it.

OFCC ACTIVITIES

OFCC will communicate with fishermen about the NEW CROSS PACIFIC cable, and evaluate and resolve fishermen claims. OFCC will also oversee the Sacrificed Gear Fund and other funds and perform any other related activities as needed and according to the OFCC Rate Schedule in effect.

MICROSOFT ACTIVITIES

Cable Burial

MICROSOFT has contracted to have the NEW CROSS PACIFIC fiber optic cable installed at a depth of one meter or more beneath the seabed from shore to the Burial End Point. The fiber optic cable may be buried at less than one meter in hard ground or where the onboard OFCC observers have determined that reasonable efforts failed to achieve full burial. Additionally, where soft bottom is encountered, the fiber optic cable may be buried deeper than one meter. In all instances, current technology will be utilized in the cable burial process including using remote operated vehicles ("ROV"), post-lay burial, where required, and ROV inspection immediately following installation shoreward of the Burial End Point.



MICROSOFT agrees that two (2) OFCC fishermen representatives shall be allowed on board cable survey, cable installation, and cable maintenance vessels from the coast out to the Burial End Point. The involvement of OFCC fishermen representatives is limited to cable survey, cable installation, cable maintenance, cable inspection and cable repair activities.

OFCC shall ensure that the Personal Liability Release Form included as Attachment 1 to this Agreement is signed by all persons undertaking activities at the behest of OFCC onboard any cable survey, installation, inspection or maintenance vessels chartered by MICROSOFT or its contractors. The OFCC fishermen representatives shall have access to observe all operations including access to instruments onboard vessels whenever space and working conditions reasonably allow. MICROSOFT shall pay all of the representatives' approved expenses in the course of their observing such operations in accordance with the OFCC Rate Schedule in effect at the time of the operation.

Miscellaneous Activities

MICROSOFT and its contractors shall undertake stringent debris control efforts during installation and burial of the cables.

As-Built Coordinates and Charts

MICROSOFT shall provide cable as-built installation GPS coordinates to the OFCC within 30 days after the installation contractor delivers the information to MICROSOFT. This data shall be provided in written and electronic data form. MICROSOFT shall provide the OFCC with a complete set of as laid charts of the cables shoreward of 1,500 meters water depth.

ROV Burial Verification

MICROSOFT shall conduct an ROV burial verification inspection not more than five (5) years following the completion of the NEW CROSS PACIFIC cable installation. If the survey of the cable, at not more than five (5) years following installation, presents significant evidence that the cable has remained buried, subsequent surveys for the same cable shall occur at not more than eight (8) year intervals. If there is significant evidence that the cable has not remained buried, the ROV burial surveys shall continue at intervals of not more than five (5) years. In addition to the foregoing ROV burial verification surveys, MICROSOFT shall conduct an ROV inspection and survey after any major geological or environmental event as determined by the OFCC. If required, MICROSOFT shall pay committee-approved gear compensation and/or gear removal costs associated with these or other maintenance activities. All ROV burial verification inspections shall follow protocols to be agreed to by MICROSOFT and the OFCC.

Patrol/Guard Vessels

MICROSOFT shall separately execute Fishing Vessel Charter Agreements that independently fund patrol boats that are nominated by the OFCC during the cable landing, laying and burial operation shoreward of the Burial End Point. The OFCC shall only nominate patrol boats that will meet committee minimum requirements. Patrol vessels will be compensated in accordance with the OFCC Rate Schedule in effect at the time of the operation. Patrol Boats will not be



required during ROV operations, whether part of a Post Lay Inspection & Burial (PLIB) operation, subsequent repair or ROV Inspection.

A guard boat will be required for a new cable exposure during construction or repair operations more than 3 nm away from the cable ship performing the work. The guard boat shall maintain a watch at the site for up to 10 days, or a mutually agreed upon duration, to allow for fleet notification to occur. A single guard boat may stand watch over multiple exposures in which no exposure is more than 10 nm from any other exposure. If exposures are more than 10 nm apart, one or more additional guard boats are required.

REVIEW BY LEGAL COUNSEL

The Parties acknowledge and agree that they have had this Agreement reviewed by legal counsel or were afforded an opportunity to have this Agreement reviewed by legal counsel.

DISPUTE RESOLUTION AND LIMITATION OF LIABILITY

In the event of a dispute between the Parties to this Agreement, the Parties shall (1) discuss the problem between them and attempt a resolution. If the dispute is not thereby resolved within seven (7) days, the Parties shall (2) mediate the problem in Portland, Oregon or in another mutually agreed location. If the dispute is not thereby resolved within thirty (30) days, the Parties shall (3) engage in binding arbitration in Portland, Oregon or in another mutually agreed location and before a mutually agreed arbitrator.

Neither Party will be liable to the other for any indirect, consequential, special, incidental or punitive damages, or for any lost profits of any kind or nature whatsoever, foreseeable or not, arising from its performance of its obligations under this Agreement, whether from negligence or otherwise. Neither Party's total aggregate liability arising out of or relating to this Agreement will exceed the annual amount paid or payable under this Agreement.

In the event of a dispute between or among the Parties to this Agreement on a technical issue, the Parties shall discuss the problem between them and diligently attempt to reach a resolution. If the dispute is not thereby resolved in a timely manner, the Parties shall employ an independent engineer to review the issue and render an opinion that shall be binding. The engineer shall be hired from a mutually agreeable independent engineering firm with expertise in undersea cable systems and paid by MICROSOFT.

SUPPORT FOR NEW CROSS PACIFIC CABLE PROJECT

The fishing industry members of the OFCC express their support to governmental agencies in connection with the permitting, installation, operation and maintenance of the NEW CROSS PACIFIC cable that is the subject of this Agreement. These members shall also express support for subsequent cables that may be proposed by MICROSOFT, provided that the provisions of this Agreement or a similar agreement cover these subsequent cables.

CONFIDENTIALITY

All data concerning cable installation and engineering shall be considered confidential and released outside the OFCC only by written consent of MICROSOFT.



AGREEMENT OPEN TO NEW MEMBERS

Additional cables and cable companies may join the OFCC by majority vote of the OFCC. In such an event, the OFCC's operating expense, Sacrificed Gear Fund, and other shared costs of the Committee will be allocated among the cable company committee members and such new member cable companies must agree to the substantive terms and provision of this Agreement. Changes to the total number of shares under agreements with the OFCC will be adjusted accordingly and will not require amendment to this Agreement. Such changes shall be noted in the published meeting minutes from the Board Meeting approving the change. The new company may only be offered more favorable terms provided that all existing members receive the same or similar improved terms.

MISCELLANEOUS

This Agreement is solely for the benefit of the Parties and their respective successors and permitted assigns, and this Agreement shall not otherwise be deemed to confer upon or give to any other third-party any remedy, claim, liability, reimbursement, cause of action or other right.

MICROSOFT shall have the right to assign its interests and obligations in this Agreement subject to the Oregon Committee's written approval, which shall not be unreasonably withheld. OFCC will approve the assignment if the assignee agrees to assume the interests and obligations of this agreement. OFCC agrees to use its best efforts to effect an orderly and efficient transition to any assignee in the event of any such assignment. MICROSOFT shall have the right to assign without consent to its related affiliates, any of which will assume all interests and obligations from MICROSOFT. In the event of an assignment, the assigning entity will remain liable under the terms of this Agreement. This Agreement shall be binding on MICROSOFT and the OFCC and their respective successors and assigns.

If any of the provisions of this Agreement are invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions and the rights and obligations of the Parties shall be construed and enforced accordingly.

A waiver of any of the terms and conditions of this Agreement, or the failure of either Party strictly to enforce any such term or condition on one or more occasions shall not be construed as a waiver of the same or of any other term or condition of this Agreement on any other occasion.

This Agreement supersedes all prior oral or written understanding between the Parties and constitutes the entire Agreement with respect to the subject matter herein. The Agreement can not be modified or amended except by a writing signed by authorized representatives of all Parties.



This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, United States, excluding its conflicts of laws provisions.

AUTHORITY TO EXECUTE

The Parties execute this Agreement by and through their respective duly authorized representatives who warrant and covenant their authority to enter into this Agreement.

This Agreement is executed this 23rd day of March, 2016

MICROSOFT INFRASTRUCTURE GROUP, LLC.

By: David J Crowley
David Crowley, Senior Director.

OREGON FISHERMEN'S CABLE COMMITTEE, INC.

By: Scott McMullen
Scott McMullen, President/Chairman
(Astoria/Columbia River)

By: Michael S Retherford
Mike Retherford
(Newport/Yaquina Bay)

By: Terry Thompson
Terry Thompson (Newport/Yaquina Bay)

By: Brad Pettinger
Brad Pettinger (Brookings/Harbor)

By: Gerald Gunnari
Gerald Gunnari (Charleston/Coos Bay)

By: Bill Kositz
Bill Kositz (ACS Cable Systems, Inc.)

By: David Jordan
David Jordan (Garibaldi)

By: John R Freeman
John R Freeman (Tata Communications
(America) Inc.)

Approved As To Form:
LEGAL DEPARTMENT
By: Sujay Guha Thakurta
Date: _____
TCSTL1008-10 APPROVED FOR SIGNATURE



By: ^{DocuSigned by:}
Mikal Modisette
Mikal Modisette (MFS Globenet, Inc.)

By: ^{DocuSigned by:}
Robert Munier
Rob Munier (Woods Hole Oceanographic Institution)

By: ^{DocuSigned by:}
Bruce Rein
Bruce Rein (General Communication, Inc.)

By: ^{DocuSigned by:}
Gary Wintersteen
Gary Wintersteen (Astoria/Columbia River)

By: ^{DocuSigned by:}
Susan Banahan
Susan Banahan
(The Consortium for Ocean Leadership, Inc.)

By: ^{DocuSigned by:}
Woohyong Choi
Woohyong Choi
(GU Holdings, Inc.)



^{DocuSigned by:}
Rex Leach
Rex Leach
Charleston/Coos Bay



**OREGON FISHERMEN'S CABLE COMMITTEE
PERSONAL LIABILITY RELEASE FORM
Attachment 1**

This is a legally-binding Liability Release, Waiver, Discharge, and Covenant Not to Sue made by me, _____ (hereinafter referred to as "Releaser") to Microsoft Infrastructure Group, LLC ("**Microsoft**") (hereinafter referred to as "MICROSOFT") and the Oregon Fishermen's Cable Committee Inc. (hereinafter referred to as "OFCC").

I fully recognize that there are dangers and risks to which I may be exposed by participating in support of the Oregon Fishermen's Cable Committee (OFCC) activities associated with the planning and installation of the NEW CROSS PACIFIC cable from the time of signing this release until completion of this cable installation. The following is a description and/or examples of significant dangers and risks associated with this activity:

1. Serving as an OFCC shipboard observer during cable installation activities or route survey.
2. Being a skipper or crewmember of a fishing vessel chartered to support the NEW CROSS PACIFIC cable project.
3. Driving or riding in a vehicle transporting me to meetings or activities associated with the NEW CROSS PACIFIC cable project.

I understand that neither MICROSOFT nor OFCC requires me to participate in this activity, but I want to do so, despite the possible dangers and risks and despite this Release.

I, therefore, agree to assume and take on myself all of the risks and responsibilities in any way associated with this activity. In consideration of and return for the services, facilities, and other assistance provided to me by MICROSOFT, I release MICROSOFT and OFCC (and their governing boards, employees, contractors and agents) from any and all liability, claims and actions that may arise from injury or harm to me, including death, or from damage to my property in connection with this activity. I understand that this Release covers liability, claims and actions caused entirely or in part by any acts or failures to act on my part, including but not limited to negligence, mistake, or failure to supervise.

I assure MICROSOFT and OFCC that there are no health-related reasons or problems which preclude or restrict my participation in this activity and I will indemnify and hold MICROSOFT and OFCC harmless for any such medical costs.

I understand that this Release means I am giving up, among other things, rights to sue MICROSOFT, and/or OFCC, their governing boards, employees, and/or agents for injuries (including death), damages, or losses I may incur. I also understand that this Release binds my heirs, executors, administrators, and assigns.

I HAVE READ THIS ENTIRE RELEASE, I FULLY UNDERSTAND IT, AND I AGREE TO BE LEGALLY BOUND BY IT.

Witness

Releaser's Signature

Date



THE OREGON FISHERMEN'S CABLE COMMITTEE AGREEMENT
Attachment 2

INDIVIDUAL FISHERMAN'S AGREEMENT AND MUTUAL RELEASE

OFCC Member Submarine Fiber Optic Cable Companies landing in Oregon ("Cable Companies") agree to release me, a Participating Trawl Fisherman, and the

F/V _____ a Participating Trawl Vessel, from liability to the Cable Companies for my ordinary negligence if, when engaged in trawl operations, I agree to honor the "Procedures to Follow While Operating Near Submarine Fiber Optic Cables" (the "Operating Procedures") established by the Oregon Fishermen's Cable Committee ("OFCC" or "Oregon Committee") pursuant to the "AGREEMENT TO CREATE AND ESTABLISH THE OREGON FISHERMEN'S UNDERSEA CABLE COMMITTEE" dated July 9, 1998 and related subsequent agreements (the "Oregon Accord" at times described as the "Oregon Fishermen's Agreements"). I agree that "THE OREGON FISHERMEN'S CABLE COMMITTEE AGREEMENT: INDIVIDUAL FISHERMAN'S AGREEMENT AND MUTUAL RELEASE" (this "Agreement" also known as the "IFA") does not release me and the Participating Trawl Vessel from liability for damage arising directly or indirectly from my gross negligence or intentional, willful or wanton acts or omissions, which for purposes of this Agreement shall include my failure to honor the Operating Procedures. The Cable Companies further agree that they will actively encourage governmental authorities not to bring or maintain any civil or criminal actions or penalties against a Participating Trawl Fisherman or Participating Trawl Vessel who honors the procedures established by the Oregon Committee pursuant to the Oregon Fishermen's Agreements.

I agree to learn about the location of the submarine fiber optic cables that land in Oregon and also to exercise care and observe the Operating Procedures when trawl fishing in the area of the cable. If I believe that I have snagged a cable, I agree to cease hauling on the trawl fishing gear and to call the 24-hour toll free telephone line maintained by the Cable Owners to discuss the situation. The Cable Owner's representative has the authority immediately to approve cutting the trawl gear and by doing so thereby authorizes the provision of replacement trawl gear to me from approved suppliers. I agree to present my claim in writing (my "Claim") to the Oregon Committee for review on the approved form within thirty (30) days of the incident. I understand that the Oregon Committee, constituted of Oregon commercial fishermen and fiber optic cable representatives, is empowered to review and investigate my Claim for compensation including if necessary undertaking an inspection of the cable by an underwater remote operated vehicle. If the Oregon Committee approves my Claim, the Oregon Committee waives any right to collect from me for any replacement trawl gear provided to me. In addition, the Oregon Committee shall pay from the Fund established by the Oregon Fishermen's Agreements an amount equal to fifty percent (50%) of the value of the replacement trawl gear to me. This sum represents liquidated damages in settlement and satisfaction of any and all claims or possible



claims for loss of business, lost profits or any other damages incurred by me. If the Oregon Committee denies my Claim because of fraud, misrepresentation or failure to follow the required Operating Procedures or other procedures, the payment for the sacrificed trawl gear is treated as a bridge loan to me that I may have to repay. The Oregon Committee may issue and revise the Operating Procedures and other procedures from time to time governing the treatment of Claims and shall send copies of the revisions to me at the address noted below.

The Oregon Committee shall review my Claim and accept it in full or offer a settlement to me. I understand that by signing this Agreement I agree to and do hereby release any and all individuals affiliated with the Oregon Committee, the Oregon Committee itself, and the Cable Companies and their affiliates and subsidiaries, including their officers, directors, employees, agents and assigns from any and all legal and equitable liability for any actions, inactions or decisions of the Oregon Committee including the decision on my claim. I further agree not to bring any legal or equitable action against them. I also release any other telecommunications companies that execute the Oregon Fishermen's Agreements or a related subsequent agreement.

If the Oregon Committee accepts my claim in full or if I accept the settlement for my claim offered to me by the Oregon Committee, I agree to release and am thereby releasing the Cable Companies and their affiliates and subsidiaries, including their officers, directors, employees, contractors, agents and assigns from any and all legal and equitable liability. I further agree not to bring any legal or equitable action against them. I also agree that the Cable Companies and the Oregon Committee shall not be responsible in any way for any lost earnings, waste of fishing resources or other consequential, incidental or punitive damages. I also release any other telecommunications companies that execute the Oregon Fishermen's Agreements or a related subsequent agreement.

In the event of a dispute between the parties to this Agreement, the parties shall (1) discuss the problem between themselves and attempt a resolution. If the dispute is not thereby resolved within seven (7) days, the parties shall (2) mediate the problem in Portland, Oregon or in another mutually agreed location. If the dispute is not thereby resolved within thirty (30) days, the parties shall (3) engage in binding arbitration in Portland, Oregon or in another mutually agreed location. This dispute resolution provision reflects the provision in the Oregon Fishermen's Agreement and represents a commitment to resolve disagreements in a just, speedy and inexpensive way without resorting to litigation.

This Agreement can be terminated by thirty (30) days written notice to the other party. By joining as a Participating Trawl Fisherman and representative of a Participating Trawl Vessel, I agree to these terms and conditions and to the terms and conditions of the Oregon Fishermen's Agreements. I acknowledge that I have contacted legal counsel or had an opportunity to contact legal counsel to discuss the terms set forth in this Agreement.



Signature of Participating Trawl Fisherman/Vessel
Owner/Vessel Operator/Master/Skipper

Trawl Vessel Name

Print Name _____

Date: _____

Address

Oregon Fishermen's Cable Committee, Inc.

By Its: Chairman _____

Date: _____

2021 Marine Drive
Suite 102

Astoria, OR 97103





909 NE Boat Street, Seattle, Washington, 98105

January 30, 2017

Ms. Patricia Fox
Oregon Department of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301-1279

Mr. Scott Marion
Oregon Department of Fish and Wildlife
Marine Resources Program
2040 SE Marine Science Drive
Newport, OR 97365

**RE: Response to ODFW's Comments on Microsoft Infrastructure Group, LLC
Fiber Optic Cable, DSL Application #59081-EA**

Dear Ms. Fox and Mr. Marion:

The intent of this letter is provide clarification and resolution to comments received from the Oregon Department of Fish and Wildlife (ODFW) on June 23, 2016, regarding the application 59081-EA submitted by Microsoft Infrastructure Group, LLC (Microsoft) for the proposed New Cross Pacific (NCP) cable. We understand that ODFW has a direct interest in the proposed action because the project has the potential to affect fish and wildlife resources that are within ODFW's statutory purview.

We appreciate the acknowledgement from ODFW regarding NCP's siting of the cable to minimize sensitive seafloor habitats by avoiding hard substrates to the extent possible, and that we have worked extensively with the Oregon Fishermen's Cable Committee (OFCC) to minimize the likelihood of the cable interacting with fishing gear. A key to this project's success has been to work closely with all stakeholders throughout the siting process.

In the above referenced letter, ODFW expressed a concern about the targeted date of installation of the NCP fiber optic cable off the coast of Pacific City. The proposed NCP installation is currently scheduled to occur within the April 1 to June 15 migration period of the Oregon State listed endangered gray whale migration, and in particular, when mothers and calves are moving north in shallow waters (generally 12 to 75 meters). To avoid potential interactions with this species when installing the NCP fiber optic cable, the cable installer, Tyco Electronics Subsea Communications, LLC ("TE SubCom"), will implement the following mitigation measures.

Reduced Vessel Speeds During Marine Operations:

Five marine vessel operations will be performed during the installation of the NCP fiber optic cable. These include 1) vessel support during the HDD seaward emergence (i.e., punch out), 2)

Pre-Lay Grapnel Run clearance of the route, 3) direct landing of the cable into the HDD bore pipe, 4) simultaneous cable laying and burial, and 5) Post-Lay Inspection and Burial. All but the first marine vessel operation will be performed by a cable ship and all of these operations will be performed at **vessel speeds not exceeding 2 knots**. In some instances during the performance of these operations, the vessels may be held in a stationary position by using an anchor or by using bow and stern thrusters and Differential Global Positioning System (DGPS) capabilities. The only time vessels involved in the NCP installation might operate at speeds greater than 2 knots would be when transiting to, or from, the work site (transits speeds will not exceed 10 knots) or in an emergency situation when it may be necessary to exceed 2 knots to mitigate a situation where the safety of the vessel or crew is in jeopardy.

Active Monitoring of the Work Area

In addition to operating vessels at low speeds that would avoid or minimize the potential for an interaction with a whale, deck officers and OFCC onboard representatives will serve as monitors for the presence of whales during operations and transits. These observers will have the authority to delay or suspend operations when whales are in the vicinity of the working area and to resume operations once they have moved a safe distance away from the vessel (beyond 500 meters). Accordingly, both restricted vessel speeds and monitoring by deck officers and OFCC onboard representative can be expected to minimize the likelihood of interactions with gray whales.

We greatly appreciate ODFW's comments on the proposed NCP cable project. If you have any questions regarding our response above, please do not hesitate to contact me at either (206) 714-5474 or at cfisher@48northsolutions.com.

Sincerely,



Cameron Fisher
48 North Solutions, Inc.

Cc: (via electronic mail)
Katie Myers (Microsoft)
Daniel Marquis (TE SubCom)

DRAFT

STATE OF OREGON Department of State Lands

COMMUNICATION CABLE EASEMENT AGREEMENT 59081-EA

THIS COMMUNICATION CABLE EASEMENT AGREEMENT (this "Agreement"), effective as of _____, 2016, is made by and between the State of Oregon, by and through its Department of State Lands ("GRANTOR"), and Microsoft Infrastructure Group, LLC, a Washington limited liability company ("GRANTEE").

1. Grant of Easement. Pursuant to ORS 758.010 and OARs 141-083 and 141-122 (as may be amended at any time and from time to time), GRANTOR hereby grants to GRANTEE an easement (the "Easement") to construct, maintain, operate and replace a portion of a single submarine fiber optic cable known as the New Cross Pacific (NCP) cable system (the "Cable"), in, over, under and across GRANTOR-owned submerged and submersible land of the Pacific Ocean, in or adjacent to Tillamook County, Oregon, described as the Easement Parcel in Section 2 below. This Agreement does not convey an estate in fee simple of the Easement Parcel. The grant contained herein is for an easement only, and title to the Easement Parcel remains in GRANTOR.

2. Easement Parcel. The Easement runs in, over, under and across a fifteen foot (15.00') wide swath of shore and seabed located seven and half feet (7.50') on either side of the proposed centerline described below (the "Easement Parcel"). The Easement Parcel includes the "Shore Area" (GRANTOR'S submersible land, i.e., from the ordinary high tide to the ordinary low tide, pursuant to ORS 390.615) and the "Territorial Sea Area" (GRANTOR'S submerged land, i.e., from the ordinary low tide to the three-mile limit of the Territorial Sea (as defined in ORS 196.405(5) and OAR 141-083-0280(11) and pursuant to ORS 274.710).

The proposed centerline of the Easement Parcel is further described as follows:

All latitude and longitude are in degree decimal minutes:

Beginning at the southwest corner of Section 19, Township 4 South, Range 10 West of the Willamette Meridian, Tillamook County, Oregon (located approximately 45° 12.150669', -123° 57.9541'), and running thence Southwesterly S 78° 51' 17" W for a distance of 330 feet to Point 1; (45° 12.1380', -123° 58.0290'), being that certain property in Tillamook County, Oregon, commonly known as the western terminus of Pacific Avenue in Pacific City, Oregon);

thence running Northwesterly N 78° 22' 38" W for a distance of 294 feet to the boundary of the Pacific Ocean tidelands as determined by the State of Oregon and the TRUE POINT OF BEGINNING;

thence to Point 2; 45° 12.2004', -123° 58.5676',

thence to Point 3; 45° 12.2354', -123° 58.8703',

thence to Point 4; 45° 12.2514', -123° 59.0080', the approximate end of HDD (horizontal directional drilling);

thence to Point 5; 45° 12.2523', -123° 59.0162,

thence to Point 6; 45° 12.3104', -123° 59.6520,

thence to Point 7; 45° 12.3190', -124° 00.1194',

thence to Point 8; 45° 12.3428', -124° 00.3008',

thence to Point 9; 45° 12.4391', -124° 01.0209',

thence to Point 10; 45° 12.6299', -124° 01.8950',

thence to Point 11; 45° 12.6444', -124° 02.1529',

thence to Point 12; 45° 12.6299', -124° 02.4184',

thence to Point 13; 45° 12.5861', -124° 03.0649',

thence to Point 14; 45° 12.5434', -124° 03.5340', to the approximate extent of the Three (3) Mile Limit of the Territorial Sea.

Containing 8.27 acres (360,340.86 square feet), more or less, and as shown on Exhibit A.

The foregoing description of the Easement Parcel is used to establish the approximate location and extent of the area subject to this Agreement and was not prepared by a licensed surveyor. All locations, bearings and distances were developed in the Oregon Coordinate Reference System Standard; Oregon Statewide Lambert Conformal Conic, NAD 1983, International Feet, GRS 1980 Spheroid.

3. Payment. GRANTEE understands and acknowledges that the Easement may be granted at no charge, pursuant to current Oregon state law and GRANTOR'S administrative rules, but that, if Oregon state law changes during the term of this Agreement, GRANTEE may be subject to future imposition, by GRANTOR, of a consideration payment and/or usage fee that would be established by the Oregon State Land Board as authorized by law. In order to avoid the potential future imposition of a consideration payment and/or usage fee, GRANTEE has paid to GRANTOR, concurrently with the execution of this Agreement, a one-time payment of Three Hundred Thousand Dollars (\$300,000.00), the receipt and sufficiency of which is acknowledged by GRANTOR. No additional consideration, payments, usage fees and/or rents shall be due or may be imposed as consideration for the rights granted in this Agreement, regardless of any amendment to statutes or administrative rules governing this Agreement that may be enacted during the original term of this Agreement. Notwithstanding the foregoing, GRANTEE acknowledges and agrees that it shall not be entitled to any rebate or reimbursement of all or any portion of the consideration paid for the Easement if for any reason this Agreement is not renewed or is terminated pursuant to the provisions herein.

4. Term. The term of this Agreement is twenty (20) years.
5. Renewal. GRANTEE, subject to continued compliance with the terms and conditions of this Agreement, shall have the right to renew this Agreement for an additional twenty (20) -year term, in accordance with the governing law and applicable rules of GRANTOR at the time of renewal.
6. Construction of Cable.
 - (a) Construction of the Cable shall conform to standards and specifications set by the U.S. Army Corps of Engineers and the U.S. Coast Guard.
 - (b) Any blasting which may be necessary for the construction of the Cable shall be performed according to the laws of the State of Oregon and the rules of its agencies, including, without limitation, Oregon Department of Fish and Wildlife's in-water work windows.
 - (c) GRANTEE shall supply to GRANTOR as-laid positions (longitude and latitude points) for the Cable within ninety (90) days after completion of construction, which positions shall be the centerline of the Easement Parcel. Upon obtaining the as-laid positions, GRANTEE shall cause to be recorded in the real property records of Coos County, Oregon, an amendment to this Agreement describing the Easement Parcel by reference to the as-laid positions.
7. Surety Bond. GRANTEE shall furnish to GRANTOR a surety bond in the amount of \$20,000.00 (or, in lieu of the surety bond, an equivalent cash deposit or certificate of deposit), which names the State of Oregon as co-owner, to ensure that GRANTEE performs construction of the Cable in accordance with all terms and conditions of this Easement, to be held until construction of the Cable is completed.
8. Maintenance and Repair in Shore Area. If maintenance or repair is required within the Shore Area, GRANTEE shall follow and adhere to the Oregon Parks and Recreation Department OARs 736-020 – Beach Construction/Alteration Standards (as may be amended at any time and from time to time).
9. Inspection. GRANTEE shall inspect the Cable and related fixtures at least every five (5) years and after any major geologic event, such as a subduction-zone earthquake, to ensure continued burial (from the entry of the Cable on the Shore Area to the end of HDD) and location integrity of non-buried cable (from the end of the HDD to the remainder of the Cable on the Easement Parcel). GRANTEE shall promptly perform any maintenance or repair shown to be necessary after such inspections, to ensure continued burial or location integrity of the Cable.
10. Restoration. Those portions of the Easement Parcel in or on which the Cable is not directly located shall be restored to the condition prior to installation, as determined by GRANTOR in GRANTOR'S discretion, as soon as construction or maintenance is completed.
11. Vegetation and Mineral Resources.
 - (a) Except as expressly authorized in writing by GRANTOR, GRANTEE shall not: remove from the Easement Parcel any sand and gravel, or other mineral resources, for commercial use or sale.

(b) GRANTEE shall compensate GRANTOR for the fair market value of any commercially valuable sand, gravel or other mineral resources, in the Easement Parcel that must be removed during or after construction or maintenance of the Cable, or which cannot be developed because of GRANTEE'S use of the Easement Parcel.

12. Damage; Fines.

(a) GRANTEE shall pay to GRANTOR the current fair market value for any unnecessary and non-approved damages to the Easement Parcel or surrounding seabed or shoreline caused by construction or maintenance of the Cable, which shall be determined in GRANTOR'S discretion.

(b) GRANTEE shall be responsible for the payment of any fines or penalties charged against the Easement Parcel resulting from GRANTEE'S failure to comply with laws or regulations affecting GRANTEE'S use of the Easement Parcel.

13. Conservation. GRANTEE shall use best efforts to conduct all operations within the Easement Parcel in a manner that minimizes adverse effect to fish and wildlife habitat and water quality; and does not contribute to the introduction or spread of noxious weeds or pests.

14. Compliance with Other Agreement and GRANTEE'S Applications. As applicable, in all of its activities related to its use of the Easement Parcel, including construction, maintenance and repair of the Cable, GRANTEE shall comply with the following documents as listed below in this Section 14. GRANTEE'S material failure to construct, maintain or repair the Cable in accordance with GRANTEE'S representations in such documents shall constitute a Grantee Default, as defined in Section 26 below.

(a) "Agreement between the Oregon Fishermen's Cable Committee, Inc. and Microsoft as Relates to the New Cross Pacific Cable System" dated March 23, 2016, attached as Exhibit B;

(b) All of the information provided by or on behalf of GRANTEE in GRANTEE'S "Easement Application Form for 'Territorial Sea' Fiber Optic Cable," dated May 2, 2016; and

(c) All of the information provided by or on behalf of GRANTEE in GRANTEE'S "Joint Permit Application," dated May 2, 2016.

15. Prior Notification to GRANTOR. GRANTEE shall notify GRANTOR in writing at least ninety (90) days:

(a) prior to any pre-planned change in the location of the Cable;

(b) prior to any change in ownership of the Cable, such that GRANTEE'S ownership interest in the Cable as of the Effective Date is reduced or eliminated;

(c) after discovery of any change in the location of the Cable resulting from accidental contact or geologic or other natural causes; or

(d) prior to an abandonment or termination of the use of the Cable.

16. Prior Consent from GRANTOR. GRANTEE may not, without prior written approval from GRANTOR:

- (a) change the type of use authorized by this Agreement;
- (b) expand the number of authorized developments or uses of the Easement;
- (c) change the location of the Easement Parcel; or
- (d) permit other persons to utilize the Easement Parcel for uses and developments requiring separate written authorization by GRANTOR pursuant to the administrative rules governing the granting of easements or other GRANTOR requirements.

17. No Interference. Nothing in this document may be construed as permission, except during construction, maintenance or repair periods, to GRANTEE to interfere with navigation or fisheries, or reduce the public's rights to the free and unimpeded use of the navigable waters of the State of Oregon within the area of the Easement Parcel; provided, however, that to the extent necessary to facilitate construction, maintenance or repair of the Cable, GRANTEE may so interfere, but shall keep such interference to an absolute minimum. GRANTEE shall perform and complete all such construction, maintenance and repair of the Cable as promptly as is reasonable.

18. Requirements of Regulatory Agencies. In its activities related to the Easement, GRANTEE shall comply with all applicable requirements of the regulatory agencies of the State of Oregon, including, without limitation, the Oregon Department of Fish and Wildlife.

19. Assessments. GRANTEE shall pay all assessments that may be legally charged on public lands which are levied against the Easement Parcel as a result of GRANTEE'S use, whether or not such assessments have been levied against the Easement Parcel or GRANTOR by the assessing agency.

20. Nondiscrimination. GRANTEE shall use the Easement Parcel only in a manner, or for such purposes, that assure fair and nondiscriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender or national origin.

21. Nonuse. If the Easement Parcel is not used for a period of five (5) consecutive years, this Agreement may be terminated by written notice from GRANTOR to GRANTEE at its last known address. Upon termination or expiration of this Agreement, GRANTEE shall have one (1) year to remove the Cable and appurtenances from the Easement Parcel. However, if GRANTEE demonstrates to GRANTOR'S satisfaction that removal of the Cable will be more detrimental to the Easement Parcel than leaving it in place, GRANTEE shall be permitted to abandon the Cable in place.

22. Hold Harmless. GRANTEE shall indemnify, defend and hold GRANTOR harmless from any and all claims suffered or alleged to be suffered as a result of GRANTEE'S use of the Easement Parcel.

23. Open to Public. The Easement Parcel shall remain open to the public for recreational and other non-proprietary uses unless restricted or closed to public entry by GRANTOR.

24. GRANTOR'S Reservation of Rights.

(a) GRANTOR reserves the right to lease or otherwise utilize the Easement Parcel in a manner and for uses that will not be incompatible with GRANTEE'S use of the Easement Parcel.

(b) GRANTOR has the right to grant additional easements within the Easement Parcel that are not incompatible with GRANTEE'S use of the Easement Parcel and subject to the provisions of the administrative rules governing the granting of easements.

(c) GRANTOR and its employees, agents and contractors shall have the right to enter into and upon the Easement Parcel at any time for the purposes of inspection or management.

25. Assignment of Agreement. This Agreement may be assigned, pursuant to the provisions of OAR 141-122-0080.

26. Default. A "Grantee Default" shall occur if:

(a) GRANTEE fails to comply with or fulfill any term, condition or obligation of this Agreement (except with regard to Section 17 above), within thirty (30) days after notice from GRANTOR specifying the nature of the failure with reasonable particularity or, in the event such failure cannot reasonably be cured within such thirty (30) -day period, then within such time as the failure can be cured with reasonable good faith and diligence; provided, however, that such cure period shall not exceed one hundred eighty (180) days; or

(b) GRANTEE fails to comply with Section 17 above within ten (10) days after notice from GRANTOR specifying the nature of the failure with reasonable particularity; or, in the event such failure cannot reasonably be cured within such 10-day period, then within such time as the failure can be cured with reasonable good faith and diligence; provided, however, that such cure period shall not exceed thirty (30) days.

27. Remedies. Upon any Grantee Default, GRANTOR may exercise any one or more of the following remedies:

(a) At GRANTEE'S cost and expense, GRANTOR may perform GRANTEE'S unperformed obligations that gave rise to the Grantee Default, and charge all such costs and expenses to GRANTEE pursuant to this Agreement, which GRANTEE shall pay within thirty (30) days after GRANTOR delivers an invoice therefor, together with reasonable supporting documentation of such costs and expenses.

(b) Except if GRANTOR elects the remedy in Section 27(a) above and GRANTEE makes full and timely payment as provided therein, GRANTOR may terminate this Agreement.

(c) GRANTOR may sue periodically to recover damages as they accrue without barring a later action for further damages.

(d) GRANTOR shall be entitled to recover from GRANTEE any and all damages arising from a Grantee Default, including all costs and expenses of curing Grantee Default, with any amounts due and owing to accrue interest at the rate of eight percent (8%) per annum.

(e) The foregoing remedies in this Section 27 shall be in addition to and shall not exclude any other remedy available to GRANTOR in law or equity.

28. Governing Law; Consent to Jurisdiction. This Agreement is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, suit action or proceeding (“Claim”) between GRANTOR (or any other agency or department of the State of Oregon) and GRANTEE that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the jurisdiction of the Circuit Court of Marion County in the State of Oregon. In no event shall this Section 28 be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. GRANTOR and GRANTEE each hereby consents to the exclusive jurisdiction of such court, waives any objection to venue and waives any claim that such forum is an inconvenient forum.

[Remainder of page intentionally left blank]

GRANTOR:

WITNESS the seal of the Department of State Lands affixed this ____ day of _____, 2017.



STATE OF OREGON,
acting by and through its Department of State Lands

Name: _____
Title: _____
Signature: _____

STATE OF OREGON)
) ss
County of Marion)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by _____, the _____ of the Department of State Lands.

Signature
My Commission Expires _____, 20____.



Oregon

Kate Brown, Governor

Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

www.oregon.gov/dsl

State Land Board

State Land Board

Kate Brown

Governor

Regular Meeting February 14, 2017 Agenda Item 3

Dennis Richardson

Secretary of State

Tobias Read

State Treasurer

SUBJECT

Request for approval to quitclaim approximately 1.54 acres of submerged and submersible land to The Marine Salvage Consortium, Inc. in Multnomah County.

ISSUE

Whether the State Land Board should authorize the Department of State Lands to issue a quitclaim deed to The Marine Salvage Consortium to clear title of the state's ownership of the submerged and submersible lands at the surveyed 1973 mean (ordinary) low water line.

AUTHORITY

Oregon Constitution, Article VIII, Sections 2 and 5; pertaining to the Common School Fund and land management responsibilities of the State Land Board.

ORS 273.055; relating to the power to acquire and dispose of real property.

ORS 273.171; relating to the duties and authority of the Director.

ORS 273.281 and ORS 273.285; relating to the payment for state lands.

ORS 274.040; relating to the sale of submerged lands.

ORS 274.915; relating to the sale, lease or trade of submersible and submerged lands.

OAR 141-067; relating to the sale, exchange and purchase of state land.

SUMMARY

In June of 1967, the State of Oregon deeded its interest in certain submerged and submersible lands within Swan Island Lagoon to the Port of Portland (Port) for development purposes. In March of 1973, the Port then sold the property to Fred

Devine Diving and Salvage. The property was subsequently sold again in June 1993, to the current property owner, The Marine Salvage Consortium, Inc. (MSC).

When the state issued its deed to the Port in 1967, it contained a reversionary clause that stipulated if any of the submerged or submersible lands conveyed by the deed remained submerged or submersible after a period of ten years, the title to those lands would revert back to the State of Oregon. Furthermore, none of the subsequent deed transfers contained any such reversionary clause.

The MSC has a lease from the Department (ML-10324) initiated on September 27, 2004, renewed on March 10, 2016, which has as its shoreward boundary the mean low water line that the Port surveyed as part of the land sale to Fred Devine Diving and Salvage in 1973. Following the sale, sometime in approximately 1977, the shoreline was dredged back. This constituted an avulsive action which froze the ownership boundary at its pre-avulsion location, as mapped in the 1973 deed.

The state has acknowledged the ownership boundary as located along the pre-dredged mean low water line since the lease was initiated in 2004. This mean low water line serves as an appropriate approximation of the location of the ordinary low water line prior to the avulsion, and in recent mapping efforts for the Portland Harbor Superfund work, the Department has asserted this line to be the riparian property boundary (Appendix A). The quitclaim action that is the subject of this agenda item would clarify and formalize acknowledgment of legal ownership of the submerged and submersible lands between the line of ordinary low water and the line of ordinary high water at this location.

Both Department staff and attorneys working on the Portland Harbor Superfund clean-up effort agree an exchange of quitclaim deeds with MSC would benefit both parties. A copy of the draft quitclaim deed is attached as Appendix B.

RECOMMENDATION

The Department recommends that the State Land Board approve the granting of a quitclaim deed to The Marine Salvage Consortium, Inc. to clear title of the state's ownership of the submerged and submersible lands at the surveyed 1973 mean (ordinary) low water line.

APPENDICES

- A. Map of the parcel
- B. Draft Quitclaim Deed

State of Oregon
Department of State Lands

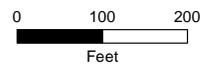


EXHIBIT A

59594-LS
T1N, R1E Section 17
Multnomah County

 Quitclaim Description Area

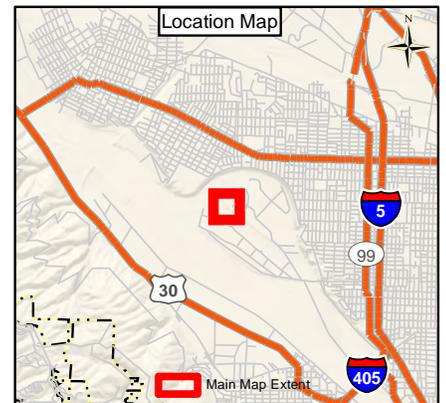
This map depicts the approximate location and extent of a Department of State Lands Proprietary authorization for use. This product is for informational purposes only and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.



Map Projection:
Oregon Statewide Lambert
Datum NAD83
International Feet

State of Oregon
Department of State Lands
775 Summer St NE, Suite 100
Salem, OR 97301
503-986-5200
www.oregon.gov/DSL

Date: 1/20/2017



Space above this line for Recorder's use.

Quitclaim Deed
(ORS 93.865)

GRANTOR:

State of Oregon, acting by and through its
Department of State Lands
775 Summer St. NE, Ste 100
Salem, OR 97301-1279

GRANTEE:

The Marine Salvage Consortium, Inc.
6211 N. Ensign St.
Portland, OR 97217

**FUTURE TAX STATEMENTS
SHOULD BE MAILED TO:**

The Marine Salvage Consortium, Inc.
6211 N. Ensign St.
Portland, OR 97217

**AFTER RECORDING
RETURN TO:**

The Marine Salvage Consortium, Inc.
6211 N. Ensign St.
Portland, OR 97217

The STATE OF OREGON, acting by and through its Department of State Lands, GRANTOR, releases and quitclaims to The Marine Salvage Consortium, Inc., GRANTEE, all right, title and interest in and to the following described submerged and submersible lands:

BEING submerged and submersible lands located in Section 17, Township 1 North, Range 1 East of the Willamette Meridian, Multnomah County, Oregon and being more particularly described in Exhibit A, attached hereto.

SUBJECT TO the public's rights to the property as provided by the Public Trust Doctrine.

EXCEPTING AND RESERVING to itself, its successors, and assigns all minerals as defined in ORS 273.775 (1), including soil, clay, sand and gravel, and all geothermal resources, as defined in ORS 273.775 (2), but excluding any and all minerals located on the Property as the result of the artificial deposit of fill onto the formerly submerged and submersible land ("Excluded Minerals"), together with the right to make such use of the surface as may be reasonably necessary for prospecting for, exploring for, mining, extracting, reinjecting, storing, drilling for, and removing such minerals (but not Excluded Minerals), materials, and geothermal resources. In the event use of the premises by a surface rights owner would be damaged by one or more of the activities described above, then such owner shall be entitled to compensation from state's lessee to the extent of the diminution in value of the real property, based on the actual use by the surface rights owner at the time the state's lessee conducts any of the above activities.

The true and actual consideration for this conveyance is \$-0-.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated this _____ day of _____, 2017.

STATE OF OREGON, acting by and through its Department of State Lands,

James T. Paul, Director

STATE OF OREGON)

County of Marion)

) ss

The foregoing instrument was acknowledged before me this _____ day of _____, 2017,

by _____, as _____ of the Department of State Lands.

Notary Public for Oregon

My commission expires _____, 20__.

EXHIBIT A
(Legal Description)

A parcel of land located in Section 17, T. 1 North, Range 1 East, W.M. Multnomah County, Oregon as follows:

Beginning at the terminus of N. Basin Avenue as dedicated and accepted by the city of Portland by ordinance No. 119402; thence S. 52° 15' E., 401.10 feet along the centerline of N. Basin Avenue to the intersection of N. Basin Avenue and N. Ensign Avenue; thence S. 37° 45' W., 550.00 feet to the True Point of Beginning; thence N. 52° 15' W., 858.23 feet; thence S. 37° 45' W., 193.00 feet, more or less, to the Mean Low Water line of Swan Island Lagoon; thence Southeasterly along the Mean Low Water line as follows; S. 17° 00' E. 93.00 feet; S. 50° 40' E. 171.00 feet; S. 24° 15' E. 54.00 feet; S. 46° 45' E. 80.00 feet; S. 60° 50' E. 65.00 feet; S. 49° 00' E. 162.00 feet; S. 46° 35' E. 220.00 feet; and S. 39° 48' 35" E. 40.03 feet; thence leaving said Mean Low Water Line N. 37° 45' E. 314.00 feet, more or less, to the true point of beginning, containing 5.368 acres.

Grantee accepts the rights of the public and of governmental bodies in and to that portion of the premises herein described lying below the mean low water mark and the ownership of the State of Oregon in that portion lying below the line of ordinary low watermark of the Willamette River .

DRAFT



Oregon

Kate Brown, Governor

Department of State Lands

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State Land Board

Kate Brown

Governor

M E M O R A N D U M

Dennis Richardson

Secretary of State

February 14, 2017

Tobias Reed

State Treasurer

To: Governor Kate Brown
Secretary of State Dennis Richardson
State Treasurer Tobias Reed

From: Jim Paul, Director

Subject: Elliott Property Ownership Transfer Opportunity Status Report

BACKGROUND

At the December 13, 2016 State Land Board meeting the Department provided an update on the status of identifying potential comprehensive ownership transferees for the Elliott State Forest, and requested input and direction on proceeding with developing an offer of direct sale.

That update included a review of background information related to the Elliott State Forest and the issues the Board has faced over the past several years leading up to the approval of the Elliott Transfer Opportunity and Protocol in August 2015. The Department further summarized the implementation of the Protocol leading up to the December 2016 meeting, and provided an overview of the one proposal received.

The proposed plan was submitted by Lone Rock Timber Management Company as the lead participant; the Cow Creek Band of Umpqua Tribe of Indians; and the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians; with the support and advice of The Conservation Fund and a number of other parties (see the December 13, 2016 Land Board Agenda item for additional details). The proposed plan would result in ownership of the Elliott property by a limited liability company (LLC) called the Elliott Forest LLC.

The Department reviewed the plan and found that the primary goal of the protocol was achieved and that it contained both clear demonstrations of financial viability, as well as proposals for enforceable mechanisms for enhanced public benefits sufficient to demonstrate responsiveness. It was also noted by the Department, however, that the plan contained some gaps, uncertainties, and ambiguities that would require further definition prior to making an offer and the development of a purchase and sale agreement.

Accordingly, the Department proposed to continue working under the Protocol towards developing an offer of direct sale and seek to close the gaps, clarify uncertainties and resolve the ambiguities identified. This would involve starting discussions with the proposers of the plan before making an offer of direct sale, with the expectation of returning to the Board on Feb. 14, 2017, to provide an update before moving forward with an offer and negotiating the terms of the sale.

At the December 2016 meeting, the Board provided input and direction to the Department, summarized in the meeting minutes (see item 1.a. in this meeting agenda). This input and direction was two-fold: (1) the Board asked the Department to continue working under the Protocol consistent with the Department's December 2016 staff report; and, (2) the Board called upon the public to engage in thoughtful collaboration and potentially bring forward a "Plan B" option that might incorporate up to \$100 million in bonding authority towards a state or tribal ownership solution.

CURRENT STATUS

Over the past two months the Department has been proceeding, consistent with the direction of the December 2016 meeting. The Department convened three meetings with the proposers to determine if the specific issues identified regarding the enforceable mechanisms and public benefits described in the proposal could be sufficiently clarified. The Department was also responsive to the public regarding questions related to any potential Plan B inquiries, in a manner similar to responding to public information requests generally that are related to public policy initiatives occurring external to the agency.

Discussions with the proposal partners to address the gaps, uncertainties, and ambiguities have been completed, and resulted in their submittal of an Addendum to the proposed plan (see Appendix A). After reviewing the Addendum, the Department has determined the range of issues previously identified have been adequately addressed and can confirm that the proposal is sufficient to demonstrate responsiveness, consistent with the terms of the Protocol.

NEXT STEPS

The Department will initiate negotiations in good faith with the plan proposers towards a binding Purchase and Sale Agreement (PSA), and an eventual transfer of ownership of the Elliott Property to the Elliott Forest LLC, unless and to the extent the Board directs the Department otherwise. The Department will ensure that any final, executable form of PSA will be consistent with the terms of the Protocol, as well as the details outlined in the proposed plan and attached Addendum. Additionally, the Department would not return to the Board for its approval of such PSA—as such Board action is not required under the Protocol—unless the Board directs the Department otherwise.

APPENDICES

A. Proposers' addendum to proposal



THE
CONSERVATION FUND



Via E-MAIL

CONFIDENTIAL-- Elliott Forest Acquisition Plan—Lone Rock Timber Management Company Lead Participant

February 3, 2017

Mr. Jim Paul, Director
Oregon Department of State Lands
775 Summer St. NE, Ste 100
Salem, OR 97301-1279

RE: Addendum to November 15, 2016 Elliott Forest Acquisition Plan—Lone Rock Timber Management Company Lead Participant

Mr. Paul:

Lone Rock Timber Management Company, The Cow Creek Band of Umpqua Tribe of Indians, The Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, with the support and advice of The Conservation Fund, Dr. John Gordon, the College of Forestry at Oregon State University, the Oregon Department of Forestry, The Confederated Tribes of Siletz Indians and The Confederated Tribes of the Grand Ronde submitted their Elliott Forest Acquisition Plan (“**Plan**”) on November 15, 2016.

The State Land Board (“**SLB**”) met at a regular meeting on December 13, 2016 and concluded as follows (and all provisions of this Addendum that appear in *italics* are from the SLB meeting minutes and findings):

The Department has reviewed the Plan and found that it contains both clear demonstrations of financial viability as well as proposals for enforceable mechanisms for enhanced public benefits sufficient to demonstrate responsiveness:

- *The Plan demonstrates adequate equity investment and financing to acquire*

the Elliott Property at the established fair market value price, in cash at closing.

- *The Plan proposes enhanced public benefits as required by the Protocol that exceed those which are already provided under applicable law.*
- *The Plan recites enforceable mechanisms required for providing the enhanced public benefits in perpetuity.*

A summary chart of the Department's responsiveness analysis was attached. (See Appendix C)

The Plan, however, includes some gaps, uncertainties, and ambiguities, especially with respect to the enforceable mechanisms. Within the discretion provided under Section 7 of the Protocol, the Director of the Department has deemed the Plan responsive, despite these concerns. The Director's rationale for deeming the Plan responsive includes the following:

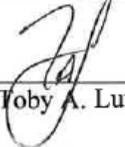
1. *Ensuring fairness between competitors is not an issue because only one plan was submitted;*
2. *The Board's direction has placed a priority on moving forward in a timely fashion due to the ongoing economic losses associated with the property; and*

3. *The plan meets basic requirements of the Protocol and the gaps, uncertainties, and ambiguities, can and will be addressed prior to a future offer of direct sale and through subsequent purchase and sale agreement negotiations.*

Attached is an Addendum to November 15, 2016 Term Sheet for Acquisition Plan for the Elliott Forest. Initially capitalized terms in the Addendum that are not otherwise defined in the Addendum have the meanings given to them in the Plan.

Thank you for this opportunity,

LONE ROCK TIMBER MANAGEMENT COMPANY

By: 

Toby A. Luther, President and CEO

2323 Old Highway 99 South
P. O. Box 1127
Roseburg, OR 97470-0257
Telephone: 541.673.0141 x402
E-Mail: TLuther@lrtc.com

ADDENDUM TO NOVEMBER 15, 2016 TERM SHEET FOR ACQUISITION PLAN FOR THE ELLIOTT PROPERTY

DATE: FEBRUARY 3, 2017

Part One: Structure and Funding

A. Entities Involved in Plan

This Addendum to November 15, 2016 Term Sheet for Acquisition Plan for the Elliott Property (“**Addendum**”) is presented by Toby A. Luther (“**Lead Representative**”), who is the authorized representative and CEO of Lone Rock Timber Management Company, d/b/a Lone Rock Resources (the “**Lead Participant**”). Lead Participant, through its authorized Lead Representative, signed the Addendum (on its identifying page) in proper form, such signature evidencing Lead Representative’s authority to submit this Addendum for consideration on behalf of Lead Participant and all other participants involved in this Addendum and Plan.

Schedules:

In addition to the Schedules attached to the Plan, the followed updated or new Schedules are attached:

Schedule I.A.3: Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians¹ is the entity committing to hold the Conservation Easement.

Schedule I.A.16 Douglas County Board of Commissioners on behalf of Douglas County committing to hold the Easement in Gross.

Schedule I.A.17 Sample public access permit documents for public access from Lead Participant’s other timberlands (form has been modified).

Schedule I.A.18 Mature Forest Optimization.

Schedule I.A.19 Riparian Management Areas.

B. Funding of Plan

No additional information provided in this Addendum.

Part Two: Enhanced Public Benefits

A. Public Recreation Access

¹ The participating Confederated Tribes consists of three Tribes (four Bands): two bands of Coos Tribes, Hanis Coos (Coos Proper) and Miluk Coos; the Lower Umpqua Tribe; and, the Siuslaw Tribe.

Gaps, uncertainties, and ambiguities around the public benefits that require further definition prior to development of an offer of direct sale include the following:

- *Details regarding floating public recreational access rights and landowner closure rights;*
- *Reassurances regarding compliance and means of public enforcement, especially related to the potential denial of public access through any permit system;*

Clarification: Lead Participant intends that the Elliott Forest will initially be fully open to the public and remain fully open to the extent possible. Lead Participant's lands have been similarly managed for years. Pursuant to the Protocol, the Company will guarantee not less than fifty (50%) of the entire 82,500 acres of the Elliott Forest will be open to the public for recreational use at all times and in perpetuity except in the case of extreme natural disasters. An annual report prepared by the Company and submitted to the holder of the Conservation Easement will document at least 41,250 acres were accessible at all times excepting incidences where temporary closures are required for public safety or resource protection concerns. In the case of extreme natural disasters such as major fire, windstorm, flood, or similar disaster extended closures may be necessary for public safety and resource protection concerns. The Company will coordinate with the holder of the Conservation Easement in the case of such extreme events. The Company intends to utilize various communication tools to inform the public of closures and/or open areas. Potential examples include signs, maps and web based tools to communicate to the public.

Clarification: The holder of the Conservation Easement will be vested with full enforcement rights and the Conservation Easement will obligate the holder to exercise those rights for and on behalf of the public to guarantee the public access described above. The holder of the Conservation Easement intends to establish an advisory board to assist it in its work. Lead Participant intends for the Company to endow the holder of the Conservation Easement with adequate funding to fully exercise those enforcement rights. There will be no third party holding enforcement rights under the Conservation Easement; provided, however, the Company and the holder of the Conservation Easement are open to discussing potential State involvement to remedy any long term and prevalent failures to enforce the Conservation Easement (hereinafter a "**State Remedy**").

Clarification: The Company may require the public to obtain access permits prior to entering the Elliott Forest. There will be no limits on the number of permits available. No fee is anticipated to be charged for such permits, however the Company reserves the right to charge an administrative fee as described in Oregon statutes associated with public recreational access on private lands. Any permits will describe activities allowed in the Elliott Forest as well as allow the Company to communicate safety considerations or other specific information about the Elliott Forest to permit holders. The permit system will also allow Company a means for monitoring recreation use. The permit system will not discriminate against users or restrict access except as noted above. Permits will be issued for safety to track who enters the Elliott Forest and leaves the Elliott Forest and to require disclosure of the purpose for entry (e.g., outdoor activities such as hunting, fishing, swimming, boating, camping, picnicking, gardening, hiking, nature study, outdoor educational activities, waterskiing, winter sports, viewing or enjoying historical, archaeological, scenic or scientific

sites or volunteering for any public purpose project) and provide a tracking system to exclude future use by those who have previously engaged in dangerous or irresponsible activities while in the Elliott Forest. Fees will not exceed those in ORS 105.672 through 105.696 as follows:

105.672 Definitions for ORS 105.672 to 105.696. As used in ORS 105.672 to 105.696:

(1) “Charge”:

(c) Does not include the fee for a winter recreation parking permit or any other parking fee of \$15 or less per day.

105.688 Applicability of immunities from liability for owner of land; restrictions.

(5) The immunities provided by ORS 105.682 for gardening do not apply if the owner charges more than \$25 per year for the use of the land for gardening. If the owner charges more than \$25 per year for the use of the land for gardening, the immunities provided by ORS 105.682 apply to any use of the land other than gardening. If the owner charges more than \$25 per year for permission to use a specific part of the owner’s land for gardening and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the remainder of the owner’s land.

(6) The immunities provided by ORS 105.682 for woodcutting do not apply if the owner charges more than \$75 per cord for permission to use the land for woodcutting. If the owner charges more than \$75 per cord for the use of the land for woodcutting, the immunities provided by ORS 105.682 apply to any use of the land other than woodcutting. If the owner charges more than \$75 per cord for permission to use a specific part of the owner’s land for woodcutting and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the remainder of the owner’s land.

(7) The immunities provided by ORS 105.682 for the harvest of special forest products do not apply if the owner makes any charge for permission to use the land for the harvest of special forest products. If the owner charges for permission to use the owner’s land for the harvest of special forest products, the immunities provided by ORS 105.682 apply to any use of the land other than the harvest of special forest products. If the owner charges for permission to use a specific part of the owner’s land for harvesting special forest products and the owner provides notice in the manner provided by subsection

See new Schedule 1.A.17 for sample permitting documents.

B. Economic Benefits

Easement in Gross

Economic benefits are proposed to be enforced through an easement in gross instead of the suggested deed covenant. While the suggested structure for an easement in gross was provided in the Plan, a holder of these rights was not definitively identified. Identifying a holder of the easement in gross appropriate to adequately address the economic benefits promised.

Clarification: See Schedule I.A.16 The Douglas County Board of Commissioners on behalf of Douglas County committed to hold the Easement in Gross. The Oregon State College of Forestry agreed to provide the economic analysis described in the Conservations Easement and not less than annually provide copies to Douglas County and the Company. Details on the mechanics of this work will be developed in writing prior to signing a purchase and sale agreement.

Conservation Easement

Gaps, uncertainties, and ambiguities around the conservation easement mechanism will need to be addressed during development of an offer of direct sale and negotiation of a purchase and sale agreement, and include the following:

1. *Confirmation that there would be one conservation easement over the entire property addressing public recreational access, Harvest Protection Areas, and Riparian Management Areas;*
2. *Firm identification of the holder(s) of the conservation easement given that the CTCLUSI have only expressed an interest (as per the Plan) and many terms have not been finalized as between the LLC and the CTCLUSI, and such terms may be problematic for the state;*
3. *If proceeding with the CTCLUSI pursuant to their proposed letter of intent, or with another conservation easement holder with similar terms, additional issues to clarify include the following:*
 - a) *Details regarding a third-party enforcement right in the conservation easement, potentially held by the state;*
 - b) *Limitations in the conservation easement to address potential conflicts of interest such as the possibility that the easement holder might be compensated for its enforcement activities by the acquisition of land within the conservation easement;*
 - c) *Limitations in the conservation easement to address potential obstacles to enforcement that could arise due to sovereign immunity claimed by either a fee title or conservation easement holder;*
4. *Details regarding reporting processes under the conservation easement including the level of public involvement and oversight.*

Clarification—1: There will be one Conservation Easement over the entire Elliott Forest addressing public recreational access, Harvest Protection Areas, and Riparian Management Areas.

Clarification—2, 3(a) and 3(b): See Schedule I.A.3: The Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians is the entity committing to hold the Conservation Easement. Schedule I.A.3 details the intended metrics for compensating the holder of the Conservation Easement and the methods to avoid conflicts of interest. The parties recognize the potential for a conflict of interest. This arrangement will avoid such conflicts. The holder of the Conservation Easement will be vested with full enforcement rights and will obligate the holder of the Conservation Easement to exercise those rights for and on behalf of the public. Lead Participant intends for the Company to endow the holder of the Conservation Easement with adequate funding to fully exercise those enforcement rights.

Clarification—3(c): The Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians is prepared to provide limited waivers of sovereign immunity as set forth in Schedule 1.A.3 of the original Plan and in Schedule 1.A.3 of this Addendum.

Clarification—4: Company does not anticipate “public” involvement and/or oversight outside of the holder of the Conservation Easement other than the willingness to discuss the potential State Remedy (as defined above). The Company will prepare and deliver to the holder of the Conservation Easement, not less than annually, written reports, regarding its compliance with the terms of the Conservation Easement and the holder of the Conservation Easement may audit the Company’s records to verify such compliance.

C. Harvest Protection Areas

Gaps, uncertainties, and ambiguities around the public benefits that require further definition prior to development of an offer of direct sale include the following:

- *Details regarding potential adjustments to Harvest Protection Areas and expectations around potential salvage operations in the event of a natural disaster; and*
- *Details regarding allowable activities in Riparian Management Areas including watershed improvement activities and potential salvage operations in the event of a natural disaster.*

Clarification: Company intends to conserve from commercial harvest those areas most beneficial to wildlife and ecosystem services and associated with older forest characteristics and which can be verified and enforced. A minimum of 25% of the Elliott Forest will be permanently managed for older forest characteristics and restricted from commercial forest harvest. Company anticipates more refined maps will be a part of the purchase and sale agreement defining those areas. Also see new Schedule I.A.18 (Mature Forest Optimization).

Clarification: Natural catastrophic events may occur which adversely impact or affect the Elliott Forest. These events may include windstorms, wildfires, floods, landslides, insect, disease, or other pathogen outbreaks. Where such events occur, Company shall develop and deliver to CTCLUSI (Conservation Easement holder) for its review and approval, an action plan recommending appropriate corrective actions to remedy the adverse impact or effect. If catastrophic events result in a loss of Harvest

Protection Areas below the target baseline, management of the Elliott Forest will focus on replacing and/or restoring the characteristics of the Harvest Protection Areas to the target baseline based on the best available science at the time.

Appropriate corrective action may include the salvage of damaged timber in the Elliott Forest. Any salvage of timber approved by CTCLUSI (Conservation Easement holder) must be consistent with the principles, terms and conditions of the Conservation Easement. Danger trees and wind-thrown trees within the prism of open roads may be salvaged as part of normal road maintenance activities. Also see new Schedule I.A.18 (Mature Forest Optimization).

Company may immediately respond to emergencies such as fires, landslides, and floods to protect the infrastructure and natural resources based on the best available science at the time. In those situations, notice to CTCLUSI (Conservation Easement holder) will be provided as soon as possible but in any event, no more than three days after the action is undertaken.

D. Riparian Management Areas

Gaps, uncertainties, and ambiguities around the public benefits that require further definition prior to development of an offer of direct sale include the following:

- *Details regarding allowable activities in Riparian Management Areas including watershed improvement activities and potential salvage operations in the event of a natural disaster.*

Clarification: See new Schedule I.A.19 (Riparian Management Areas) defining standards that in many cases go beyond the Oregon Forest Practices Act (FPA).

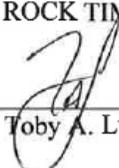
E. Elliott State Forest Reciprocal Easement Agreement.

No additional information provided.

Respectfully submitted as of February 3, 2017

LONE ROCK TIMBER MANAGEMENT COMPANY

By: _____


Toby A. Luther, President and CEO

2323 Old Highway 99 South
P. O. Box 1127
Roseburg, OR 97470-0257
Telephone: 541.673.0141 x402
E-Mail: TLuther@lrtc.com

SCHEDULE I.A.3
Updated

**(Confederated Tribe of the Coos Lower Umpqua and Siuslaw Indians (CTLUSI) –
Conservation Easement Holder)**
(Attached hereto)



**CONFEDERATED TRIBES OF
COOS, LOWER UMPQUA AND SIUSLAW INDIANS
TRIBAL GOVERNMENT OFFICES**

1245 Fulton Avenue • Coos Bay, OR 97420
(541) 888-9577 • 1-888-280-0726 • General Office Fax: (541) 888-2853

February 2, 2017

Mr. Toby A. Luther
President and CEO
Lone Rock Timber Management Company
2323 Old Highway 99 South
P.O. Box 1127
Roseburg, OR 97470-0257
E-Mail: TLuther@lrco.com

RE: Elliott Forest Acquisition Plan

Dear Mr. Luther,

I write on behalf of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians ("Tribe") to clarify certain principles to which the Tribe is committed with respect to the Tribe serving as the holder and enforcer of the Conservation Easement for the Elliott. First, there would be one Conservation Easement over the entire Elliott Forest addressing public recreational access, Harvest Protection Areas, and Riparian Management Areas. The Tribe would be vested with full enforcement rights for the entire Conservation Easement and would exercise those rights for and on behalf of the public. Second, there must be dispute resolution provisions that contain the following requirements:

- a. Disputes between the Tribe and Elliott Forest LLC ("Company") regarding compliance with the terms and conditions of the Conservation Easement would be subject to arbitration. The Tribe and the Company to agree to enforcement of associated arbitration awards in the courts of the State of Oregon.
- b. Disputes regarding the Tribe's compliance with its obligations as holder and enforcer of the Conservation Easement would be subject to arbitration in certain, defined instances. The Tribe is open to discussion regarding the entity that could invoke arbitration in such instances. Possibilities include the Conservation Easement advisory board and/or the State. Termination of the Tribe's role the holder and/or enforcer would be a potential remedy for material or repeated violations. Tribe to agree to enforcement of associated arbitration awards in the courts of the State of Oregon.
- c. The Tribe would agree to a limited and conditional waiver of its sovereign immunity as necessary to allow for arbitration and judicial enforcement of associated awards.

Third, any potential for Elliott land transfers to the Tribe must be structured to avoid any potential conflicts of interest. Fourth, there must be an endowment that is appropriately structured and funded to allow for full and effective monitoring, administration and enforcement, while avoiding

instability or the appearance of a conflict of interest. Finally, successor provisions must be negotiated to ensure there is no interruption in the perpetual administration and enforcement of the Conservation Easement.

Consistent with these principles and the terms and conditions set forth in the Elliott Forest Acquisition Plan, inclusive of addenda, the Tribe remains committed in principle to assuming the role as the holder and enforcer of the Conservation Easement, subject to negotiation of final terms. The Tribe understands that the State Land Board has not yet made an offer to you to acquire the Elliott and that any negotiations on the Conservation Easement will be dependent upon such an offer being made and accepted.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Ingersoll". The signature is fluid and cursive, with the first name "Mark" being more prominent than the last name "Ingersoll".

Mark Ingersoll, Chair
Tribal Council

SCHEDULE I.A.16

New

Douglas County Board of Commissioners Holder of Easement in Gross
(Attached hereto)

Mr. Toby A. Luther
President & CEO
Lone Rock Timber Management Company
2323 Old Highway 99 South
P. O. Box 1127
Roseburg, OR 97470-0257
E-Mail: TLuther@lrtco.com

CONFIDENTIAL-- Elliott Forest Acquisition Plan—Lone Rock Timber Management Company Lead Participant/Easement in Gross/Douglas County

Dear Mr. Luther:

The County understands Lone Rock Timber Management Company, The Cow Creek Band of Umpqua Tribe of Indians, The Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, with the support and advice of The Conservation Fund, Dr. John Gordon, the College of Forestry at Oregon State University, the Oregon Department of Forestry, The Confederated Tribes of Siletz Indians and The Confederated Tribes of the Grand Ronde submitted their Elliott Forest Acquisition Plan (“Plan”) on November 15, 2016 to the Oregon Department of State Lands.

The County reviewed the Plan and the December 13, 2016 agenda and meeting minutes of the State Land Board. Those minutes contain this statement by the State Land Board:

Economic benefits are proposed to be enforced through an easement in gross instead of the suggested deed covenant. While the suggested structure for an easement in gross was provided in the Plan, a holder of these rights was not definitively identified. Identifying a holder of the easement in gross appropriate to adequately address the economic benefits promised.

The County reviewed Schedule II.B of the Plan which included by way of a separate attachment, a draft copy of the proposed Easement in Gross.

The County is committed in principle to assuming the role of the holder of the Easement in Gross and the County Board of Commissioners authorized [_____], with the advice and counsel of the County Counsel, to proceed to negotiate the final terms of the Easement in Gross. Reaching final agreement on those terms is a condition precedent to a binding commitment by the County to serve as the holder of the Easement in Gross. The County does not foresee any material obstacles to reaching a final agreement.

The County understands the State Land Board has not yet made an offer to you to acquire the Elliott Forest and that any negotiations on the Easement in Gross will be dependent upon such an offer being made and accepted.

Thank you and please call me with questions.

Douglas County

By: _____

Name: _____

Title: _____



College of Forestry – Office of the Dean
Oregon State University, 109 Richardson Hall, Corvallis, OR 97331-5704
Phone 541-737-1585 | Fax 541-737-2906 | www.forestry.oregonstate.edu

January 30, 2017

Mr. Toby A. Luther
President & CEO
Lone Rock Timber Management Company
2323 Old Highway 99 South
P. O. Box 1127
Roseburg, OR 97470-0257
E-Mail: TLuther@lrtc.com

CONFIDENTIAL

Elliott Forest Acquisition Plan: Lone Rock Timber Management Company Lead Participant/Easement in Gross/College of Forestry

Dear Mr. Luther:

The Oregon State University College of Forestry (“College”) understands Lone Rock Timber Management Company, The Cow Creek Band of Umpqua Tribe of Indians, The Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, with the support and advice of The Conservation Fund, Dr. John Gordon, the College of Forestry at Oregon State University, the Oregon Department of Forestry, The Confederated Tribes of Siletz Indians and The Confederated Tribes of the Grand Ronde submitted their Elliott Forest Acquisition Plan (“Plan”) on November 15, 2016 to the Oregon Department of State Lands.

The College reviewed the Plan and the December 13, 2016 agenda and meeting minutes of the State Land Board. Those minutes contain this statement by the State Land Board:

Economic benefits are proposed to be enforced through an easement in gross instead of the suggested deed covenant. While the suggested structure for an easement in gross was provided in the Plan, a holder of these rights was not definitively identified. Identifying a holder of the easement in gross appropriate to adequately address the economic benefits promised.

The College reviewed Schedule II.B of the Plan which included by way of a separate attachment, a draft copy of the proposed Easement in Gross. The College understands that Douglas County (“County”) committed to be the holder of the Easement in Gross. The proposed Easement in Gross in the Plan provides as follows:

Employment. Grantor has identified the required jobs pursuant to an IMPLAN analysis. This jobs consist of not less than forty (40) Full-Time Jobs or a combination of Full-Time Jobs and part-time jobs which equal not less than forty (40) Full-Time Jobs. Upon thirty (30) days’ prior written request by the County to Grantor, Grantor will provide a copy of the IMPLAN analysis and any updates to the same since the last IMPLAN analysis was performed, which Grantor shall certify to be true and accurate. Grantor will not be required to report more than one time each

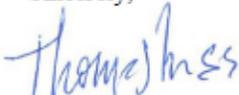
calendar year quarter. Grantor may omit personal information regarding the employees (names, addresses, social security numbers, etc.) to protect their confidentiality. County, at its option and upon ten (10) business days' prior written notice to Grantor, may audit Grantor's employment records to verify the accuracy of the IMPLAN analysis. The types of jobs created may vary from time to time such that there may be more employees performing certain types of jobs and less employees performing others as long as the IMPLAN analysis supports an aggregate total of the jobs of at least 40 Full-Time Jobs. If at least (40) Full-Time Jobs are not supported at any time by the most current IMPLAN analysis then County and Grantor agree to meet and approve a plan to increase Full-Time Jobs to meet such threshold and each party agrees to exercise good faith efforts to approve and implement that plan

Independent Auditor. County may retain an independent third-party auditor to audit the employment records of Grantor four (4) times during the Term to verify the required job creation and the maintenance of those jobs during the Term as set forth in Section 2 and to enter the Property to verify such employment (hereinafter the "Permitted Activities"). Grantor agrees to reimburse County for the cost of the independent third-party auditor not to exceed \$5,000 for any such audit. Harvest levels are reported to the Oregon Department of Revenue for tax purposes each year by Grantor and Grantor will upon request share those reports with County with the goal of eliminating the need for the audits if County is satisfied that the harvest amounts sufficiently support the employment requirements in this Easement.

The College is committed in principle to annually provide an independent report to the County, and provide a copy to the Company, documenting the annual job creation using the IMPLAN analysis. Reaching agreement on those terms of service is a condition precedent to a binding commitment by the College to provide the reporting in accordance with the terms of the Easement in Gross. The College does not foresee any material obstacles to reaching a final agreement.

The College understands the State Land Board has not yet made an offer to you to acquire the Elliott Forest and that any negotiations between the Company and the College will be dependent upon such an offer being made and accepted.

Sincerely,



Thomas Maness
Cheryl Ramberg-Ford and Allyn C. Ford Dean
Director, Forest Research Laboratory

SCHEDULE I.A.17

New

Sample public access permit documents for public access to Lead Participant's other timberlands—form was modified from Lead Participant's current form.

(Attached hereto)



Sample Permit Form²

LONE ROCK TIMBER MANAGEMENT CO.

P.O. BOX 1127 * ROSEBURG, OR 97470

TELEPHONE: 541-673-0141

FAX: 541-440-2516 or 541-440-1573

Access permit

This permit allows _____ (Permittee) access as identified below to the following property:

T___ R___ Sections _____.

It is understood that this is an active forest management area and as such likely to have industrial and commercial activities, including the use of chemicals, occurring while permittee is on the property. User agrees to hold Lone Rock Timber Management Co. and affiliates harmless for any injuries or damages that may occur while exercising the privileges granted by this permit. Permittee shall follow all rules and regulations pertaining to property. User will be liable for any and all damages to property as a result of their use, including the fire, trespass, and environmental degradation.

This permit is good only _____ 20_____.

- **No smoking on LRT land**
- **Do not block gates**
- **Permission may be revoked if fire weather changes**
- **Do not go on other landowners without permission**

Permitted Uses:

- Unrestricted use.**
- Access by foot and non-motorized vehicles.**
- Access by motorized vehicle.**
- Hunting / Fishing**
- Harvesting of Secondary Forest products - _____**
- Other _____**

I have read and agree to the conditions of this permit:

Date: _____ Signature _____ Issued by: _____

Lone Rock Timber Management Co.

² Example only

Address

Phone

**DRAFT RECREATION PERMIT AND ACCESS AGREEMENT
TERMS, RULES AND REGULATIONS**

THIS RECREATION PERMIT AND ACCESS AGREEMENT is between [] (“Permittee”) and Lone Rock Timber Management Company (“LRTM”).

Valid from [] to []. Permit Area Description: SEE ATTACHED MAP.

Permittee must read, understand, and accept all of the terms of this Agreement (the “Agreement”) and acknowledge acceptance by signing and dating this Agreement at the bottom of this form. After the Permit has been processed successfully, Permittee will then be issued an access permit (the “Permit”) which will become valid upon Permittee’s receipt of the Permit and an official acceptance notice from LRTM.

1. Compliance with Laws, Terms, Rules, and Regulations. This Permit grants to Permittee and others described below the right to recreate on the property managed by LRTM as depicted on the map attached hereto as Exhibit A (the “Permit Area”). In exchange for such recreational access, Permittee agrees to comply with all federal, state, and local laws and regulations while on LRTM managed Property. Permittee further agrees to comply with all of the terms, rules, and conditions stated in this Agreement and on the Permit, as well as any special provisions or addenda that are made part of this Agreement or the Permit (collectively, the “Permit Rules”). LRTM reserves the right to modify or supplement the Permit Rules at any time upon reasonable notice to Permittee. Permittee agrees to comply with all instructions given by LRTM representatives or law enforcement.

2. Permit Term and Access. This Permit is valid only for the period set forth above, unless terminated earlier for violation of the Permit Rules. Motorized vehicle access to and from the Permit Area is allowed only through the access points identified on the map attached as Exhibit A. These entry points may change due to active operations. Updates will be provided of any changes.

3. Personal, Family Use Only. Permittee agrees that the Permit is valid for personal recreational access on the Permit Area only. No commercial activities or uses are permitted. Access and use of the Permit Area is granted in an “as-is” condition and no additional accommodations, amenities, products or services will be provided to Permittee under any circumstance by LRTM or its affiliates. This Permit may be used only by the Permittee, his or her legally married spouse, registered domestic partner (legally married and domestic partners are hereinafter and hereinbefore called “spouse”), and their children or grandchildren 18 years of age and under as of the date the Permit is applied for and who are in the accompaniment of the Permittee and/or spouse while on the Permit Area. No other persons are covered or authorized by this Agreement or the Permit. Permittee represents that he or she is at least 18 years of age as of the date of this Agreement. All persons accompanying Permittee on the Permit Area must also adhere to the Permit Rules.

4. Permit, Hang Tag, Identification. Permittee agrees and understands that the Permit must be displayed and/or in the possession of the Permittee and/or spouse at all times while on the Permit Area. The Permit and photo identification must be shown upon request by a LRTM representative (including security) or law enforcement officer. The Permit provided by LRTM must

be displayed in the Permittee's vehicle at all times while on LRTM property.

5. Dangerous, Primitive Conditions, Industrial and Other Activities. PERMITTEE ACKNOWLEDGES AND UNDERSTANDS THAT:

- a) the Permit Area is unimproved timberland used primarily for the growing and harvesting of timber and other forest products;
- b) conditions on the Permit Area can be dangerous and roads are primitive and unsigned;
- c) other hazards may exist throughout the Permit Area that are unmarked and not readily apparent;
- d) roads may be used at any time by logging trucks, rock trucks, other heavy logging and forestry equipment and forest management vehicles that may be used after dark for wildlife surveys;
- e) areas of the Permit Area may be subject to logging activities, including tree cutting and other dangerous activities; other forest management activities, including, without limitation, aerial fertilizing, herbicide spraying using ground and aerial methods (both helicopters and fixed wing aircraft) may occur;
- f) inherently dangerous activities, including, but not limited to, hunting, will occur on the Permit Area;
- g) maps provided by LRTM are for Permittee's convenience only, may contain or reference information provided by third parties, the accuracy of which has not been confirmed by LRTM, and such maps may not be relied upon by Permittee for navigation purposes;
- h) the Permit Area is remote, in some cases without cellular phone service or other means to summon medical aid should the same be needed, and weather and road conditions are subject to change with little or no warning;
- i) LRTM makes no representations or warranties concerning the fitness, suitability or safety of the Permit Area for any recreational uses made thereon under this Permit; and
- j) use of the Permit Area is non-exclusive; there may be other permittees in the Permit Area at any time; bullying, harassment, or interference with the reasonable enjoyment of other permittees is strictly prohibited.

6. Assumption of Risk and Waiver of Liability Claims. PERMITTEE AND HIS/HER SPOUSE, FOR THEMSELVES AND FOR ANY CHILDREN OR GRANDCHILDREN ENTERING THE PERMIT AREA UNDER THE TERMS OF THIS PERMIT, EXPRESSLY ASSUME ALL RISKS associated with the Permit Area that are related in any manner whatsoever to their activities on the Permit Area, including without limitation, all risks related to the condition of the Permit Area, including but not limited to those items identified in Section 5 above, conducted by or on behalf of LRTM, its subsidiaries, contractors, or other permittees. PERMITTEE HEREBY EXPRESSLY WAIVES ALL CLAIMS against LRTM, its subsidiaries and affiliates, and any of their permittees, contractors, employees, officers and directors, and other agents for personal injury, including death, or damage to property in connection with 1) the rights granted by this Permit; and 2) the condition of the Permit Area, including without limitations the roads and other improvements and all other elements and hazards of the Permit Area. PERMITTEE ACCEPTS AND ASSUMES THE RISKS ASSOCIATED WITH THE HAZARDS AND CONDITIONS ON THE PERMIT AREA.

7. Automobile Insurance. Permittee agrees and represents that he or she has adequate vehicle insurance as required by state law for the vehicles identified on the Permit and that it is a valid and existing policy of insurance that will not be cancelled during the period covered by this Permit.

8. No Transfer. Permittee agrees that this Permit may not be sold, gifted, or transferred in any way to any other party.

9. Termination. This Permit may be terminated by LRTM at any time, in LRTM's sole discretion, for any violation of the Permit Rules or the terms of this Agreement by Permittee or anyone accompanying Permittee. Permittee further agrees and understands that violation of the Permit Rules may result in LRTM's denial of future permit applications.

10. Vehicles. Motorized vehicles used to access the Permit Area are allowed to access the Permit Area only and must be licensed, street legal and have a properly functioning exhaust system. During fire season, all vehicles must have appropriate fire prevention tools including a fire extinguisher, shovel and axe. Vehicles larger than one ton are prohibited.

11. Driving. Permittee and anyone operating a motor vehicle on the Permit Area must be licensed to drive and no one may drive in the Permit Area without a valid driver's license.

12. Closure of Permit Area. LRTM reserves the right to close the Permit Area in case of extreme fire danger or other extreme conditions, including without limitation any conditions that may cause excessive damage to roads. Areas where active logging, road construction, or other commercial operations or forest management are underway are strictly off-limits and must be avoided by Permittee at all times, whether such areas are signed or not. Permittee must obey all signs on the Permit Area.

13. Hunting License. If Permittee wishes to hunt on the Permit Area, he/she must do so within lawfully established hunting seasons and only when in possession of a lawful Oregon State hunting license and all required tags or permits. No target shooting is permitted.

14. Vehicle Travel. Any authorized travel by motorized vehicle on the Permit Area shall be limited to rocky roads.

15. Fireworks. No fireworks are permitted on the Permit Area at any time.

16. Smoking. No smoking is allowed outside the cab of a motor vehicle. Smoking is prohibited during fire season or when signs otherwise appear prohibiting smoking.

17. Alcohol/Drugs. Permittee shall not use or possess alcohol, be under the influence of alcohol, use or possess drugs that are illegal under state or federal law while on the Permit Area.

18. Pets. Dogs and other domestic pets must be kept in Permittee's control at all times.

19. Boundaries of Permit Area. Permittee must familiarize himself/herself of the location of the boundaries of the Permit Area and not cross beyond the boundaries. Activities outside the Permit Area will be considered a trespass and violation of the Permit Rules.

20. No Dumping Allowed. No littering, dumping or burying of garbage is permitted. Pack it in and pack it out. Permittee will not possess or dispose of any hazardous substance on the Permit Area.

21. Driving. Be alert for oncoming traffic, including heavy trucks and equipment.

Logging and forest management traffic has the right-of-way; be prepared at all times to yield to them. Drive safely at all times, with driver and all passengers secured with seat belts at all times. Permittee must be able to stop within one-half of his or her sight distance. Permittee must report all accidents to LRTM within 24 hours of occurrence.

22. Damage to Natural Resources. No cutting of or injury to any trees, shrubs or other forest products is allowed. Do not place any nails, screws, or other metal objects in trees. If Permittee violates the foregoing requirements, Permittee agrees to pay LRTM three times (3x) the value of the trees cut or injured. There shall be no rock collecting, gold panning, prospecting or archeological artifact disturbance permitted on the Permit Area. No collection of environmental or biological data or material is permitted without additional LRTM permissions.

23. Laws. The Permit is governed by and shall be construed under the substantive law of the State of Oregon.

24. Special Provisions.

25. Acknowledgment. By signing below, Permittee: 1) represents that he/she and his/her spouse have read the foregoing Agreement and Permit Rules, understand them, agree to abide by them at all times, and will ensure that all persons accompanying Permittee also abide them; and 2) acknowledges that he/she understands and agrees that any violation of the Permit Rules shall entitle LRTM to terminate this Permit, and to deny future permit applications in LRTM's sole discretion.

Permitted Uses [check each box you are applying for]:

- Unrestricted use.**
- Access by foot and non-motorized vehicles.**
- Access by motorized vehicle.**
- Hunting / Fishing.**
- Harvesting of Secondary Forest products - _____.**
- Other _____.**

PERMITTEE:

I have read and agree to the conditions of this Permit:

Date: _____

NAME: _____

Signature: _____

Address:

Phone Number (_____) _____

E-mail address: _____

Driver's License No. _____

Motor Vehicle License No. _____

ACCEPTED:

Lone Rock Timber Management Co.

By: _____

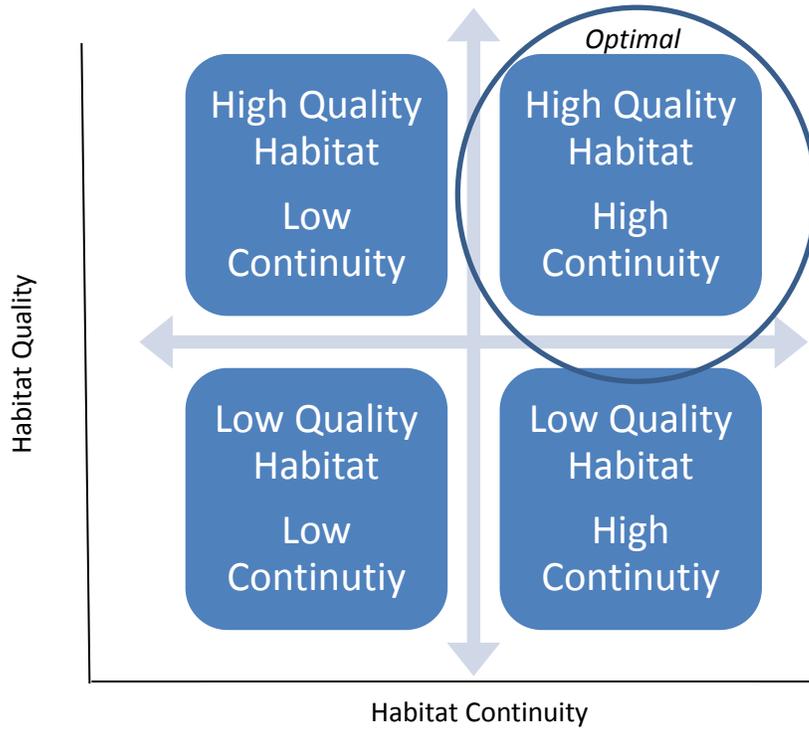
Date: _____

Exhibit A – Permit Area

SCHEDULE I.A.18
New
Mature Forest Optimization
(Attached hereto)

Mature Forest Optimization on the Elliott

Intent: Develop large blocks of structurally complex/mature stands that provide high quality habitat over time.



SCHEDULE I.A.19
New
Riparian Management Areas
(Attached hereto)

RIPARIAN MANAGEMENT AREAS

Goal

The primary goal of riparian management is to provide self-sustaining streamside forests that will ensure the desired conditions of riparian resources on the Elliott Forest for the future.

Management Actions

The desired future riparian condition (DFC) along streams, is the natural condition that existed prior to mature forest harvest. This condition is generally characterized by stands that have developed an increased level of structural complexity. The development of large overstory trees, increased decadence, accumulation of large downed wood and the reestablishment of moss and lichen communities are characteristic of this condition. Vertical and horizontal diversity develops as shade-tolerant trees grow into the overstory canopy. Overstory crowns deepen and gap formation increasingly affects the diversity (heterogeneity) of the stands in this condition. Management of riparian areas will be implemented with the end goal of achieving the DFC.

The historic riparian conditions on the Elliott vary across the landscape depending on site class and natural disturbance frequency. Typically these stands were multi-storied with a relatively high density of mature trees. These stands maximized riparian functions such as large woody debris (LWD) inputs, shade, litter fall and attaining uniform local climates (microclimates).

In order to promote the DFC, riparian management areas (RMAs) will be established immediately adjacent to waterways for the purpose of protecting aquatic and riparian resources and maintaining the functions and ecological processes of the waterways. Within these areas, special management considerations and operational restrictions will be applied.

The width of the RMA will vary depending upon topography, vegetative cover, the needs of harvesting design and the needs for aquatic and wildlife habitat. This is assumed to average at least the minimum riparian management standard, measured using slope distance on each side of the stream. Boundaries of the RMAs need not be formed by straight lines. The width of these areas may be expanded, if necessary, to fully encompass certain sensitive sites.

The RMAs along streams will be divided into the following two management areas: the Inner Riparian Management Area (IRMA), and the Outer Riparian Management Area (ORMA). The differences between these two areas are defined below.

IRMA — The IRMA is the land closest to the stream, including the stream banks. Vegetation within this zone contributes substantially to desired riparian functions, including providing aquatic shade, delivering a high proportion of the potential large wood available, sediment filtration, and contributing organic inputs to the stream.

Vegetation within this area also provides some protection to certain aspects of the riparian micro-climate. Because vegetation in this zone has a relatively greater role in supporting riparian functions and processes, a high priority is being placed on protecting this area. The

IRMA extends from 0 feet to 40 feet from the stream.

ORMA — the ORMA is the portion of the riparian management area farthest away from the stream. Vegetation within this area may still contribute to certain riparian functions and processes, but to a lesser extent than the IRMA. The primary functions provided by vegetation in this area are to provide additional contributions of large wood to the riparian zone, and additional shade. The ORMA extends from the edge of the IRMA at 40 feet out to 120 feet from the stream.

RIPARIAN STANDARDS — will be finalized as part of the conservation easement process with CTCLUSI. Riparian standards on SSBT streams will exceed the Oregon Forest Practice rules while allowing for restoration practices that meet the riparian objectives and/or promote the Desired Future Conditions. Management actions implemented within riparian areas will be for enhancement purposes only. Company will work with additional stakeholders (i.e. Watershed Councils) to identify and prioritize projects within Riparian Areas.

Timber Management

- With the exception of implementing instream restoration projects, neither conduct nor allow timber harvest, including fuel wood cutting, in the IRMA portion of the RMA on SSBT streams.
- Neither conduct nor allow timber harvest, including fuel wood cutting, in ORMA portion of the RMA on SSBT streams except for restoration purposes. (i.e., removing dense stands of salmonberry from the stream bank and replacing with mixed conifers to support long-term LWD inputs, thinning dense stands to promote structural complexity and understory development - see basal area requirements, and/or planting additional native species to increase diversity).
- Where catastrophic events such as fire, flooding, volcanic, wind, or insect damage result in degraded riparian conditions, allow salvage and fuel wood cutting, if needed, to meet the DFC. Reforest with a mix of native species following disturbance.
- Apply non-commercial silviculture practices for RMAs to acquire desired vegetation characteristics needed to attain the DFC.

Fire and Fuels Management

- Design fuel treatment and fire suppression strategies, practices and activities to meet DFC goals and to minimize disturbance of riparian ground cover and vegetation. Strategies will recognize the role of fire in ecosystem function and identify those instances where fire suppression or fuel management activities could be damaging to long-term ecosystem function.
- Locate incident bases, camps, helibases, staging areas, helispots and other centers for incident activities outside of RMAs. If the only suitable location for such activities is within the RMA, an exemption may be granted following a review and recommendation by a resource advisor. The advisor will prescribe the location, use conditions and rehabilitation requirements.
- Design prescribed burn projects and prescriptions to contribute to attainment of DFC goals.
- Suppress wildfire to avoid loss of habitat and to maintain future management options.

General Riparian Management

- Fell trees when they pose a safety risk. Keep felled trees onsite when needed to meet objectives for coarse woody debris retention.
- Locate water drafting sites to minimize adverse effects on stream channel stability, sedimentation, in stream flows needed to maintain riparian resources, channel conditions and fish habitat.

Riparian Restoration

- Design and implement riparian restoration projects in a manner that promotes long-term ecological integrity of ecosystems, conserves the genetic integrity of native species and attains DFC goals and objectives.
- Cooperate with federal, state and local agencies, watershed councils, and private landowners to develop coordinated resource management plans or other cooperative agreements to meet DFC goals.
- Prevent habitat degradation rather than relying on mitigation measures or planned restoration.