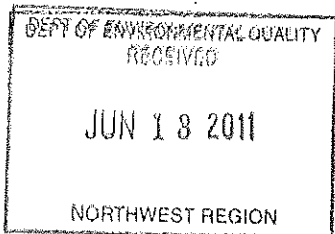


Chicago Title 50-444-2666 71
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Washington County, Oregon 2011-040089
08/03/2011 11:33:47 AM

D-E Cnt=1 Stn=22 REED
\$40.00 \$5.00 \$11.00 \$15.00 - Total = \$71.00



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I, Richard Hobarnicht, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, Oregon, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county.

Richard Hobarnicht, Director of Assessment and Taxation, Ex-Officio County Clerk



Space above this line for Recorder's use.

After recording, return to:
Oregon DEQ, Northwest Regional Office
2020 SW 4th Avenue, Suite 400
Portland, OR 97201-4987
Attn: Rebecca Wells-Albers

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes is made June 3rd, 2011 between Tualatin Hills Park and Recreation District ("Grantor") and the State of Oregon, acting by and through the Oregon Department of Environmental Quality ("DEQ" or "Grantee").

RECITALS

A. Grantor is the owner of certain real property located at 13660 SW Farmington Road in Washington County, Oregon in Washington County Tax Map #1S116BD02101, Tax Lot # 2101, Property ID # R128686 (the "Property") the location of which is more particularly described in Exhibit A and shown in Exhibit B to this Easement and Equitable Servitudes, and referenced under the name Former Farmington Texaco Site, ECSI # 5546 in the files of DEQ's Environmental Cleanup Program at DEQ's Northwest Region, 2020 SW 4th Avenue, Suite 400, Portland OR 97201-4987. Interested parties may contact the Northwest Region to review a detailed description of the residual risks present at the Property and found in the *Analysis of Brownfields Cleanup Alternatives, Former Farmington Texaco, Beaverton, Oregon*, dated January 31, 2011.

B. On May 7, 2011, the Director of the Oregon Department of Environmental Quality or delegate selected the remedial action for the Property set forth in the Record of Decision ("ROD") for the Property, Former Farmington Texaco Site. The remedial action selected requires, among other things:

- Excavation and off-site disposal of surface soil containing levels of petroleum contamination above recreational park user direct contact risk-based concentrations.

- Excavation and off-site disposal of sub-surface soil to a depth of ten feet in the northeast corner of the site to remove source mass and address risk to excavation workers. As part of this work, a treatment compound will be applied to soil and groundwater to facilitate ongoing contaminant reduction.
- Recording of a institutional control with the property deed memorializing use of the site as a park, prohibiting use of groundwater, prohibiting the construction of habitable structures across the remedial action area and requiring precautionary measures for excavation workers that might encounter soil or groundwater contamination in the northeast site corner.

C. On May 17, 2011, Grantor entered into a Prospective Purchaser Agreement ("Agreement") with DEQ, under which Grantor agreed to implement the selected remedial action, including the required institutional controls. On May 31 2011, the Washington County Circuit Court approved the Agreement as a Consent Judgment in Case No. C11-2792CV

D. The provisions of this Easement and Equitable Servitudes are intended to further the implementation of the selected remedial action and thereby protect human health and the environment.

1. DEFINITIONS

- 1.1 "Acceptable risk level" has the meaning set forth in Oregon Revised Statute (ORS) 465.315 and Oregon Administrative Rule (OAR) 340-122-0115.
- 1.2 "DEQ" means the Oregon Department of Environmental Quality, and its employees, agents, and authorized representatives. "DEQ" also means any successor or assign of DEQ under the laws of Oregon, including but not limited to any entity or instrumentality of the State of Oregon authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by DEQ.
- 1.3 "Ecological receptor" has the meaning set forth in OAR 340-122-0115.
- 1.4 "Hazardous substance" has the meaning set forth in ORS 465.200
- 1.5 "Owner" means any person or entity, including Grantor, who at any time owns, occupies, or acquires any right, title, or interest in or to any portion of the Property or a vendee's interest of record to any portion of the Property, including any successor, heir, assign or holder of title or a vendee's interest of record to any portion of the Property, excluding any entity or person who holds such interest solely for the security for the payment of an obligation and does not possess or control use of the Property.
- 1.6 "Property" means the real property described in Exhibit A to this Easement and Equitable Servitudes.

2. GENERAL DECLARATION

Grantor grants to DEQ an Easement for access and accepts the Equitable Servitudes described in this instrument and, in so doing, declares that the Property is now subject to and shall in future be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this Easement and Equitable Servitudes. Each condition and restriction set forth in this Easement and Equitable Servitudes touches and concerns the Property and the equitable servitudes granted in Paragraph 3 and easement granted in Paragraph 4 below, shall run with the land for all purposes, shall be binding upon all current and future owners of the Property as set forth in this Easement and Equitable Servitudes, and shall inure to the benefit of the State of Oregon. Grantor further conveys to DEQ the perpetual right to enforce the conditions and restrictions set forth in this Easement and Equitable Servitudes.

3. EQUITABLE SERVITUDES (RESTRICTIONS ON USE)

3.1 **Groundwater Use Restrictions:** Owner shall not extract through wells or by other means or use the groundwater at the Property for consumption or other beneficial use, as long as the hazardous substance concentrations exceed the acceptable risk level for such use. This prohibition shall not apply to extraction of groundwater associated with groundwater treatment or monitoring activities approved by DEQ or to temporary dewatering activities related to construction, development, or the installation of sewer or utilities at the Property. Owner shall conduct a waste determination on any groundwater that is extracted during such monitoring, treatment, or dewatering activities and handle, store, and manage waste water according to applicable laws.

3.2 **Land Use Restrictions:** The construction, operation, or use of habitable structures of any type is prohibited on the Property.

3.3 **Use of the Property.** Owner shall not occupy or allow other parties to occupy the Property unless the controls listed in this Paragraph 3 are maintained.

3.4 **Worker Protection.** Before any redevelopment activity at the Property, Owner shall develop and submit for DEQ review and approval a soils management plan to limit or prevent future excavation or utility worker exposure to subsurface soil or groundwater contamination that might be encountered during redevelopment. The plan must address: (a) worker notification of areas where contamination might be encountered; (b) personal protective equipment or other protective measures; and (c) management of any petroleum-contaminated media that is encountered.

3.5 **Notice of Transfer.** Owner shall notify DEQ at least ten (10) days before the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of Owner's interest in or occupancy of the Property, or the start of any development activities or change in use of the Property that might expose human or ecological receptors to hazardous substances at the Property. Notwithstanding the foregoing, Owner shall not commence any development inconsistent with the conditions or restrictions in this Paragraph 3 without prior written approval from DEQ as provided in Paragraph 3.2 or removal of the condition or restriction as provided in Paragraph 5.1 below.

3.6 **Zoning Changes.** Owner shall notify DEQ no less than thirty (30) days before Owner's petitioning for or filing of any document initiating a rezoning of the Property that would change the base zone of the Property under the ~~Washington County~~ **BEAVERTON** zoning code or any successor code. As of the date of this Easement and Equitable Servitudes, the base zone of the Property is General Commercial.

3.7 **Cost Recovery.** Owner shall pay DEQ's costs for review and oversight of implementation of and compliance with the provisions in this Easement and Equitable Servitudes. This Easement and Equitable Servitudes shall constitute the binding agreement by the Owner and DEQ to reimburse DEQ for all such eligible review and oversight costs. DEQ will establish a cost recovery account for tracking and invoicing DEQ project costs. DEQ will provide the Owner with a monthly statement and direct labor summary. DEQ costs will include direct and indirect costs. Direct costs include site-specific expenses and legal costs. Indirect costs are those general management and support costs of the State of Oregon and DEQ allocable to DEQ oversight of this Easement and Equitable Servitudes and not charged as direct site-specific costs. Indirect charges are based on actual costs and are applied as a percentage of direct personal services costs.

4. EASEMENT (RIGHT OF ENTRY)

During reasonable hours and subject to reasonable security requirements, DEQ shall have the right to enter upon and inspect any portion of the Property to determine whether the requirements of this Easement and Equitable Servitudes have been or are being complied with. DEQ shall have the right, privilege, and license to enter upon the Property at any time to abate, mitigate, or cure at the expense of the Owner the violation of any condition or restriction contained in this Easement and Equitable Servitudes, provided DEQ first gives written notice of the violation to Owner describing what is necessary to correct the violation and Owner fails to cure the violation within the time specified in such notice. The time to cure specified in the notice shall be reasonable. Any such entry by DEQ shall not be deemed a trespass, and DEQ shall not be subject to liability to Owner for such entry and any action taken to abate, mitigate, or cure a violation unless such liability stems from DEQ's negligence or intentional misconduct.

5. GENERAL PROVISIONS

5.1 Each condition and restriction contained in this Easement and Equitable Servitudes and presented in the ROD shall be recited in any deed conveying the Property or any portion of the Property, and shall run with the land so burdened until such time as the condition or restriction is removed by written certification from DEQ, recorded in the Deed Records of the County in which the Property is located, certifying that the condition or restriction is no longer required in order to protect human health or the environment.

5.2 Upon the recording of this Easement and Equitable Servitudes, all future Owners, as defined in Paragraph 2.2 above, shall be conclusively deemed to have consented and agreed to every condition and restriction contained in this Easement and Equitable Servitudes, whether or not any reference to this Easement and Equitable Servitudes is contained in an instrument by which such person or entity occupies or acquires an interest in the Property.

5.3 Upon any violation of any condition or restriction contained in this Easement and Equitable Servitudes, DEQ, in addition to the remedies described in Paragraph 4 above, may enforce this Easement and Equitable Servitudes as provided in the Agreement, or may seek any other available legal or equitable remedy to enforce this Easement and Equitable Servitudes.

IN WITNESS WHEREOF Grantor and Grantee have executed this Easement and Equitable Servitudes as of the date and year first set forth above.

GRANTOR: Tualatin Hills Park and Recreation District

By: 

Doug Menke, General Manager

Date: May 16, 2011

STATE OF OREGON)
) ss.
County of Washington)

The foregoing instrument is acknowledged before me this 16th day of May, 2011, by Doug Menke of Tualatin Hills Park and Recreation District, on its behalf.



Jessica Collins
NOTARY PUBLIC FOR OREGON
My commission expires: May 24, 2012

GRANTEE: State of Oregon, Department of Environmental Quality

By: Charles Harman Date: 5/19/2011
Charles Harman, Cleanup Manager, Northwest Region

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument is acknowledged before me this 19 day of May, 2011, by Charles Harman of the Oregon Department of Environmental Quality, on its behalf.



Catherine Jean Phillips
NOTARY PUBLIC FOR OREGON
My commission expires: 14 April 2013

EXHIBIT A SITE MAP

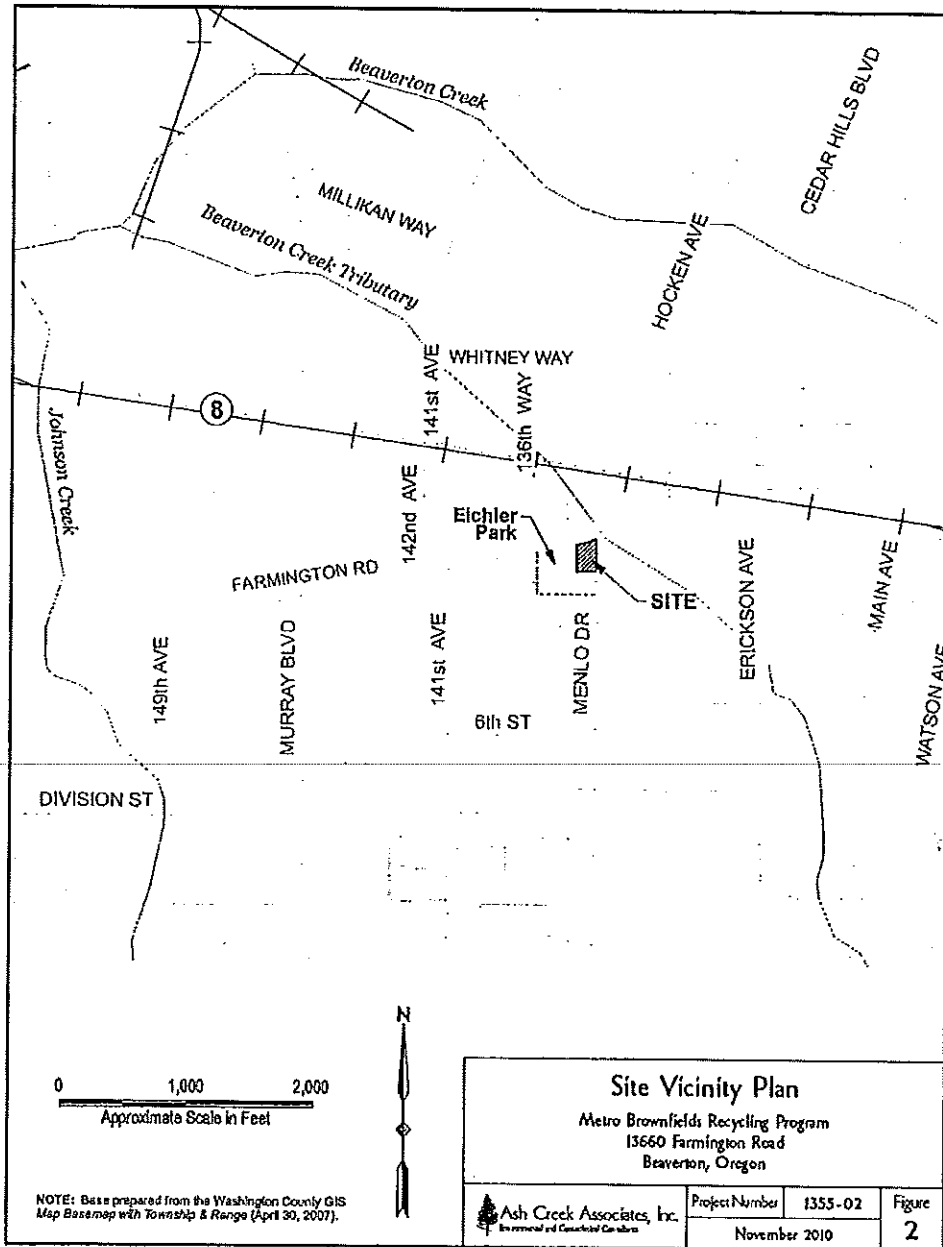


EXHIBIT B

LEGAL DESCRIPTION

That portion of Lot 12, LADD AND REED'S ADDITION TO BEAVERTON, in Section 16, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Beaverton, County of Washington and State of Oregon, described as follows:

Beginning at the intersection of the Westerly line of County Road No. 1404, S.W. Menlo Drive, as now laid out, with the Southerly line of S.W. Farmington Road, as now laid out; thence South $78^{\circ} 26'$ West 135 feet along the Southerly line of said S.W. Farmington Road to an iron rod; thence South $0^{\circ} 46'$ East 200 feet to an iron rod; thence North $78^{\circ} 26'$ East 135 feet to an iron rod on the Westerly line of S.W. Menlo Drive; thence North $0^{\circ} 46'$ West 200 feet along said Westerly line of S.W. Menlo Drive, to the point of beginning.

EXCEPTING THEREFROM that portion thereof conveyed to Beaverton Urban Renewal Agency by Deeds recorded September 12, 1980, as Recorder's Fee Nos. 80-032001 and 80-032002.

13660 SW Farmington Road, Beaverton
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R128686