



State of Oregon
Water Resources Department
 725 Summer Street NE, Suite A
 Salem, Oregon 97301-1266
 (503) 986-0900

Application for Instream Lease

A summary of review criteria and procedures that are generally applicable to these applications is available at www.wrd.state.or.us/OWRD/PUBS/forms.shtml.

Pursuant to ORS 537.348(2) and OAR 690-077

Optional Identification by Lessor/Lessee: _____
 Lease Application Number (assigned by WRD): IL-926

This Lease is between:

Lessor #1:

Name Bend Metro Parks & Recreation
 Mailing address 200 NW Pacific Park Ln
 City, State, Zip Code Bend, OR 97701
 Telephone number 541-389-7275
 Email address _____

Lessor #2, 3, etc.

Arnold Irrigation District
PO Box 7923
Bend, OR 97708
541-382-7664

The water right to be leased is located in Deschutes County.

Lessee (if different than Oregon Water Resources Department):

Name Deschutes River Conservancy
 Mailing address 700 NW Hill St.
 City, State, Zip Code Bend, OR 97701
 Telephone number 541-382-4077
 Email address gen@deschutesriver.org

Trustee:

Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem, OR 97301-1266
 (503) 986-0900

~I~ Water Right Holder and Water Right Information

1.1 Lessor #1 is the water right holder, or authorized agent for water right holder of the property located at: Township 18 S, Range 11 E, Section 13 and Tax Lot number 01200. If the water right appurtenant to these lands is also appurtenant to lands owned by others who are not included in this application, then Attachment 1 (tax lot map), needs to be included.

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- 1.2 Lessor #2 is the (Check one):
 Not applicable
 Official representative of Arnold Irrigation District, the irrigation district which conveys water to the subject water rights.
 Another party with an interest in the subject water rights representing _____.

- 1.3 For the water right(s) being leased, list all water rights appurtenant to the same lands. Indicate if there are any supplemental or overlying rights.

Certificate No. 74197

- 1.4 Are some or all of the lands being leased part of a Conservation Reserve Enhancement Program. Yes No

1.5 **Water Rights Proposed to be Leased Instream.**

The first right to be leased identified in Section 1.3 is further described as follows:

Certificate No.: 74197

Priority date: February 1 and April 25, 1905 Type of use: IRRIG

Legal Season of Use: April 1 - October 31

Is the entire water right certificate being leased? Yes No

If no, list the acres of the subject water right by legal description of township, range, section, and 1/4 1/4 which will be dried up as part of this lease, and include a map (Attachment 2) showing the lands which will not receive water.

Place of use: T 18 S, R 11 E, Section 13, NW 1/4 SE 1/4 - 2.51 acres to be leased

Enter additional places of use here, using format above:

Page 2 (originally part of the Thompson Trust, Helen Malarkey water right) (Identify page number of certificate, if certificate is greater than 10 pages.)

Number of acres being leased, if for irrigation: 2.51

Acre-feet of storage, if applicable: _____

Maximum rate associated with the right to be leased (cfs): 0.005

(Use additional lines if there is more than one rate associated with the water right.)

Maximum duty associated with the right to be leased (ac-ft): 38.70

(Use additional lines if there is more than one duty associated with the water right.)

Conditions or other limitations, if any: _____

If you need to enter another leased right, please use the additional water rights form.

1.6 **Validity of rights.** Lessor(s) attests (mark one) that:

the water has been used over the past five years according to the terms and conditions of the water right certificate or as an instream water right or

the water has not been used over the past five years according to the terms and conditions of the water right certificate, however the water right is not subject to forfeiture under ORS 540.610(2)()(include necessary supporting information as Attachment 3).

~II~ Instream Water Right Information

2.1 Public use. This lease will increase streamflows that will benefit:

- Conservation, maintenance and enhancement of aquatic and fish life, wildlife, and fish and wildlife habitat
- Pollution abatement
- Recreation and scenic attraction

2.2 Instream use created by lease. The instream use to be created is described as follows:

Deschutes River

Tributary to Columbia River in the Deschutes Basin.

Describe the point of diversion (POD) and any associated reach(es) of the instream use being created. If possible list the reach by river mile. If no reach is identified, and there is only one POD listed on the certificate, the lease may be processed to be protected at the POD. (If more than one POD is listed on the certificate, then the POD and any associated reach(es) must be identified): canal diversion river mile 174.5 to Lake Billy Chinook river mile 120 to the mouth of the Deschutes at RM 0

Maximum volume in acre-feet: February 1905 - 2.13, April 1905 - 8.63

Rate in cfs: Season 1 - February 1, 1905 - 0.005, April 25, 1905 - 0.012

Season 2 - February 1, 1905 - 0.005, April 25, 1905 - 0.018

Season 3 - February 1, 1905 - 0.005, April 25, 1905 - 0.025

(Use the section below to indicate a more restrictive period of use than allowed by the water right.)

Conditions to prevent injury, if any:

- None
- The instream flow will be allocated on a daily average basis up to the described rate from April 1 through October 31.
- Other (describe): _____

If you need to enter more instream uses, please use the additional water rights form.

2.3 Term of lease. This lease shall terminate on October 31, 2008.

2.4 Flow protection. The Trustee will regulate use of water from the source, subject to prior appropriation and the agency enforcement guidance, to assure the water is delivered to the point of diversion, and through the reach past junior downstream users, so long as flow is sufficient to meet the demand under priority date of the new instream use (see Section 2.2). As part of regulation activities the watermaster or a designee has access to the point of diversion and place of use for the water rights involved in this lease. No party is required to continuously measure the flow of the waterway described in Section 2.2.

~III~ Other Information

3.1 Accuracy. The Undersigned Lessor(s) and Lessee(s) declare that, to the best of their knowledge and belief, the information contained in this application is true and correct.

Application for Short-Term Instream Lease / 3

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complete. If after the lease order is signed, any information is determined to be false, the lease order may be modified or terminated. The lease only exercises the water rights being leased, for the term of the lease. It shall not be construed to overcome any claim that the water right may otherwise be subject to forfeiture for nonuse pursuant to ORS 540.610 during the period of time prior to the execution of the lease.

- 3.2 **Lease.** Lessor(s) and Lessee(s) agree to lease the water rights listed in Section(s) 1.5 for instream use for the term of this lease through Lessee to the Trustee, the Oregon Water Resources Department, pursuant to the provisions of ORS 537.348(2) and OAR 690-077.
- 3.3 **Precedent.** If a right which has been leased is later proposed to be leased again or transferred to an instream use under ORS 537.348 and OAR 690-077 a new injury review shall be required, and a prior lease shall not set a precedent for the amount of water to be leased or transferred instream.
- 3.4 **Suspension of original use.** During the period of the lease, the water right holder agrees to suspend use of water allowed under the subject water rights and under any water right that is supplemental to the subject water rights.
- 3.5 **Termination provision.**
- For multiyear leases, the Lessor(s) shall have the option of terminating the lease each year with written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is received less than 30-days prior to the period of allowed instream use or after the period of allowed use has begun for the water right(s) being leased, water may not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur. The Department may also require:
 - Written notice to the Department with original signatures;
 - Consent by all parties to the lease; and/or
 - Written notice to the Watermaster's office.
 - For multiyear leases, the lessor shall not have the option of terminating the lease, without consent by all parties to the lease.
- 3.6 **Modification to prevent injury.** Allocation of water to the instream use described in Section 2.2 during the term of this lease is not reasonably expected to cause injury to other rights to use water from the same source. If injury is found after this lease is signed, the lease may be modified or terminated to prevent injury.
- 3.7 **Fees.** Pursuant to ORS 536.050, the following fee is included:
- \$200 for an application with four or more landowners or four or more water rights.
 - \$100 for all other applications.

Lessor #1: Don V. Horton Date: April 25, 2008
Don Horton, Executive Director, Bend Metro Parks & Recreation

For additional Lessors, type in space for signature and date

Lessor #2: Shawn Gerdes Date: 5/7/08
Shawn Gerdes, Manager, Arnold Irrigation District

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Lessee: Genevieve Hubert
Deschutes River Conservancy

Date: 5/8/2008

Other Attachments as Needed:

Attachment 1: Tax Lot Map. (See instructions.)

Attachment 2: Detailed map illustrating lands under subject rights to be leased; required if only part of a right is being leased instream. (See instructions.)

Attachment 3: Supporting documentation indicating why a right is valid and not subject to forfeiture even though the right has not been exercised for five or more consecutive years (required if the second box in Section 1.6 is checked).

Attachment 4: Split Season Instream Use Form

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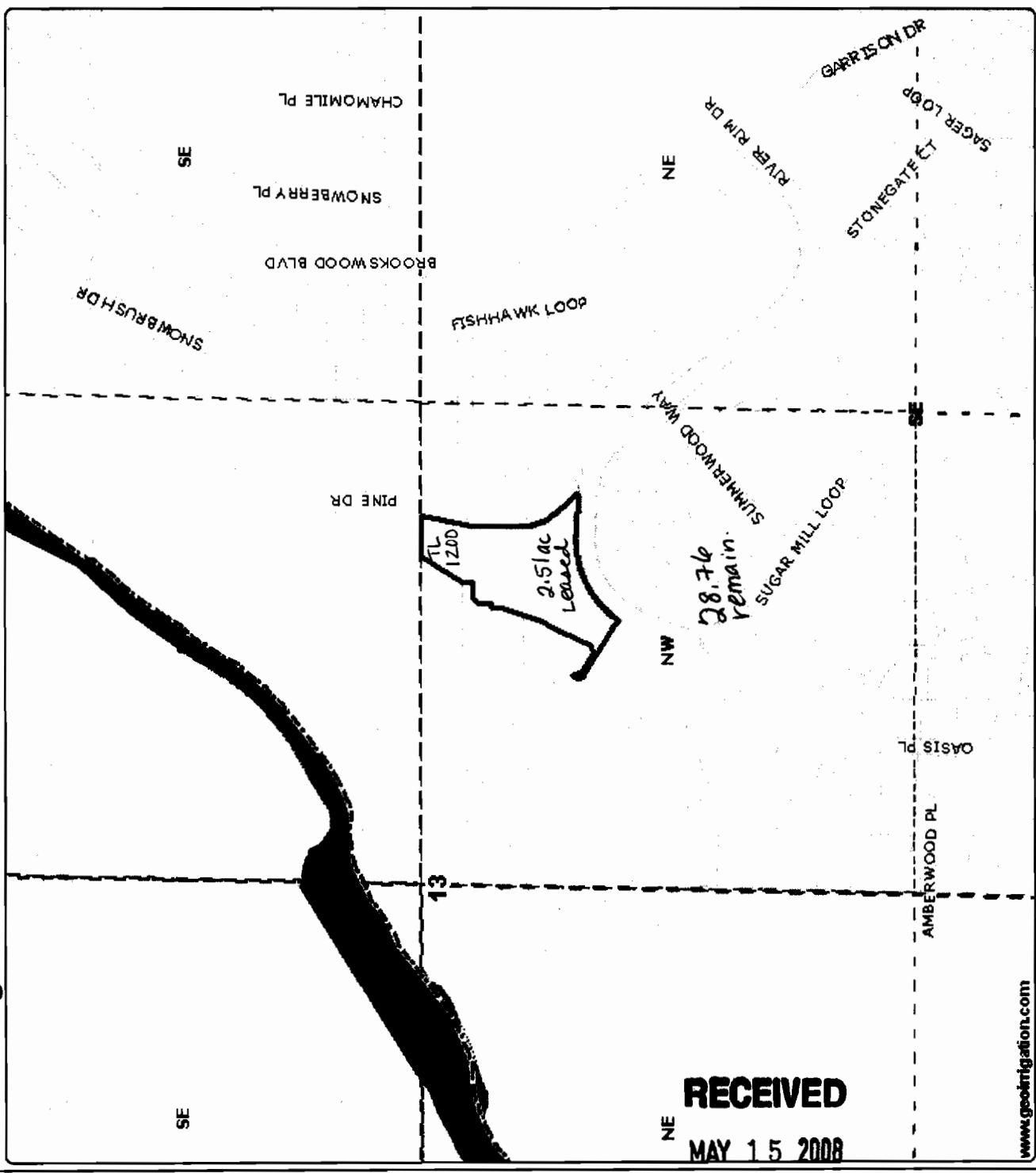
Bend Metro Parks & Rec -
181113-NWSE-01200 -
2.51 ac

181113DB01200

- District Boundary
- County Boundary
- State Roads
- Roads
- Township Range
- Sections
- Section Labels
- Quarters
- Quarter Labels
- Quarter Quarters
- Quarter Quarter Labels
- Taxlots
- Gauging Station
- Canal All
- Canal Piped
- Canal Open
- Rivers
- Place of Use Fill



Scale 1" = 400'
Created: 4/25/2008

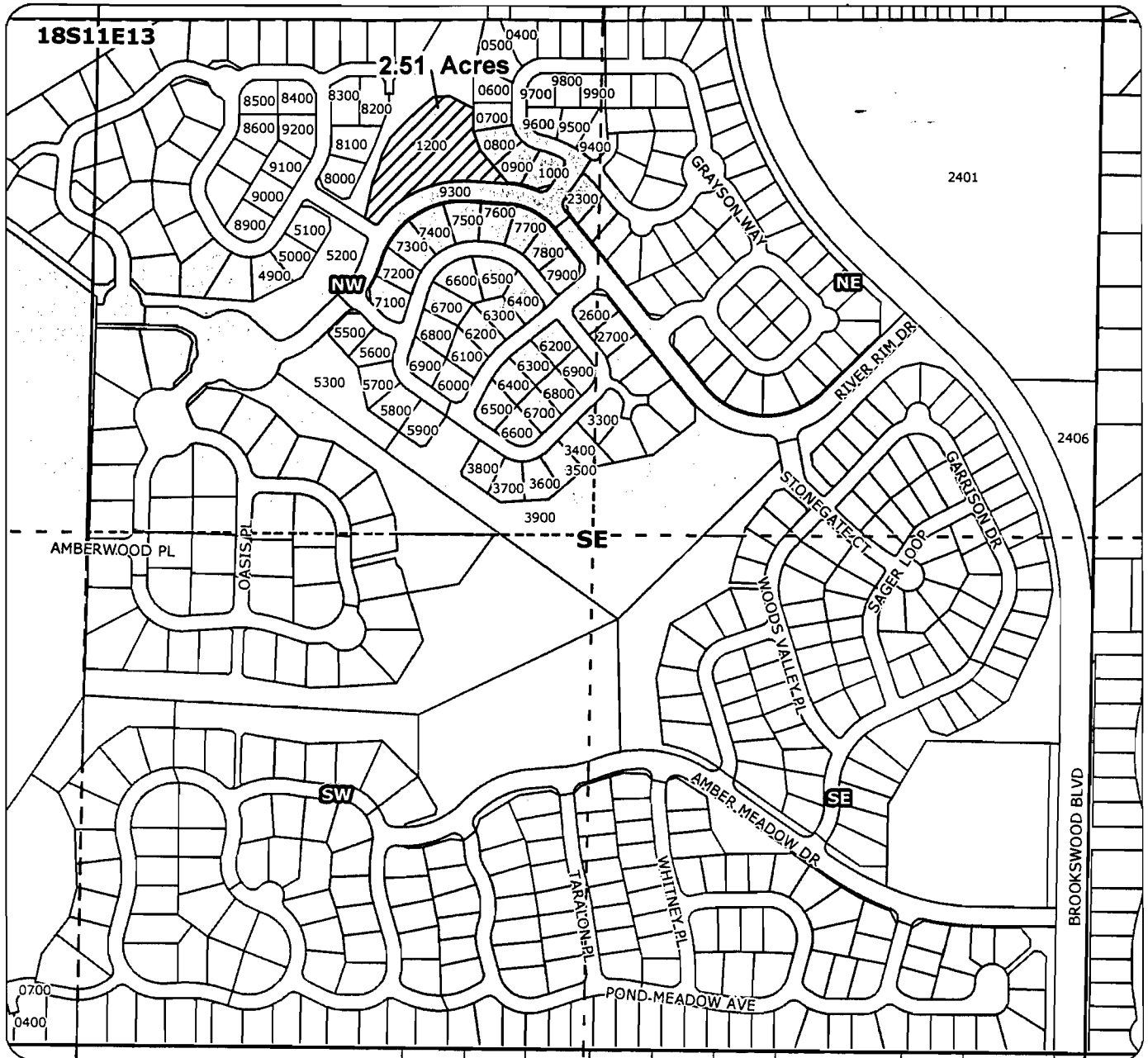


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www.geoinformation.com

DISCLAIMER: This map is intended for display purposes only and is not intended for any legal representations. There are no warranties, expressed or implied, that accompany this product.

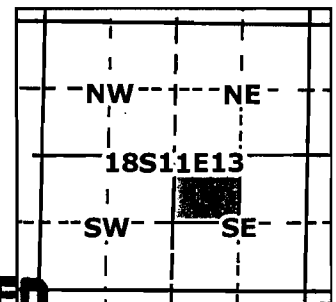
2008 Arnold Irrigation District Instream Lease Map



Application for 1-year Instream Lease Primary: Certificate 74197

-  Proposed Lease of Irrigation Rights
-  Water Rights

For:
Bend Metro Park & Rec.
Taxlot 1200 - 2.51 acres
in 18S11E13NWSE
Total Lease of 2.51 Acres



Geo-Spatial Solutions, Inc.
www.geospatialolutions.com

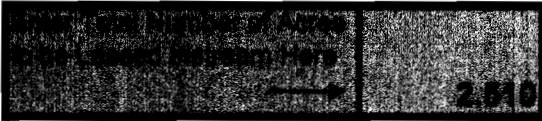
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Date Created: May 2008 **WATER RESOURCES DEPT** inch equals 400 feet
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**This table will calculate flow rate factors and duty for Arnold Irrigation District
Instream Leases**



Information highlighted with pink font is to be entered on to the Instream Lease Application Form.

Rate (CFS) associated with leased rights for Section 1.5 of the Lease Application Form			
The rate and duty identified in this section includes the 65% transmission loss.			
Enter Rates by Priority Date on Lease Form	Full Rate	February 1, 1905	April 25, 1905
Season 1	0.049	0.014	0.035
Season 2	0.064	0.014	0.050
Season 3*	0.086	0.014	0.072
* The rate identified for Season 3 has been proportioned such that the max rate allowed by the right (150.0 CFS) will not be exceeded if all acres were being irrigated.			
Duty (AF) associated with leased right for Section 1.5 of the Lease Application Form			
Duty (decree) AF/Acre =	15.42		
	38.70		

Enter Rates by Priority Date on Lease Form	Full Rate	February 1, 1905	April 25, 1905
Season 1	0.017	0.005	0.012
Season 2	0.023	0.005	0.018
Season 3	0.030	0.005	0.025
	# days	AF/Season	Duty (decree) AF/Acre = 5.40
Season 1	61	2.08	Total = 13.55
Season 2	30	1.34	Feb. 1905 portion = 2.13
Season 3	123	7.33	April 1905 portion = 8.63
		10.76	
Water protected instream: April 1 through October 31			

Duty Associated with Leased Right for Section 1.5 of the Additional Water Right Form	
38.70	
7.73	

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DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK

2004-45797



\$66.00

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D-D Cntw1 Stw2 PAT

\$40.00 \$11.00 \$10.00 \$5.00

Wildflower Park

DESCHUTES COUNTY CLERK

CERTIFICATE PAGE



This page must be included
if document is re-recorded.
Do Not remove from original document.

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67408-42 66

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK

2004-45276



\$61.00

07/29/2004 04:03:27 PM

D-D Cnt=1 Stn=2 JEFF
\$35.00 \$11.00 \$10.00 \$5.00

After recording, return to:
Bend Metropolitan Park and Recreation District
Administration & Recreation Services
Attention: Don Horton, Executive Director
200 N.W. Pacific Park Lane
Bend, Oregon 97701

Until a change is requested, all tax statements
shall be sent to the following address:
Bend Metropolitan Park and Recreation District
Administration & Recreation Services
Attention: Don Horton, Executive Director
200 N.W. Pacific Park Lane
Bend, Oregon 97701

THIS DEED IS BEING RE-RECORDED TO ADD
ACCEPTANCE OF DEED CERTIFICATION TO THE
ORIGINAL DEED RECORDED 7/29/04 in 2004-45276
Deschutes County Records.

Handwritten notes: 8/9/04, yes

WARRANTY DEED—STATUTORY FORM

NNP-RIVERRIM, LLC, a Delaware limited liability company ("Grantor"), conveys
and warrants to BEND METROPOLITAN PARK AND RECREATION DISTRICT
("Grantee"), the following described real property:

Common M, RIVERRIM P.U.D., PHASE 1, Deschutes County, Oregon.

The said described real property is free from all encumbrances except: regulations,
including levies, assessments, water and irrigation rights and easements for ditches and canals
of Arnold Irrigation District; other covenants, conditions, restrictions, easements, rights-of-
way and reservations as shown on the recorded plat of RiverRim P.U.D., Phase 1; and the
encumbrances set forth in Exhibit A attached hereto and by this reference made a part hereof.

Consideration: The true and actual consideration for this conveyance consists in whole of
other value given, Grantor having donated the said described real property to Grantee.

In addition to the encumbrances above-set forth in the immediately preceding
paragraph and the encumbrances set forth in the attached Exhibit A, the said described real
property is also subject to the *use restriction* set form in Exhibit B, attached hereto and by this
reference made a part hereof, restricting the use of said property to a public park, as more
particularly set forth in Exhibit B. Grantee (and Grantee's successors and assigns) by
accepting this Deed, agree to be bound by the terms and provisions of Exhibit B.

Required Notice: THIS INSTRUMENT WILL NOT ALLOW USE OF THE
PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE

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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 APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

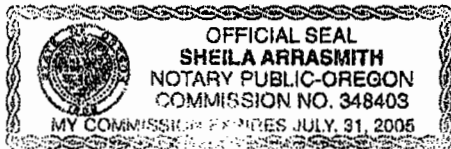
DATED: July 22, 2004.

NNP-RIVERRIM, LLC,
a Delaware limited liability company

By: Mary Ruby
Mary Ruby, Assistant Vice President

STATE OF OREGON)
) ss.
County of Deschutes

This instrument was acknowledged before me on July 22, 2004, by Mary Ruby as Assistant Vice President of NNP-River, LLC, a Delaware limited liability company.



Sheila Arrasmith
Notary Public for Oregon
My commission expires: July 31, 2005

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EXHIBIT A

ADDITIONAL ENCUMBRANCES

1. Easement, including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein
As reserved by: State of Oregon
Recorded: October 29, 1947
Book-Page: 83-397, Deed Records
2. Easement, including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein
As granted to: Pacific Power and Light Company
Recorded: June 28, 1954
Book-Page: 107-438, Deed Records
3. Public Facility Improvement Agreement, including the terms and provisions thereof, recorded October 3, 2001, in Volume 2001, Page 48663, Deschutes County Records.
4. Waterline easement as shown on the official plat of said land.
5. Storm drainage easement as shown on the official plat of said land.
6. Public utility easement as shown on the official plan of said land.
7. Temporary Road Easement Agreement, including the terms and provisions thereof, recorded April 30, 2002, in Volume 2002, Page 23632, Deschutes County Records.
8. The assessment roll and the tax roll disclose that the within described property has been specially assessed as Open Space Land. If the land becomes disqualified for this special assessment under the statute or if there is a change in Open Space use, additional taxes may be levied as provided for in the statute.
9. Taxes deferred, as disclosed by the tax roll, the premises herein described have been zoned or classified for farm use. At any time that said land is disqualified for such use the property will be subject to additional taxes or penalties and interest.

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EXHIBIT B
USE RESTRICTION

RECITALS: The Grantor of this Deed, NNP-RiverRim, LLC, is the "Declarant" under the Planned Community Subdivision Declaration of Covenants, Conditions, and Restrictions for RiverRim recorded April 25, 2002, in Volume 2002, Page 22719, Deschutes County Records, Oregon, as amended ("CC&Rs"). The property subject to the CC&Rs is described in Exhibit C attached hereto and by this reference incorporated herein ("RiverRim"). Declarant is developing portions of RiverRim as a residential planned community. RiverRim is being developed in phases and some of the property described in Exhibit C has been separately platted. The first phase was platted as RiverRim P.U.D., Phase 1, Deschutes County, Oregon. Phase 1 included a tract designated as "Common M" and lots platted as "Lot 37" and "Lot 38." By First Amendment to Planned Community Subdivision Declaration of Covenants, Conditions, and Restrictions for RiverRim recorded February 27, 2004, in Volume 2004, Page 10404, Deschutes County Records, Common M, Lot 37 and Lot 38 were withdrawn from the property subject to the CC&Rs. This Deed conveys Common M to the Grantee, Bend Metropolitan Park and Recreation District. Lot 37 and Lot 38 are being conveyed by Grantor to Grantee by separate deed. This use restriction is to apply to Common M, Lot 37 and Lot 38.

1. **Use Restriction.** Common M, Lot 37 and Lot 38, RiverRim P.U.D., Phase 1, Deschutes County, Oregon (the "Park Property"), shall be subject to the following use restriction:

The Park Property shall be used in perpetuity as a public park for the benefit of the citizens of the Bend Metropolitan Park and Recreation District to enjoy, and in the event the Park Property ceases to be devoted to such use, the Grantor and its successors and assigns shall be entitled to injunctive relief together with any other legal remedies available under applicable law for such violation.

2. **Binding Effect.** This use restriction touches and concerns the land, and is appurtenant thereto, and shall be binding upon all successors and assigns of Grantee and all persons or entities acquiring ownership of or the right to use the Park Property or any part thereof, and their respective heirs, personal representatives, successors and assigns. This use restriction shall run with the land for the benefit of the owners of the property described in the attached Exhibit C, exclusive of Common M, Lot 37 and Lot 38 (the "Benefited Property").

3. **Enforcement.** Provided, however, so long as Grantor holds title to any of the Benefited Property, Grantor as Declarant, and its successor and assigns, shall have the right, but not the duty, to enforce this use restriction on behalf of the Benefited Property. When

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Grantor no longer holds title to any of the Benefited Property, or at such earlier time as Grantor may elect to assign this right of enforcement, the RiverRim Community Association, an Oregon mutual benefit corporation, and its successors and assigns, shall have the right, but not the duty, to enforce this use restriction on behalf of the Benefited Property.

4. **Legal Action.** If legal action is instituted to enforce this use restriction, Grantor and Grantee agree that monetary damages would not be adequate to protect the rights of the owners of the Benefited Property and that injunctive relief is an appropriate remedy, together with any other legal remedies available under applicable law. Grantor and Grantee agree that the prevailing party in any action to enforce this use restriction shall be entitled to recover its reasonable attorney fees and costs from the non-prevailing party.

Exhibit C

SUBDIVISION PARCEL

A parcel of land containing 144.73 acres, more or less, located in a portion of the South One-half (S1/2) of Section 13, Township 18 South, Range 11 East, Willamette Meridian, City of Bend, Deschutes County, Oregon, being more particularly described as follows:

Beginning at a point on the south line of said Section 13 which bears South 89°53'25" West a distance of 80.01 feet from the southeast corner of said Section 13, said beginning point also being on the westerly right-of-way line of Brookwood Boulevard; thence leaving said westerly right-of-way line and continuing along said south section line South 89°53'25" West a distance of 2581.87 feet to the south one-quarter corner of said Section 13; thence continuing along said south section line South 89°53'31" West a distance of 364.81 feet to a point which bears North 89°53'31" East a distance of 2297.03 feet from the southwest corner of said Section 13; thence leaving said south section line North 13°43'49" East a distance of 149.39 feet; thence South 89°23'48" East a distance of 75.79 feet; thence North 75°48'12" East a distance of 104.45 feet; thence 45.17 feet along the arc of a tangent curve to the right with a radius of 112.50 feet, the chord of which bears North 87°18'18" East a distance of 44.87 feet; thence North 12°36'39" East a distance of 66.73 feet; thence North 36°28'23" East a distance of 120.90 feet; thence North 14°44'51" East a distance of 80.06 feet; thence North 02°06'46" West a distance of 151.44 feet; thence North 24°29'34" West a distance of 105.43 feet; thence North 56°33'19" West a distance of 85.32 feet; thence North 33°26'41" East a distance of 249.42 feet; thence North 01°01'21" East a distance of 1032.97 feet; thence South 88°58'39" East a distance of 5.43 feet; thence 11.87 feet along the arc of a tangent curve to the left with a radius of 25.00 feet, the chord of which bears North 77°25'26" East a distance of 11.75 feet; thence 7.50 feet along the arc of a compound curve to the left with a radius of 10.00 feet, the chord of which bears North 25°52'53" East a distance of 7.33 feet; thence 45.12 feet along the arc of a reverse curve to the right with a radius of 46.00 feet, the chord of which bears North 32°29'15" East a distance of 43.34 feet; thence 10.57 feet along the arc of a reverse curve to the left with a radius of 10.00 feet, the chord of which bears North 30°17'40" East a distance of 10.09 feet; thence North 00°00'00" East a distance of 16.47 feet; thence South 49°54'37" West a distance of 27.03 feet; thence North 90°00'00" West a distance of 30.38 feet; thence North 53°17'37" West a distance of 431.39 feet; thence North 07°24'32" West a distance of 38.80 feet; thence North 28°43'19" East a distance of 100.75 feet; thence North 49°32'53" East a distance of 100.01 feet; thence North 58°44'18" East a distance of 91.39 feet; thence North 57°03'41" East a distance of 370.81 feet to a point on the east-west centerline of said Section 13 which bears North 89°29'34" East a distance of 2786.12 feet from the west one-quarter corner of said Section 13; thence along said east-west section centerline North 89°29'34" East a distance of 1509.96 feet to a point on the westerly right-of-way line of Brookwood Boulevard which bears South 89°29'34" West a distance of 982.15 feet from the east one-quarter corner of said Section 13; thence along said westerly right-of-way line the following two (2) curves and two (2) courses:

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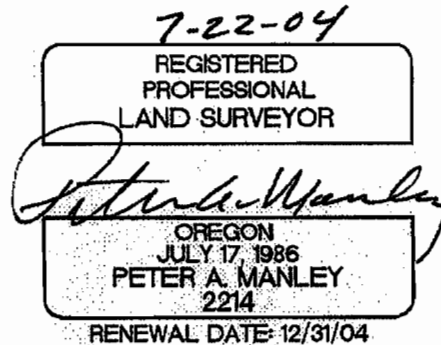
Exhibit C

733.62 feet along a non-tangent curve to the left with a radius of 1040.00 feet, the chord of which bears South 27°09'37" East a distance of 718.50 feet;
South 47°22'07" East a distance of 339.15 feet;
802.61 feet along the arc of a tangent curve to the right with a radius of 960.00 feet, the chord of which bears South 23°25'03" East a distance of 779.44 feet;
South 00°32'01" West a distance of 308.37 feet;

Thence leaving said westerly right-of-way line North 89°24'31" West a distance of 357.11 feet; thence South 30°49'38" West a distance of 193.48 feet; thence South 00°39'45" West a distance of 217.83 feet; thence 249.71 feet along a non-tangent curve to the left with a radius of 596.77 feet, the chord of which bears South 78°26'46" East a distance of 247.89 feet; thence South 89°28'21" East a distance of 211.88 feet to a point on said westerly right-of-way line of Brookwood Boulevard; thence along said westerly right-of-way line South 00°32'01" West a distance of 382.33 feet; to the point of beginning, the terminus of this description.

Excepting Therefrom: Any lots previously conveyed.

Subject to: All easements, restrictions and rights-of-way of record and those common and apparent on the land.



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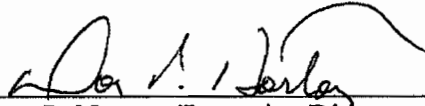
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ACCEPTANCE OF DEED

The Bend Metropolitan Park and Recreation District, pursuant to ORS 93.808, hereby accepts title and approves the foregoing Warranty Deed from NNP-RIVERRIM, LLC, A Delaware limited liability company to Bend Metropolitan Park and Recreation District.

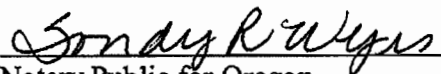
Dated this 29th day of July, 2004

BEND METROPOLITAN PARK AND RECREATION DISTRICT

BY: 
Don P. Norton, Executive Director

STATE OF OREGON)
)
County of Deschutes) ss.

Before me, A Notary Public, personally appeared DON P. NORTON, on behalf of the Bend Metropolitan Park and Recreation District.


Notary Public for Oregon
My commission expires: 3-10-06



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