

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (the "Easement") which is more specifically defined in Section 1 below is made this 20th day of July, 2007, by and between the **Confederated Tribes of Siletz Indians of Oregon**, P.O. Box 549, Siletz, OR 97380 (the "Grantor") in favor of the United States - acting through the **U.S. Department of the Interior, Bureau of Land Management**, P.O. Box 2965, Portland, OR 97208 - and the **State of Oregon, Department of Fish and Wildlife**, 3406 Cherry Ave. NE, Salem, OR 97303 (the "Grantees"). While not serving as a Grantee, the **U.S. Fish and Wildlife Service**, 911 NE 11th Ave., Portland, OR 97232, will serve as a co-representative of the U.S. Department of the Interior for purposes of oversight and enforcement. The Grantor and Grantees will collectively be referred to in the Easement as the "Parties". Certain terms used in this Easement are defined in Section 1.

RECITALS

The Grantor is the owner in fee simple of the Property constituting approximately 3851 acres situated in Lincoln County, Oregon, subject to easements, covenants, conditions, restrictions and agreements of record as of the date of the Easement which are listed on Schedule A. The Property provides habitat for the marbled murrelet, a federally-listed threatened species, and for other mid and late successional forest species as well as native fish populations. The Property was acquired by TCF from private owners using funds provided by the Trustees. Pursuant to agreement with TCF, the Property was deeded to the Grantor. Grantor was selected by the Trustees as the transferee of the ownership interest in the Property because of the Grantor's stated commitment to the long-term management of the Property for the purposes contained in the Easement.

The Trustees include the United States Department of the Interior as represented by the Bureau of Land Management, the U.S. Fish and Wildlife Service, and the Bureau of Indian Affairs; the United States Department of Agriculture as represented by the Forest Service; the State of Oregon as represented by the Department of Fish and Wildlife; the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians; and the Confederated Tribes of Siletz Indians of Oregon. The Trustees are the duly authorized natural resource trustees under the Oil Pollution Act of 1990. Grantor and Grantees are also Trustees.

The acquisition, management and enhancement of the Property is intended to compensate the public for injuries to marbled murrelets caused by an oil spill from the *M/V New Carissa* that began on February 4, 1999 on the Oregon coast. As such, the habitat protections afforded by this easement will not be decreased or altered if the marbled murrelet is no longer listed as threatened or endangered under the Endangered Species Act or similar state law. The Trustees have adopted a January, 2006 Final Damage Assessment Restoration Plan ("DARP") for the *M/V New Carissa* Oil Spill. The DARP sets forth certain projects intended to restore those resources injured as a result of the spill. The DARP notes that loss of nesting habitat and poor reproductive success are the primary reasons for the decline of the marbled murrelet species. Among the preferred projects selected were the acquisition, management and

enhancement of the Property to serve as habitat for the marbled murrelet. The DARP also notes that a host of other mid and late successional forest species would potentially benefit from the acquisition and protection of this habitat. The DARP notes that marbled murrelet habitat will be appropriately protected and buffered and the adjoining acreage will remain open to forestry practices which will be expected to move even-aged stands into a forest providing more diverse habitat.

The DARP requires that Grantor enter into a legally binding, recorded agreement assuring that the Property will be managed in accordance with the DARP objectives. The DARP also states that the Grantor will not seek substantial financial return from the harvest of wood products on the parcels. The Grantor and Grantees recognize the special character of the Property as nesting habitat for marbled murrelets and have the common purpose of the conservation and protection of the Property by placing restrictions upon the use of the Property.

In recognition of the special character of the Property and in furtherance of the Easement purpose as defined in Section 2 below, Grantor and Grantees agree as follows:

1. Definitions

Unless otherwise provided in the Easement, the following terms have the meanings set forth below.

“Annual Operations Plan” or “Operating Plan” means the plan to be prepared by the Grantor for each calendar year as described in Section 9.2.

“Annual Report” means the report to be prepared by the Grantor for each calendar year as described in Section 9.3.

“Baseline Documentation” means the inventory of all available information on the Property consisting of reports, maps, photographs and other documentation as of the execution of the Easement by the Parties. This information is intended to serve as an objective information baseline for monitoring compliance with the terms of the Easement.

“Buffer Habitat” means forested areas located immediately adjacent to Marbled Murrelet Habitat that exhibit a canopy height of at least one-half the site-potential tree height as described in Section 3.2.

“Buffer Protection Area” or “BPA” means that portion of the Property which is initially designated within the Baseline Documentation and which may be modified from time to time as a result of the recommendations contained in the Property Management Plan. The BPA is comprised of Buffer Habitat of generally no less than 300 feet around the perimeter of the HPA, contingent on topography and man-made features, which is intended to adequately protect the Marbled Murrelet Habitat from disturbances and to provide areas for additional recruitment of Marbled Murrelet Habitat.

“Easement” means this Conservation Easement which is a perpetual, exclusive easement in gross, the burden running with the land. The Easement is subject to the preexisting encumbrances identified in Schedule A.

“Effective Date” means the date on which all of the following have been completed: (1) execution of the Easement by the Parties, (2) delivery of the executed Resolution to the Grantees by the Grantor pursuant to Section 24.5, and, (3) delivery of the Deed to the Grantor by TCF.

“Highest Protection Area” or “HPA” means that portion of the Property which is initially designated within the Baseline Documentation and which may be modified from time to time as a result of the recommendations contained in the Property Management Plan. The HPA is comprised of occupied marbled murrelet habitat and other suitable marbled murrelet habitat.

“Initial Baseline” means that portion of the Property (approximately 1261 acres or 1/3 of the Property) which is Marbled Murrelet Habitat as of the Effective Date.

“Marbled Murrelet Habitat” means that portion of the Property which is occupied or suitable marbled murrelet habitat as described in Section 3.

“Property” means all of the property identified in Exhibit A attached to this Easement.

“Property Management Plan” or “Management Plan” means the plan to be prepared by the Grantor as described in Section 9.1.

“Standard Protection Area” or “SPA” means all of the remaining Property except for the HPA and BPA.

“Target Baseline” means a goal of the Parties to increase and maintain the amount of Marbled Murrelet Habitat on the Property to a minimum of 2570 acres or 2/3 of the Property.

“TCF” means The Conservation Fund.

“Trustees” means the Natural Resource Trustees for the *M/V New Carissa* oil spill which are comprised of the United States Department of the Interior as represented by the Bureau of Land Management, the U.S. Fish and Wildlife Service, and the Bureau of Indian Affairs; the United States Department of Agriculture as represented by the Forest Service; the State of Oregon as represented by the Department of Fish and Wildlife; the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians; and the Confederated Tribes of Siletz Indians of Oregon.

2. Grant and Purpose of the Easement

2.1 Grantor hereby grants the Easement to the Grantees.

2.2 The Grantor shall use, operate, maintain and manage the Property in perpetuity for these purposes in descending priority:

2.2.1 First, to provide for the benefit and conservation of the marbled murrelet by protection of Marbled Murrelet Habitat, and the creation of additional Marbled Murrelet Habitat over time.

2.2.2 Second, where consistent with the first purpose, to provide sufficient revenue for management of the Property through limited commercial timber harvest and other activities as defined below and to protect and promote other late seral or mature forest conditions, native fish and wildlife.

3. Description of Marbled Murrelet Habitat

For the purpose of this Easement, suitable marbled murrelet habitat is described in this Section. It is possible that this description may need to be refined in the future as more is learned about the marbled murrelet.

3.1 Suitable marbled murrelet habitat consists of forested areas with late seral or mature characteristics, which includes moderate-to-high canopy closure, a multi-layered, multi-species canopy dominated by large overstory trees; a high incidence of large trees, some with broken tops and other indications of old and decaying wood including numerous large snags and heavy accumulations of wood including large downed logs. Suitable habitat must contain potential murrelet nest trees which are generally more than 45 inches in diameter at breast height with large crowns and large limbs that provide potential nest platforms. Nesting platforms consist of large or forked limbs greater than 6 inches in diameter or deformities caused by broken tops or mistletoe. Nest platforms are typically located 50 feet or higher from the ground to allow access by the marbled murrelet. The number of trees that contain potential nesting platforms is generally greater than seven per acre to be considered suitable nesting habitat. Nesting also requires an accumulation of moss, duff, or needles on the nest limb of sufficient depth to prevent the egg from rolling out of the nest, and vertical and/or horizontal cover from neighboring branches to reduce the likelihood of nest predation.

3.2 Marbled murrelet habitat is considered of higher quality and greater conservation benefit to murrelets when it occurs in large, contiguous blocks rather than smaller isolated patches. Quality marbled murrelet habitat also generally exhibits low amounts of edge, fragmentation and disturbance. Habitat may be enhanced when adjacent surrounding forested areas buffer nesting areas. Forest buffers generally exhibit a canopy height of at least one-half the site-potential tree height.

4. Development of Baseline Documentation and Categorization of the Property

4.1 The Grantor shall develop the Baseline Documentation within ninety (90) days of the Effective Transfer Date. The Baseline Documentation shall be delivered to Grantees for their review and approval. Upon approval, the Baseline Documentation shall be maintained by the Grantees.

4.2 The Baseline Documentation shall contain a recommendation for the approximate initial categorization of the Property into the HPA, the BPA and the SPA.

4.3 The Grantor and Grantees will discuss and mutually determine how the Property will initially be categorized. If the Parties cannot agree on the categorization, Grantees shall make such determination. Until the categorization is determined, the default designations in Exhibit B shall apply.

4.4 In future Property Management Plans, the location of Property within these categories will be modified based upon marbled murrelet monitoring, periodic forest inventories and recommendations of the Grantor. The process described in Section 4.3 shall govern these modification determinations.

4.5 When the Target Baseline has been achieved, the categorization of the Property into the HPA, BPA and SPA will be discontinued and the Property will be identified as either Marbled Murrelet Habitat or non-Marbled Murrelet Habitat.

5. Primary General Management Principles for the Property

5.1 The overall management goal of this Easement is to protect the existing Marbled Murrelet Habitat, create additional Marbled Murrelet Habitat and generate sufficient revenue through limited timber harvests to cover the costs associated with managing the Property as detailed in Section 8.4. It is estimated that as of the Effective Date, the Initial Baseline represents existing Marbled Murrelet Habitat on the Property. The long-term goal of this Easement is to double the Initial Baseline so that the Marbled Murrelet Habitat eventually covers and is maintained at no less than the Target Baseline, with as much of the Marbled Murrelet Habitat contained in large, contiguous blocks as practical. The remaining Property which is not Marbled Murrelet Habitat will be managed to develop a range of stand ages and habitats that could potentially develop over time into replacement Marbled Murrelet Habitat.

5.2 The primary management goals for each of the three categories of Property (HPA, BPA and SPA) are set forth below:

5.2.1 The primary management goal for the HPA area will be the protection of the existing Marbled Murrelet Habitat, with little or no active management. Where consistent with this primary goal, a very limited amount of tree cutting may occur in the HPA to enhance habitat for other late-seral to mature forest species, and to enhance habitat for native fish and wildlife but no such activity shall be conducted if it results in detriment to the murrelet. Any tree cutting occurring within the HPA must occur outside the marbled murrelet nesting season. Except as allowed by an approved catastrophic event action plan developed in accordance with Section 10, trees cut within the HPA may not be sold and must remain on the Property, unless otherwise approved by the Grantees. These trees may be used to fulfill down woody debris or fish habitat enhancement needs on the Property.

5.2.2 The primary management goal for the BPA will be to provide an initial buffer between the HPA and activities occurring on the surrounding lands. The buffer is intended to lessen the potential for predation and disturbance of murrelets and provide priority areas for recruitment of additional Marbled Murrelet Habitat. Limited management activities (including tree cutting) designed to move the stands in the BPA towards becoming additional suitable Marbled Murrelet Habitat will be allowed if those activities will not cause a long-term degradation of the habitat quality in the HPA. Where consistent with these primary goals, a limited amount of tree cutting may also occur in the BPA to enhance habitat for other late-seral to mature forest species, and to enhance habitat for native fish and wildlife. Any tree cutting occurring within the BPA must be done in such a manner as to minimize or avoid disturbance to marbled murrelets.

5.2.3 Management goals for the SPA area will focus on achieving the Target Baseline by creating late-seral to mature forest conditions while providing revenue to fund property management expenses. Portions of the initial SPA will eventually become Marbled Murrelet Habitat as part of the Target Baseline. Other SPA areas

will be managed to develop a range of stand ages and habitats that could potentially develop over time into replacement Marbled Murrelet Habitat.

5.3 Management activities designed to accelerate the development of younger stands into Marbled Murrelet Habitat will be utilized including but not limited to precommercial thinning, commercial thinning and patch cuts. Management principles for this type of activity shall be as described below.

5.3.1 In the HPA, a very limited amount of tree cutting may occur to enhance habitat for other late-seral to mature forest species, and to enhance habitat for native fish and wildlife but no such activity shall be conducted if it results in detriment to the murrelet. In no event shall such activities be conducted in the HPA unless it is consistent with Section 5.2.1.

5.3.2 In the BPA, limited management activities (including tree cutting) designed to move the stands in the BPA towards becoming additional suitable Marbled Murrelet Habitat may occur if those activities will not cause a long-term degradation of the habitat quality in the HPA. Additionally, a limited amount of tree cutting may also occur to enhance habitat for other late-seral to mature forest species, and to enhance habitat for native fish and wildlife. In no event shall such activities be conducted in the BPA unless it is consistent with Section 5.2.2.

5.3.3 In the SPA, Grantor may engage in forest management, including limited timber harvesting which generates revenue. Other management actions may occur within the SPA to enhance habitat for other late-seral to mature forest species, and to enhance habitat for native fish and wildlife but no such activity shall be conducted if it results in long-term degradation of murrelet habitat. In no event shall such activities be conducted in the SPA unless it is consistent with Section 5.2.3.

5.3.4 Once the Target Baseline is exceeded, limited timber harvest consistent with the purpose of this Easement may occur within Marbled Murrelet Habitat as long as the minimum Target Baseline acreage is maintained as Marbled Murrelet Habitat. Non-Marbled Murrelet Habitat will be managed in the same manner as described above for the Standard Protection Area. Under this scenario, the overall Marbled Murrelet Habitat would be maintained at the Target Baseline, but the actual location of that Marbled Murrelet Habitat may change on the landscape over time. To the greatest extent feasible and practical, Marbled Murrelet Habitat will be concentrated in large, contiguous blocks in order to provide high quality suitable habitat as described in Section 3.2.

5.4 No activity described in this Section 5, nor any other forest management activity, shall be conducted or undertaken on the Property until preparation and approval of the Property Management Plan described in Section 9.

5.5 No activity described in this Section 5, nor any other forest management activity, shall be conducted or undertaken on the Property if such activity is inconsistent with the provisions of this Easement.

6. Permitted Uses of the Property

In addition to the forest management activities described in Section 5, the following activities are permitted on the Property:

6.1 The Property will be open to the public except where specifically closed for resource protection.

6.2 Hunting, trapping, fishing, and hiking will be permitted, in accordance with applicable State laws and regulations, except where areas are specifically closed for resource protection. To the extent not inconsistent with law or the purposes, terms and conditions of the Easement, Grantor may apply Tribal law to members of the Grantor's Tribe with respect to conduct on the Property.

6.3 The management and harvest of native non-timber forest products, including but not limited to tribally important cultural plants, florals, edibles and greens, is permitted to the extent consistent with the purposes of this Easement except that the harvest of moss from suitable murrelet nest trees is prohibited.

7. Prohibited Uses of the Property

7.1 Any activity on the Property or use of the Property which is inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited or restricted as specified below upon or within the Property except with the written consent of Grantee.

7.2 Industrial or commercial uses other than those described in Sections 5.3 and 6.3.

7.3 Residential uses, including the construction or placement of any residential structures of any kind on the Property.

7.4 Subdivision of Property except for minor boundary line adjustment as approved by the Grantees.

7.5 Overnight camping, except to support activities permitted under this Easement.

7.6 Construction or placement of any non-residential structures or improvements, except as may be directly required for uses and activities permitted under this Easement when the construction or placement of such structures is otherwise consistent with the purposes, terms and conditions herein. With prior notice to Grantees and as part of the Property Management Plan described below, the Grantor, if the Grantor is an Indian Tribe, may construct fishing platforms in conjunction with the Tribe's hunting, fishing and gathering rights as long as this does not detract from the purposes of this Conservation Easement.

7.7 Agricultural, farming or ranching uses other than those described in Sections 5.3 and 6.3.

7.8 Expansion or construction of utilities, including but not limited to electric transmission lines, communication towers, wind or solar energy, septic or sewer, and water storage and delivery systems.

7.9 Construction or expansion of roads other than those necessary for those uses allowed under this Easement and which are consistent with the purposes, terms and conditions of this Easement. Roads shall be constructed and maintained so as to minimize erosion and sedimentation and ensure proper drainage in accordance with the Oregon Forest Practices Act and Best Management Practices as recommended by the U.S. Natural Resources Conservation Service or other similar or successor entity.

Roads that are abandoned, permanently closed and/or decommissioned shall be revegetated with native species, stabilized and ensured of proper drainage.

7.10 Use of motorized vehicles off road or on any roads not designated in the Management Plan as open to vehicular use, except in direct connection with permitted forest management, conservation or wildlife management activities and when otherwise consistent with the purposes, terms and conditions herein. Grantor may close or otherwise restrict the use of roads at any time during the year for resource protection reasons, including due to fire danger, erosion control, habitat protection, or other reasons consistent with the purposes of this Easement.

7.11 Any uses or activities that cause significant soil degradation, loss of productivity or erosion, or that contribute to the significant pollution of any surface or sub-surface waters.

7.12 The draining, filling, dredging, diking, damming or other alteration, development or manipulation of watercourses, springs and wetlands, except for restoration activities intended to enhance native fisheries and wildlife and road stream crossings and water drafting sites for road maintenance or fire-fighting as approved by the appropriate governmental authorities.

7.13 The exploration for, or development and extraction of, geothermal resources, minerals, hydrocarbons, rock, gravel, sand, peat, sod or other substances by any surface or sub-surface mining method, provided, however, that Grantor may engage in methods of mining for rock and gravel in the SPA for use on the Property, provided that the action will have a limited, localized impact on the Property, will not result in long-term degradation of murrelet habitat, and will be conducted as authorized by state law.

7.14 The dumping, release, burning, permanent storage, or other disposal of wastes, refuse, debris, motorized vehicles or hazardous substances with the exception of logging slash created by permitted uses, provided, however, that vehicles, building materials, machinery or forestry supplies required for permitted uses may be temporarily stored at landings and other suitable sites on the Property. The limited use or storage of synthetic chemical defoliant or herbicides and the use of fire as a silvicultural tool are permitted when provided for in the Property Management Plan described below.

7.15 The conversion of native vegetation to exotic species or the introduction of non-native plant or animal species, except as provided for in the Property Management Plan or pursuant to consent of the Grantee State of Oregon. Grantor shall provide a copy of such proposal to Grantee United States Department of the Interior for review as outlined in Section 11.1.

7.16 Uses or activities which may threaten the viability of populations or habitat for plant or animal species identified on the Property that are listed as threatened or endangered under state or federal statutes, except where otherwise permitted by such state or federal statute in accordance with the applicable rules and regulations governing such actions.

7.17 Outdoor advertising structures such as signs and billboards are restricted on the Property to those that are educational or necessary to accomplish the permitted uses herein, provided that such structures are constructed, placed or utilized in a manner that

is otherwise consistent with the purposes, terms and conditions of this Easement. No sign shall be artificially illuminated.

8. Property Management Obligations of the Grantor

8.1 The Grantor shall exercise sufficient control over and manage the Property strictly in accordance with the purposes, principles, terms and conditions of the Easement.

8.2 The Grantor shall give priority consideration to maintaining and ensuring marbled murrelet habitat conservation and marbled murrelet reproductive success in all management decisions on the Property.

8.3 The Grantor shall monitor marbled murrelet occupancy within the Property according to the Marbled Murrelet Monitoring Protocol, as it may be amended, or as specified by the Grantees, and submit reports to the Grantees on the monitoring results. These surveys shall be initiated during the first survey season occurring after completion of the first and sixth years following the Effective Transfer Date of the Easement. Surveys will be completed after these dates on a regular basis according to a schedule mutually agreed upon by the Grantor and Grantees.

8.4 Grantor shall deposit all revenues from marketable timber or other forest products produced as a result of forest management in an interest-bearing account which shall be used towards management expenses in this order:

8.4.1 Offsetting the necessary property expenses, including property taxes.

8.4.2 Management expenses of the Property, including personnel, vehicles, forest and murrelet habitat inventory and monitoring, etc.

8.4.3 Additional marbled murrelet monitoring and conservation on the Property.

8.4.4 Optional restoration activities beyond marbled murrelet conservation on the Property.

8.4.5 Other natural resource conservation initiatives outside the Property.

8.5 In carrying out forest management activities, Grantor may, at its discretion and expense, use or consult with professional foresters and other natural resource staff, consultants or advisers of its choice.

8.6 Grantor shall be responsible for and bear all costs and liabilities of any kind related to the ownership, operation, upkeep, maintenance and restoration of the Property, including the maintenance of adequate comprehensive general liability insurance coverage.

8.7 Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

8.8 The Grantor shall be responsible for obtaining all applicable governmental permits and approvals for any activity or use permitted by the Easement.

8.9 Grantor shall pay before delinquency, all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes") including fire protection assessments and shall furnish Grantees with satisfactory evidence of payment upon request. If Grantor has not paid taxes

assessed against the Property within one year after assessment, Grantees are authorized but in no event obligated to pay such Taxes, upon thirty (30) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the Taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at 1 percentage point over the prime rate of interest.

8.10 In managing the Property and all activities occurring on the Property, Grantor shall comply with all applicable federal, state and local laws, rules, regulations, executive orders and ordinances. To the extent not inconsistent with federal, state or local law or the purposes, terms and conditions of the Easement, Grantor may apply Tribal law to members of the Grantor's Tribe with respect to conduct on the Property.

9. Grantor's Reporting Obligations

9.1 Within twelve (12) months of the Effective Transfer Date, and every ten (10) years thereafter, Grantor shall prepare and deliver to the Grantee State of Oregon for its review and approval, a Property Management Plan addressing at a minimum, the matters listed below. Grantee State of Oregon may require the Grantor to modify and amend the Property Management Plan where Grantee State of Oregon believes that it is not consistent with this Easement. Grantor shall also provide a copy of the Property Management Plan to Grantee United States Department of the Interior for review as outlined in Section 11.1. Grantee State of Oregon will make a good-faith effort to complete its review and approval of the Property Management Plan within three (3) months of the Plan's submittal by the Grantor. In preparing the Property Management Plan, the Grantor agrees to use and consult with third party recognized experts as appropriate.

9.1.1 Grantor's forest management goals and objectives which must be consistent with and tied to the purposes, goals and principals of the Easement.

9.1.2 Delineation of the appropriate management areas (HPA/BPA/SPA or Marbled Murrelet Habitat/non-Marbled Murrelet Habitat depending on whether or not the Target Baseline has been achieved) on maps and/or aerial photos.

9.1.3 Descriptions, acreages and maps of the Property's significant resources and attributes, including: timber types; timber stand volumes; soils; streams; wetlands; slopes; aspects; roads; marbled murrelet habitat; habitat for other plant and animal species of significance; etc.

9.1.4 Results of marbled murrelet monitoring and other species of importance surveys.

9.1.5 Description of planned commercial and non-commercial activities, including: timber harvest; precommercial thinning and other silvicultural stand improvements; reforestation; road construction, maintenance, and decommissioning; marbled murrelet conservation projects; aquatic and terrestrial species habitat improvement projects; fire protection; forest health management and any other planned projects.

9.1.6 Expected timing, yields, costs and revenue for above projects.

9.1.7 Description of best management practices to be employed in all operations, including riparian management zones, minimum live tree, snag, and down woody retention requirements, maximum opening sizes, road design and maintenance standards, silvicultural practices, erosion control practices, activity timing, etc.

9.1.8 Expected impacts of planned projects on marbled murrelets and other important resources of the Property.

9.1.9 A comprehensive short and long term marbled murrelet species and habitat monitoring plan designed to quantify changes over time of marbled murrelet use of the Property and the quantity and quality of suitable marbled murrelet habitat on the Property.

9.2 No later than October 1 of each year, Grantor shall prepare an Annual Operations Plan consistent with the Property Management Plan providing details of expected timber removal, other ground disturbing activities and a proposed budget for the upcoming year and submit the Annual Operations Plan to the Grantee State of Oregon for review and approval. Grantee State of Oregon may require the Grantor to modify and amend the Annual Operations Plan where Grantee State of Oregon believes that it is not consistent with this Easement. Grantor shall also provide a copy of the Annual Operations Plan to Grantee United States Department of the Interior for review as outlined in Section 11.1. Grantee United States Department of the Interior may advise the Grantor that the Plan is not consistent with this Easement. To avoid the need for enforcement, the Grantor and Grantees may confer to resolve concerns.

9.3 No later than March 1 of each calendar year, or at such other time as agreed by the Parties, Grantor shall prepare and submit to the Grantees, an Annual Report that summarizes the actions taken on the Property by the Grantor during the preceding calendar year and a report in such detail as required by the Grantees of the income received and expenses incurred by the Grantor with respect to the management of the Property.

10. Management Actions in the Event of Catastrophic Events

10.1 Natural catastrophic events may occur which adversely impact or affect the Property. These events may include windstorms, wildfires, floods, landslides, insect, disease, or other pathogen outbreaks. Where such events occur, Grantor shall develop and deliver to Grantee State of Oregon for their review and approval, an action plan recommending appropriate corrective actions to remedy the adverse impact or effect. Grantor shall provide a copy of the action plan to Grantee United States Department of the Interior for review as outlined in Section 11.1.

10.2 If catastrophic events result in a loss of Marbled Murrelet Habitat below the Target Baseline, management of the Property must focus on restoring Marbled Murrelet Habitat to the Target Baseline.

10.3 Appropriate corrective action may include the salvage of damaged timber on the Property. Any salvage of timber approved by the Grantee State of Oregon must be consistent with the principles, terms and conditions of the Easement and shall be designed to ensure that appropriate levels of green trees, snags, and down wood as identified in the Property Management Plan remain on site. Danger trees and wind-

thrown trees within the prism of open roads may be salvaged as part of normal road maintenance activities.

10.4 Grantor may immediately respond to emergencies such as fires, landslides, and floods to protect the infrastructure and natural resources. In those situations, notice to Grantees should be provided as soon as possible but in any event, no more than three days after the action is undertaken. Grantee State of Oregon may require Grantor to modify anticipated activities or to undo completed activities where not consistent with the purposes, terms or conditions of the Easement including Section 7.15. To the extent time permits, Grantor shall provide Grantee United States Department of the Interior the opportunity for review of anticipated activities as outlined in Section 11.1.

11. Grantees Rights

11.1 Grantee State of Oregon shall have the right to review and approve all plans, reports and management activities of the Grantor in accordance with the terms of the Easement. Grantee State of Oregon's approval actions shall be consistent with the purposes, terms and conditions of the Easement. In order to carry out potential easement enforcement under section 11.2, Grantee United States Department of the Interior shall be provided 30 days advance notice of all proposed plans and management activities of the Grantor, provided, however, that with respect to the Property Management Plan required by section 9.1, 90 days advance notice shall be provided. Notice to the United States shall be provided to both the Bureau of Land Management and Fish and Wildlife Service. Grantee United States may provide written notice within this 30 day period (or 90 days for the Property Management Plan) that, in the Grantee United States' reasonable judgment, the plan or management activity is inconsistent with the Easement. If such notice is provided, Grantor must not proceed with the plan or management activity until concerns regarding consistency with the Easement are resolved.

11.2 Grantees shall have the right to enforce compliance with the terms of the Easement and to remedy any breach of the purposes, principles, terms, covenants and conditions of the Easement, or prevent, terminate or mitigate any activity or use on the Property which, in the Grantees' reasonable judgment, is inconsistent with the purpose of this Easement. The procedure for this process is set forth below:

11.2.1 Grantees shall give written notice in accordance with Section 16 to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured.

11.2.2 If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantees, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantees may bring an action at law or in equity to enforce the terms of this Easement.

11.2.3 Grantees may seek any remedy available in law or equity including temporary or permanent injunction, recovery of direct, indirect or consequential damages to which it may be entitled for violation of the terms of this Easement or for injury to any conservation values protected by this Easement, and to require the restoration of the Property to the condition that existed prior to any such injury.

11.2.4 If Grantees, in their sole discretion, determine that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantees may pursue remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire.

11.2.5 Grantees' rights apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that because of the unique nature of the Property and the purposes of the Easement, Grantees' remedies at law for any violation of the terms of this Easement are inadequate and that Grantees shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

11.3 Grantees and their representatives shall, individually and collectively, have the right to enter the Property for any purpose including:

11.3.1 Inspecting the Property to ensure compliance with this Easement;

11.3.2 Conducting non-site altering scientific or educational activities consistent with the purpose of this Easement;

11.3.3 Taking any other action consistent with the rights of the Grantees under this Section 11.

11.4 Grantees shall provide reasonable advance notice to the Grantor of the intent to enter the Property except in the case of emergency. Grantor's representatives shall have the right to accompany the Grantees upon entry.

11.5 Enforcement of the terms of this Easement shall be at the reasonable discretion of Grantees, and any forbearance by Grantees to exercise rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantees of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantees' rights under this Easement. No delay or omission by Grantees in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

11.6 Grantor shall maintain, retain, and keep accessible all records relevant to the management and administration of the Easement (the "Records") for no less than ten (10) years. Upon reasonable notice, Grantor shall permit Grantees and their duly authorized representatives access to the Records at reasonable times and places for purposes of examination and copying.

12. Non-Responsibility.

12.1 This Easement is not intended, and shall not be construed, to create a partnership or joint venture between Grantor and Grantees. Nothing in this Easement shall be construed to make Grantees or Grantors partners, joint venture participants or agents of the other.

12.2 This Easement is not intended, and shall not be construed, to create in the Grantees (1) the obligations or liabilities of an "owner" or "operator" as those words are defined and used in any federal or state environmental law including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 United States Code, sections 9601 et seq.); or (2) the obligations or liabilities of a "person" as described in 42 United States Code section 9607 (a).

12.3 The Grantor represents warrants and covenants to the Grantees that the Grantor's use of the Property shall comply with all applicable environmental laws.

13. Indemnification

13.1 Grantor shall indemnify and hold harmless Grantees and their members, directors, officers, employees, agents, (collectively, the "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, which may be alleged, brought or made against the Indemnified Parties arising out of or in any way connected with (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any or all of the Indemnified Parties; (2) tax obligations and (3) the management or administration of this Easement. (an "Indemnified Claim").

13.2 The Indemnified Parties shall promptly notify Grantor in writing of any Indemnified Claim of which the Indemnified Party becomes aware and reasonably expects to result in an Indemnifiable Loss. Grantor's obligation under this Section shall not extend to any Indemnifiable Loss to the extent caused by: the negligence or willful misconduct of the Indemnified Party.

14. Governing Law, Jurisdiction and Venue

This Easement shall be construed and enforced in accordance with the laws of the State of Oregon, without giving effect to the conflict of law principles thereof, and applicable federal law. Any action or suit brought by the Parties relating to this Easement shall be brought and conducted solely and exclusively either in the Circuit Court of Lincoln County for the State of Oregon in Newport, Oregon, or the United States District Court for the District of Oregon. Grantor hereby consents to the in personam jurisdiction of such courts, waives any objection to venue in such courts, and waives any claim that such forum is an inconvenient forum. In no way shall this Section or any other provision of this Easement be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is 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.

15. Acts Beyond Grantor's Control

Grantor shall not be liable to Grantees for (a) injury, damages or changes to the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or (b) from any damages resulting from prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate injury to the Property resulting from such causes, or (c) use of the roads or easements by holders of easements existing on the Effective Date in accordance with the terms of the Easements. This liability safe harbor shall not apply (i) if any such action was violative of applicable state or federal law and (ii) it shall not apply to the obligations to restore the Property as set forth in Section 11.

16. Notices

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Confederated Tribes of Siletz Indians of Oregon
ATTN: Mike Kennedy, Natural Resources Manager
P.O. Box 549
Siletz, OR 97380

To Grantees:

Edward W. Shepard
Authorized Official for the M/V New Carissa NRDA,
Bureau of Land Management - OR/WA State Director
United States Department of the Interior
PO Box 2965
Portland, OR 97208

State of Oregon, Department of Fish and Wildlife
ATTN: Laurie Byerly, Deputy Director for Administration
3406 Cherry Ave. NE
Salem, OR 97303

To U.S. Department of the Interior co-representative for purposes of oversight and enforcement:

Ren Lohofener, Regional Director
U.S. Fish and Wildlife Service
911 NE 11th Avenue
Portland, OR 97232

or to such other address as either party from time to time shall designate by written notice to the other.

17. Recordation

Grantees shall record or cause the recordation of this instrument in timely fashion in the official records of Lincoln County, Oregon and may re-record it at any time as may be required to preserve its rights in this Easement.

18. General Provisions

18.1 The provisions of this Easement shall be liberally construed in favor of the purposes of the Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Easement purpose in Section 2 that would render the provision valid shall be favored over any interpretation that would render it invalid.

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

19. Amendment

Grantor and Grantees may jointly amend this Easement in writing provided however that (i) no protections provided in the Easement, shall be eliminated or decreased if the marbled murrelet is no longer listed as a threatened or endangered species under the Endangered Species Act or similar state law and (ii) any amendment shall be consistent with the purposes set forth in Section 2. Any such amendment shall be recorded in the official records of Lincoln County, Oregon.

20. Successors

The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the Parties to the Easement and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

21. Termination of Rights and Obligations

A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

22. Restriction on Further Encumbrances

Grantor shall not grant any further easement of any kind on or over the Property, and shall not pledge, hypothecate or encumber the Property in any other fashion (including without limitation the placement of any mortgage or other financial encumbrance) without the advance written consent of Grantees, which consent Grantees may withhold or condition in their sole and unfettered discretion.

23. Conveyance to Tribal Entity

If the Grantor transfers or otherwise conveys the Property, or any portion thereof, to another tribal entity with any powers of sovereign immunity, Grantor shall insure that the transferee comply with the requirements set forth in Sections 24.1 through 24.5.

24 Special Terms and Conditions Applicable to the Grantor

24.1 The Grantor hereby grants a limited waiver of its sovereign immunity with respect to the enforcement of the Easement and consents to the exercise of subject matter and personal jurisdiction as set forth in Section 14. The Grantor also waives and agrees not to assert any doctrine requiring exhaustion of Tribal Court or administrative remedies prior to proceeding with any court proceeding.

24.2 The limited waiver described in this Section will be effective while the Grantor possesses any interest in the Property and for so long thereafter as necessary to resolve the rights and obligations of the Parties and any transferee under this Easement.

24.3 The Grantor shall not petition, apply to or otherwise request that the United States Department of Interior accept the Property in trust for the benefit of the Grantor pursuant to 25 U.S.C. § 465, 25 U.S.C. § 711a(a), 25 C.F.R. Part 151, or any other federal law or regulation, as amended from time-to-time. Any such petition, application, or attempt to transfer title of the Property by the Grantor to the United States to be held in trust for the benefit of the Tribe, shall constitute a violation of the Grantor's obligations under this Easement hereunder, such that the Grantees may request transfer of title to the Property to another Trustee, Grantee, government or entity.

24.4 Grantor's limited waiver of sovereign immunity is for the benefit of the Grantees and their agents, successors and assigns, and does not confer any rights or benefits on any third parties.

24.5 The Tribe shall provide a resolution of the Tribal Council (a) granting the limited waiver of its sovereign immunity described in Section 24.1, (b) containing the language set forth in Section 24.3, and (c) certifying that the waiver required by this Section has been made in accordance with all requirements of the Constitution of the Confederated Tribes of Siletz Indians of Oregon.

24.6 In the event of a transfer of all or any part of the Property by the Grantor, the following provisions shall apply:

24.6.1 For the purposes of this Section, the following terms shall have the following meanings:

- "Bona fide Sale" means a sale or other transfer of a parcel or all of the parcels to an independent third party that is unaffiliated to the Grantor on an arms-length basis.
- "Parcel Purchase Price" means the price paid by TCF to the private seller for the purchase of each individual parcel of Property.
- "Total Purchase Price" means the price paid by TCF to all private sellers for the purchase of all of the parcels of Property.

- “Purchase Price Adjustment” means the increase in value for a parcel or all of the parcels being transferred by the Grantor. The increase in the value of a parcel shall be equal to the increase in the Consumer Price Index (“CPI”) from the Base Index to the Current Index where the Base Index is the CPI index on the Effective Date and the Current Index is the CPI index for the month in which the sale or other transfer of Property is closed.
- “Sale Value” means the value, whether cash, cash equivalent or non-monetary, received by the Grantor for the sale of a parcel or all of the parcels of the Property.

24.6.2 In the event of a Bona fide Sale of a parcel or all of the parcels of the Property by the Grantor

(i) Where Sale Value is less than or equals the sum of the Parcel Purchase Prices of the parcels sold plus the Parcel Price Adjustment on each parcel sold, Tribe shall pay Grantees an amount equal to Sale Value.

(ii) Where Sale Value is greater than the sum of the Parcel Purchase Prices of the parcels sold plus the Parcel Purchase Price Adjustment on each parcel sold, Tribe shall pay Grantees the sum of the Parcel Purchase Prices for each parcel sold plus the Parcel Price Adjustment on each. The Tribe may retain the excess pursuant to Section 24.6.4 below; otherwise the Tribe shall pay the excess to the Grantees.

24.6.3 Any amounts paid by Tribe shall be paid in cash or, upon agreement of the Parties, in cash equivalent. Any and all payments are reimbursements to the Trustees for the funds for the purchase of the Property in the first instance. Such payments shall be made at the closing of the sale or other transaction and Grantees shall hold such payments in trust for the Trustees.

24.6.4 The Grantor may retain that portion of the Sale Value which exceeds the sum of the Total Purchase Price plus the applicable Purchase Price Adjustments for all parcels as of the date of the sale or other transfer. In the event that the Property is sold or transferred in several transactions, the Sale Values shall be cumulated to determine when amounts may be retained under this provision.

24.6.5 In the event that a sale or transfer by the Grantor is not a Bona fide Sale, Grantor shall pay to the Grantees in trust for the Trustees, as repayment of the funds supplied by the Trustees for the purchase of the Property in the first instance, the Parcel Purchase Price or Total Purchase Price as applicable plus an amount equal to the Purchase Price Adjustment for each parcel sold or otherwise transferred. Such payment shall be made, at the closing of the sale or other transaction, in cash or, upon agreement of the Parties, by cash equivalent.

24.6.6 The value of non-monetary consideration shall be agreed to by the Parties. Absent agreement, each party shall select an independent appraiser to provide an appraisal of the value of the non-monetary consideration. If the two appraisals are within ten (10) percent of each other, the value shall be the amount of the highest appraisal. If the difference between the appraisals is greater than set forth above,

the Parties shall agree on a third appraiser and that third appraiser shall select as the applicable value, the appraisal closest in value to the third appraisal.

25. REPRESENTATIONS AND WARRANTIES OF THE PARTIES

25.1 Grantor represents and warrants to Grantees that (1) the Grantor has the power and authority to enter into and perform this Easement, (2) this Easement, when executed and delivered, shall be a valid and binding obligation of the Grantor enforceable in accordance with its terms, (3) the waiver of sovereign immunity contained in this Easement is proper under Grantor's governing provisions and has been authorized by all necessary action of the Grantor's governing body and that the person executing this Easement on behalf of the Grantor has the necessary authority to execute this Easement for and on behalf of the Grantor.

25.2 The Grantees represents and warrant that (1) Grantees have the power and authority to enter into and perform this Easement, and that (2) this Easement, when executed and delivered, shall be a valid and binding obligation of the Grantees enforceable in accordance with its terms

SIGNATURES OF THE PARTIES

M/V NEW CARISSA CONSERVATION EASEMENT
**Confederated Tribes of Siletz Indians of Oregon, the U.S. Department of the Interior, and
State of Oregon, Department of Fish and Wildlife**

SIGNATURES OF THE PARTIES

Confederated Tribes of Siletz Indians of Oregon, Grantor

By _____
Delores Pigsley

its Tribal Chairman

Resolution No. _____

ACKNOWLEDGMENT

STATE OF Oregon)
) ss:
COUNTY OF)

On this _____ day of _____, 200__, before me, the undersigned, a Notary Public in and for the said State, personally appeared Delores Pigsley, who being duly sworn, did say that she is the Tribal Chairman for The Confederated Tribes of Siletz Indians of Oregon, and that she executed the foregoing instrument by the authority of and in behalf of The Confederated Tribes of Siletz Indians of Oregon.

[SEAL]

Notary Public in and for the State of Oregon
My commission expires: _____

M/V NEW CARISSA CONSERVATION EASEMENT
**Confederated Tribes of Siletz Indians of Oregon, the U.S. Department of the Interior, and
State of Oregon, Department of Fish and Wildlife**

SIGNATURES OF THE PARTIES

U.S. Department of the Interior, Bureau of Land Management, Grantee

By _____
Edward W. Shepard

its State Director

ACKNOWLEDGMENT

STATE OF Oregon)
) ss:
COUNTY OF Multnomah)

On this _____ day of _____, 200__, before me, the undersigned, a Notary Public in and for the said State, personally appeared Edward W. Shepard, who being duly sworn, did say that he is the State Director, Oregon State Office, Bureau of Land Management, and that he executed the foregoing instrument by the authority of and in behalf of the United States of America.

[SEAL]

Notary Public in and for the State of Oregon
My commission expires: _____

M/V NEW CARISSA CONSERVATION EASEMENT
**Confederated Tribes of Siletz Indians of Oregon, the U.S. Department of the Interior, and
State of Oregon, Department of Fish and Wildlife**

SIGNATURES OF THE PARTIES

State of Oregon, Department of Fish and Wildlife, Grantee

By _____
Laurie Byerly

its Deputy Director for Administration

ACKNOWLEDGMENT

STATE OF Oregon)
) ss:
COUNTY OF)

On this _____ day of _____, 200__, before me, the undersigned, a Notary Public in and for the said State, personally appeared Laurie Byerly who being duly sworn, did say that she is the Deputy Director for Administration, State of Oregon, Department of Fish and Wildlife, and that she executed the foregoing instrument by the authority of and in behalf of the State of Oregon.

[SEAL]

Notary Public in and for the State of Oregon
My commission expires: _____

M/V NEW CARISSA CONSERVATION EASEMENT
**Confederated Tribes of Siletz Indians of Oregon, the U.S. Department of the Interior, and
State of Oregon, Department of Fish and Wildlife**

OTHER SIGNATURE

**U.S. Fish and Wildlife Service, U.S. Department of the Interior co-representative
for purposes of oversight and enforcement**

By _____
Ren Lohofener

its Regional Director

ACKNOWLEDGMENT

STATE OF Oregon)
) ss:
COUNTY OF Multnomah)

On this _____ day of _____, 200__, before me, the undersigned, a Notary Public in and for the said State, personally appeared Ren Lohofener, who being duly sworn, did say that he is the Regional Director, U.S. Fish and Wildlife Service, and that he executed the foregoing instrument by the authority of and in behalf of the United States of America.

[SEAL]

Notary Public in and for the State of Oregon
My commission expires: _____

INDEX OF EXHIBITS

- A. Legal Description of Property Subject to Easement
- B. Protection Areas Map

SCHEDULE A Property Encumbrances