



**US Army Corps
of Engineers**®
Portland District

Portland District requires long-term site protection on compensatory mitigation projects

In accordance with the Federal Compensatory Mitigation Rule
for Losses of Aquatic Resources (33 CFR 332.7(a)).

Long-term protection may be provided through real estate instruments such as restrictive covenants (*i.e.*, deed restrictions); by conservation easements held by entities such as federal, tribal, state, or local resource agencies, non-profit conservation organizations, or private land managers; or by the transfer of title to such entities.

The attached Deed Restriction Template may be used for projects requiring such instruments.

Deed restrictions and conservation easements may not be appropriate or practicable on federal land, state or local government-owned land, tidal areas, marine areas, or for in-stream projects. For government-owned property, long-term protection may be provided through federal facility management plans, or integrated natural resources management plans. The real estate instrument, management plan, or other mechanism providing long-term protection of the compensatory mitigation site must, to the extent appropriate and practicable, prohibit incompatible uses (*e.g.*, clear cutting, grazing, mineral extraction) that might otherwise jeopardize the objectives of the compensatory mitigation project. Proof of recording with the Registrar of Deeds or other appropriate official charged with maintaining records on real property will need to be provided to the Portland District prior to the first discharge of dredged or fill material in a water of the U.S.

Questions should be directed to the Corps' project manager assigned to the county in which the project is located.

After recording, return to:

{Insert Applicant name & Address}

{leave room for Recorder's stamp}

**DECLARATION OF COVENANTS AND RESTRICTIONS and
ACCESS EASEMENT**

FOR THE

{Name of Project, Corps permit #NWP-201X-XXX, DSL permit # _____}

THIS DECLARATION is made by _____
{landowner name}, (“Declarant”).

RECITALS

1. Declarant is the owner of the real property described in Exhibit “A,” attached hereto and by this reference incorporated herein (the “Property”), and has designated the Property as a compensatory mitigation site in accordance with Removal-Fill Permit # _____ (the "DSL Permit") approved by the Oregon Department of State Lands (“Department”), and the Department of the Army permit #NWP-201X-XXX (“Corps permit”) approved by the US Army Corps of Engineers (“Corps”).

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

3. The Department has accepted the mitigation plan for the Property under ORS 196.800 et seq, and the Corps has likewise accepted the mitigation plan under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act.

ARTICLE 1
DEFINITIONS

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

1.2 “Declarant” shall mean and refer to _____
(*landowner name*), the owner of the Property, and the owner’s heirs, successors, and assigns.

1.3 “DSL permit” shall mean the final document approved by the Department that includes the mitigation plan and which formally establishes the mitigation site and stipulates the terms and conditions of its construction, operation and long-term management. A copy of the DSL permit may be obtained at the Department of State Lands, 775 Summer St. NE, Salem, OR 97301; phone 503-986-5200.

1.4 “Corps permit” shall mean the final document approved and issued by the Corps which includes the mitigation plan describing where and how the compensatory mitigation will be completed, monitored, managed, and maintained. A copy of the Corps permit associated with this Declaration may be obtained at the office of the US Army Corps of Engineers, Regulatory Branch, 333 SW First Ave., Portland, OR 97208; Phone 503-808-4373.

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

ARTICLE 2
PROPERTY SUBJECT TO THIS DECLARATION

The Property described in Exhibit A is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration. {*Exhibit “A” must be a surveyed legal description, and map illustrating the specific area subject to this Declaration. The map legend shall indicate the approximate locations of wetlands, streams, any existing*

structures such as roads, utility lines, or stormwater treatment features, and any easements located within or across the Property.}

ARTICLE 3

DECLARANT REPRESENTATIONS

Declarant represents and warrants that after reasonable investigation, and to the best of its knowledge, that no hazardous materials or contaminants are present that conflict with the conservation purposes intended; that the Property is in compliance with all federal state, and local laws, regulations, and permits; that there is no pending litigation affecting, involving, or relating to the Property that would conflict with the intended conservation use; and that the Property is free and clear of any and all liens, claims, restrictions, easements and encumbrances that would interfere with the ability to protect and conserve the Property.

ARTICLE 4

GENERAL DECLARATION

Declarant, in order to discharge in part its obligations under the DSL permit and the Corps permit, declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements and other encumbrances in this Declaration, in order that it shall remain substantially in its restored, enhanced, preserved, open and natural condition, in perpetuity. The terms and conditions of this Declaration shall be both implicitly and explicitly included in any subsequent transfer, conveyance, or encumbrance affecting all or any part of the Property. No modification or release of this Declaration will be effective unless authorized in writing by the Department and by the Corps. Any amendments must be signed by the Department and must be recorded in the official records of the county in which the Property is located.

ARTICLE 5
USE RESTRICTIONS, MANAGEMENT RESPONSIBILITIES,
AND RESERVED RIGHTS

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

A. USE RESTRICTIONS. Except as necessary to conduct, remediate or maintain the Property consistent with the DSL permit and the Corps permit, the actions prohibited by this covenant include:

- *{Insert Covenants here. List, by number, all of the things not allowed in the conservation area. See following examples.}*
- 1. There shall be no removal, destruction, cutting, trimming, mowing, alteration or spraying with biocides of any native vegetation in the Property, nor any disturbance or change in the natural habitat of the Property unless it promotes the mitigation goals and objectives established for the Property. Hazard trees that pose a specific threat to existing structures including fences or pedestrian trails may be felled and left on site. Dry grass only may be mowed after July 1 to abate fire hazard.
- 2. There shall be no agricultural, commercial, or industrial activity undertaken or allowed in the Property; nor shall any right of passage across or upon the Property be allowed or granted if that right of passage is used in conjunction with agricultural, commercial or industrial activity.
- 3. No domestic animals shall be allowed to graze or dwell on the Property.
- 4. There shall be no filling, excavating, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock minerals or other materials, nor any storage nor dumping of ashes, trash, garbage, or of any other material, and no changing of the topography of the land of the Property in any manner once the wetlands are constructed unless approved in writing by the Department and by the Corps.

5. There shall be no construction or placing of buildings, mobile homes, advertising signs, billboards or other advertising material, vehicles or other structures on the Property.
6. There shall be no legal or de facto division, subdivision or partitioning of the protected Property.
7. Use of motorized off-road vehicles is prohibited except on existing roadways.

B. MANAGEMENT RESPONSIBILITIES. Declarant shall take all reasonable action to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the mitigation purposes of the Property or that are otherwise inconsistent with this Declaration.

C. RESERVED RIGHTS. Declarant reserves all other rights accruing from Declarant's ownership of the Property including but not limited to the exclusive possession of the Property, the right to transfer or assign Declarant's interest in the same; the right to take action necessary to prevent erosion on the Property, to protect the Property from losing its wetland or waterway functions and values, or to protect public health or safety; and the right to use the Property in any manner not prohibited by this Declaration and which would not defeat or diminish the conservation purpose of this Declaration.

The Declarant specifically reserves the right to use the Property for the purposes of *{insert specific action, e.g. hunt ducks}* _____, which reserved rights are deemed to be consistent with the purposes enumerated in the permit.

ARTICLE 6

EASEMENT (RIGHT OF ENTRY)

Declarant hereby grants to the Department an easement and right of entry on the Property for the purpose of physically accessing the Property at all reasonable times to

inspect the Property in order to monitor and to ascertain whether there has been compliance with this Declaration and the DSL permit. In the event that the Property lacks access via a public road or other common area, Declarant grants to the Department an easement over and across any other property of Declarant, the use of which is necessary to access the Property. The Declarant hereby grants to the Corps a right of entry to ascertain compliance with the Corps permit and this Declaration.

ARTICLE 7
GENERAL PROVISIONS

A. NOTICE. The Department and the Corps shall be provided with a 60-day advance written notice of any legal action concerning this Declaration, or of any action to extinguish, void or modify this Declaration, in whole or in part. This Declaration, and the covenants, restrictions, easements and other encumbrances contained herein, are intended to survive foreclosure, tax sales, bankruptcy proceedings, zoning changes, adverse possession, abandonment, condemnation and similar doctrines or judgments affecting the Property. A copy of this recorded Declaration shall accompany said notice.

B. VALIDITY. If any provision of this Declaration, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Declaration, or the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

IN WITNESS WHEREOF, the undersigned being Declarant herein, has executed this instrument this _____ day of _____, 20_____.

_____ { *Owners name* }
_____ County, Oregon

By: _____
Title: _____

STATE OF OREGON)
)
County of _____)

ss:

This instrument was acknowledged before me on _____ (*date*) by _____ (*name of person*) as _____ (*title*) of Applicant firm's name of _____ County, Oregon.

Signature of Notarial Officer
My Commission Expires: _____

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

By: _____
Title: _____
Date: _____

Attachment:
Exhibit A, legal description and labeled map of the Property