



Oregon

John Kitzhaber, MD, Governor

Department of Environmental Quality

Northwest Region Portland Office

2020 SW 4th Avenue, Suite 400

Portland, OR 97201-4987

(503) 229-5263

FAX (503) 229-6945

TTY (503) 229-5471

March 16, 2012

Ms. Paula Miranda
Business Development Manager
Port of St. Helens
P.O. Box 190
Columbia City, OR 97018

Re: Easement and Equitable Servitudes
Port of St. Helens Former Pope & Talbot Wood-Treating Site.
1550 Railroad Avenue, St. Helens, Oregon
ECSI #959

Dear Ms. Miranda:

Attached is the original signed copy of the Easement and Equitable Servitudes (EES) for the northern parcel of the Former Pope and Talbot/Port of St. Helens site located at 1550 Railroad Avenue, St. Helens, Oregon. The original parcel for the project was subdivided to permit this conditional no further action on the northern parcel. As we discussed today, we suggest that you change the text on the top of Page 2 from "On ___ 2011" to "In spring 2012" so that the document is final for recording. We will send the letter issuing the conditional no further action after we receive the recorded copy of the EES.

Call me if you have any questions about this.

Sincerely,

Deborah Bailey, D. Env.
Project Manager
Cleanup and Emergency Response

Cc: Jim Benedict, Cable Huston
Bruce Gilles, DEQ
Kurt Harrington, AMEC

After recording, return certified copies to:

Grantor

Port of St. Helens
P.O. Box 598
St. Helens, Oregon 97051
Att: Paula Miranda

Grantee

Oregon DEQ
2020 S.W. Fourth Avenue
Portland, OR 97201
Att: Deborah Bailey

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes is made March 13, 2012 between Port of St. Helens ("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 1550 Railroad Avenue, St. Helens, Oregon in Columbia County, Oregon in Columbia County Partition Plat No. 2009-17, Parcel 2 (the "**Property**") the location of which is more particularly described in Attachment A to this Easement and Equitable Servitudes. The "Property" is a portion of the Former Pope and Talbot/Port of St. Helens (FPT/PSH) cleanup site (Environmental Cleanup Database Inventory [ECSI] #959). DEQ agreed to permit the Port of St. Helens to subdivide the FPT/PSH cleanup site into two parcels: the conclusion of the investigation and risk assessment at the site was that the northern portion of the site would not be a part of the active remediation at the cleanup site. The boundaries of the Property were identified and the Port of St. Helens has legally subdivided the FPT/PSH cleanup site.

B. Between December and December 31, 2008 DEQ provided a public comment period for the report entitled "Staff Report, Port of St. Helens, Conditional No Further Action for Area 2, ECSI #959 for the Former Pope and Talbot/Port of St. Helens" dated November 10, 2008. The Staff Report recommended a Conditional No Further Action at the "Property". The conditional NFA requires: 1) any soil excavated on the property would have to be sampled according to a soil management plan approved by DEQ and managed appropriately, 2) any excavation would be managed under an appropriate health and safety plan, 3) groundwater use would be restricted and 4) soil erosion would be controlled using best management practices. Interested parties may contact the Northwest Region Office, 2020 S.W. Fourth Avenue, Portland, Oregon 97201 to review the Staff Report.

C. On _____ 2011, following completion of the public comment period and completion of the legal subdivision of the property, DEQ issued the Conditional No Further Action letter.

D. The provisions of this Easement and Equitable Servitudes are intended to further the implementation of the conditional no further 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 "Beneficial use" has the meaning set forth in OAR 340-122-0115.
- 1.3 "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.
- 1.4 "Ecological receptor" has the meaning set forth in OAR 340-122-0115.
- 1.5 "Engineering control" has the meaning set forth in OAR 340-122-0115.
- 1.6 "Hazardous substance" has the meaning set forth in ORS 465.200
- 1.7 "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.
- 1.8 "Property" means the real property described in Exhibit A to this Easement and Equitable Servitudes.

2. GENERAL DECLARATION

Grantor, in consideration of DEQ's issuance of a conditional no further action letter, grants to DEQ an Easement for access and accepts the Equitable Servitudes described in this instrument and, in so doing, declares that the Property described in Attachment A to this Easement and Equitable Servitudes, 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 as long as the hazardous substance concentrations exceed acceptable risk levels for such use or its associated discharge or disposal. For beneficial uses other than consumption owner may seek approval from DEQ 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 Waste Management Plan: For activities that include excavation of soil and groundwater extraction on the property, Grantor shall implement the Waste Management Plan approved by DEQ.

3.3 Health and Safety Regulations: During any activity that involves soil excavation or groundwater extraction, Grantor shall comply with all Occupational Safety and Health Administration (OSHA) rules and regulations related to work on hazardous substance sites, including and not limited to appropriate training and management of personal protective equipment.

3.4 Erosion Control: Grantor shall prevent discharge of significant amounts of sediment to surface water or conveyance systems leading to surface water to control discharge of PCBs from the property. To accomplish this, the following activities are prohibited activities unless DEQ provides written authorization:

- a) Earth slides or mud flows;
- b) Concentrated flow of stormwater such as rills, rivulets or channels when such flows are not managed to remove sediment; and.
- c) Turbid flows of stormwater that are not managed to remove turbidity;
- d) Deposition of soil in areas that drain to unprotected stormwater inlets or catch basins that discharge to surface water; and
- e) Placement of soil off the property.

3.5 Land Use Restrictions: The following operations and uses are prohibited on the Property:

- a. Residential use of any type;
- b. Agricultural use for the production of food crops of any type; and,

- c. **Underground Injection Control systems for stormwater management.**

3.6 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 and every five years, on the anniversary of the effective date of this E&ES, a review is submitted to DEQ documenting that the restrictions and prohibitions of this Easement and Equitable Servitudes are intact and continue to protect public health and the environment.

3.7 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 or removal of the condition or restriction as provided in Paragraph 5.1 below.

3.8 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 Columbia County zoning code or any successor code. As of the date of this Easement and Equitable Servitudes, the base zone of the Property is commercial/industrial.

3.9 Cost Recovery. Owner shall pay DEQ's costs for review and oversight of implementation of and compliance with the provisions in this E&ES. This E&ES 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 specific to the Property. 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 E&ES 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 without sufficient cause to cure, or to commence to cure with due diligence, the violation within the time specified in such notice. 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.

5. GENERAL PROVISIONS

5.1 Each condition and restriction contained in this Easement and Equitable Servitudes 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, and 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 2.0 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 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.

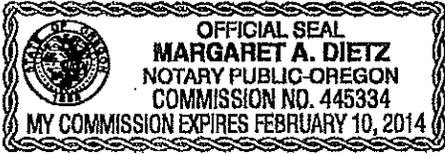
By signature below, the State of Oregon approves and accepts this conveyance pursuant to ORS 93.808.

GRANTOR: Port of St. Helens

By: Robert Keyser Date: 2.8.2012
Robert Keyser, President of the Board

STATE OF OREGON)
County of Columbia) ss.

The foregoing instrument is acknowledged before me this 8 day of February, 2011, by [NAME] of the Port of St. Helens, on its behalf.
2012



Margaret A Dietz
NOTARY PUBLIC FOR OREGON
My commission expires: 02-10-2014

GRANTEE: State of Oregon, Department of Environmental Quality

By: Nina DeConcini Date: 3/13/12
Nina DeConcini, Administrator, Northwest Region

STATE OF OREGON)
County of Multnomah) ss.

The foregoing instrument is acknowledged before me this 13 day of March, 2012, by Nina DeC [NAME] of the Oregon Department of Environmental Quality, on its behalf. Nina DeConcini



Susan Louise Curry
NOTARY PUBLIC FOR OREGON
My commission expires: Mar. 27, 2013

ATTACHMENT A

Legal Description of the Property

Parcel 2 of Partition Plat No. 2009-17, as recorded on December 11, 2009 in the Clerk's Records of Columbia County, Oregon. Please see the attached for the map and recorded deed for the partition.