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2011-006777

Klamath County, Oregon



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State of Oregon
Dept. of Environmental Quality
Eastern Region - The Dalles

PROSPECTIVE PURCHASER AGREEMENT

DEQ No. 10-02

BETWEEN: Oregon Department of Environmental Quality

AND: Quadgroup, LLC

This Agreement is entered between the Oregon Department of Environmental Quality (DEQ) and Quadgroup, LLC (Quadgroup) pursuant to ORS 465.260 and 465.327. This Agreement contains the following provisions:

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Attachment A – Easement and Equitable Servitude (which includes Legal Description of Property)

Attachment B – Site Map

1. RECITALS

A. The subject property (the Property) is at 3121 Crosby Avenue, Klamath Falls, Oregon. The legal description of the Property is provided in Attachment A to this Agreement. The Property, which covers approximately 3.5 acres, is on the north side of Crosby Avenue, east of Washburn Way and West of Altamont Drive. It was a wood treating facility from approximately 1965 until 2000. Wood was treated using pentachlorophenol in a dip tank on the west side of the Property. The Property also had aboveground and underground petroleum tanks, a kiln drying area, a truck equipment wash area, and a heavy equipment staging area. The Property is zoned Heavy Industrial.

B. In July 2002, DEQ and USEPA conducted sampling at the Circle DE Lumber Property. Results indicated that the Property contained hazardous substances, including dioxin compounds and semivolatile organic compounds (SVOCs), such as pentachlorophenol.

C. Between October 2005 and February 2006, USEPA conducted a removal action consisting primarily of excavation and offsite disposal of contaminated soil and debris associated with a former dip tank on the west side of the Property. USEPA also collected soil samples, backfilled the excavation, and installed five groundwater monitoring wells that they sampled one time.

D. The majority of contamination on the Property was removed during the 2005-2006 effort. Some dioxin contamination in surface soil remains, at concentrations of up to 8 micrograms per kilogram (ug/kg). As shown in Attachment B, pentachlorophenol was found in groundwater at concentrations up to 6 micrograms per liter (ug/l).

E. Dioxin and pentachlorophenol are "hazardous substances" within the meaning of ORS 465.200(16). The presence of hazardous substances at the Property constitutes a "release"

of hazardous substances within the meaning of ORS 465.200(22), and makes the Property a "facility" within the meaning of ORS 465.200(13).

F. Quadgroup is a limited liability corporation organized under the laws of Oregon and a "person" within the meaning of ORS 465.200(21). According to information provided by Quadgroup, Quadgroup is not currently liable under ORS 465.255 for the release of hazardous substances existing at or from the Property as of the date of this Agreement.

G. On June 24, 2009, Quadgroup submitted its application to DEQ for preparation of a Prospective Purchaser Agreement.

H. Quadgroup agrees to perform the activities described in Section 2 of this Agreement at its own expense. Quadgroup's goal is to address these requirements and prepare the Property for commercial or light industrial development. DEQ has determined that a "substantial public benefit" will result from this Agreement, within the meaning of ORS 465.327(1)(d).

I. Based upon the information submitted by Quadgroup, DEQ has further determined that the proposed development activities at the Property will not contribute to or exacerbate existing contamination, increase health risks, or interfere with other remedial measures which may be necessary at lands located adjacent to the Property.

J. In determining to enter into this Agreement, DEQ has consulted with the City of Klamath Falls and has considered reasonably anticipated future land uses at the Property and surrounding properties.

2. MEASURES TO BE UNDERTAKEN

A. Quadgroup agrees to perform the following measures at its own expense. Where required, Quadgroup agrees to conduct any required work under DEQ oversight and to pay DEQ oversight costs associated with the performance of the work. Quadgroup agrees to carry out all actions described in a work plan that will be developed by Quadgroup and approved by DEQ. Quadgroup agrees that it will work diligently to complete the work plan not later than June 30, 2010. When completed, the work plan will be incorporated by this reference into this Agreement and will become enforceable as a term of this Agreement. Quadgroup agrees it will begin implementing the work plan no later than 30 days after DEQ's approval of a schedule for implementation of the work, which will be included in the work plan. Quadgroup agrees that it will complete the work plan in accordance with that approved schedule. Based on our knowledge of the site, we anticipate that the work will include the following measures:

- (1) **Groundwater monitoring.** Quadgroup will collect one round of groundwater samples from the five groundwater monitoring wells shown in Attachment B. Groundwater analytes will include semivolatile organic compounds (SVOCs).
- (2) **Groundwater contour mapping.** Quadgroup will determine groundwater elevations and flow direction.
- (3) **Covering of residual contamination.** Quadgroup will cover an area of approximately 80 feet by 80 feet in the northeast corner of the site with either asphalt, a building, soil or gravel to prevent airborne dispersion of dioxin contamination.
- (4) **Beneficial water use determination.** Quadgroup will conduct a beneficial water use determination based on a door-to-door survey and information available on

the internet from the Oregon Department of Water Resources. The survey will cover a quarter mile radius around the site.

- (5) **Documentation.** After completing the measures described above, Quadgroup will document them in a final report prepared by a qualified environmental professional. The report will be signed and stamped by an Oregon licensed geologist or professional engineer.

B. Quadgroup will abide by the Easement and Equitable Servitude included as Attachment A to this agreement.

C. Quadgroup will not begin development of the Property without prior approval from DEQ.

D. Nothing in this Agreement obligates DEQ or the state of Oregon or any of its commissions, agencies, officers or employees to conduct or pay for any actions related to releases at or from the Property.

E. Quadgroup will comply with substantive requirements of all applicable federal, state and local laws and regulations, and will obtain all necessary permits for the activities described in this Agreement.

F. Any development, construction, or other use of the Property will be consistent with and will not interfere with investigative or remedial activities necessary at the Property. To ensure such consistency and prevent exacerbation of existing contamination at the Property, Quadgroup must notify DEQ before any material physical changes or disturbances are made to any area of the Property that is subject to use restrictions under Subsections 2.B. of this Agreement. At DEQ's request, Quadgroup will submit for DEQ review and approval, any development, use, and building plans, or other similar and adequate documentation, for the

proposed activities before any material changes or disturbances occur to any area of the Property that is subject to such use restrictions. This notification, review and approval requirement will expire upon issuance by DEQ of an unconditional No Further Action determination.

G. Quadgroup will notify occupants of the facility, site workers, and demolition, construction, remediation, and landscape workers of the presence of soil contamination in accordance with existing state and federal regulations. Hazard Notification must be performed by Quadgroup in accordance with applicable state and federal Occupational Safety and Health Administration (OSHA) regulations so that appropriate health and safety plans can be developed and implemented, if necessary.

H. Upon satisfactory completion by Quadgroup of the investigation and remedial actions under 2.A. above, DEQ will provide a written notice that such measures have been completed. If DEQ issues a determination of No Further Action or a Conditional No Further Action for the Property, such determination shall serve as notice of completion of the remedial actions required under 2.A.

3. GENERAL PROVISIONS

A. DEQ Oversight

DEQ will provide review, approval/disapproval, and oversight as described in Section 2 and Paragraph 3.G.(2) of this Agreement. Where DEQ approval is required for any plan or activity under this Agreement, Quadgroup will not proceed to implement the plan or activity until DEQ approval is received. DEQ will make good faith efforts to conduct plan and activity review promptly so that any proposed development activities are not unduly delayed.

B. Project Completion Report

Upon Quadgroup's completion of work in accordance with the work plan, Quadgroup will submit a Project Completion Report to DEQ signed by an Oregon-registered professional engineer or licensed geologist and Quadgroup's Project Manager, who may be the same person if so qualified, certifying that the work plan has been completed in accordance with this Agreement. The report will summarize the work performed and include all necessary supporting documentation. DEQ will determine whether the work plan has been fully and satisfactorily performed in accordance with this Agreement. If DEQ so determines that the work plan has been fully and satisfactorily performed in accordance with this Agreement, DEQ will issue a letter stating that the work plan has been completed.

C. DEQ Access

(1) Quadgroup grants an irrevocable right of entry to DEQ and its authorized representatives to enter and move freely about the Property at all reasonable times for purposes of overseeing implementation of this Agreement, or conducting removal or remedial measures DEQ deems necessary.

(2) Quadgroup will allow DEQ to inspect and copy all records in their possession or control relating to measures undertaken at the Property under this Agreement. Quadgroup will preserve all such records for six (6) years after the effective date of this Agreement, and, after such six-year period, will provide DEQ with sixty (60) days' notice before destruction or other disposal of such records and make the records available for inspection and copying.

(3) Quadgroup may assert a claim of confidentiality regarding any records submitted to or copied by DEQ pursuant to this Agreement. DEQ will treat documents and records for which a claim of confidentiality has been made in accordance with ORS 192.410 to 192.505.

If Quadgroup does not make a claim of confidentiality at the time the records are first submitted to or copied by DEQ, the records may be made available to the public without notice to Quadgroup, LLC. DEQ reserves any rights to obtain documents withheld from DEQ as privileged.

D. Notice

All reports, notices, and other communications required under or relating to this Agreement will be directed to:

For DEQ:
Bob Schwarz
Oregon DEQ
400 E. Scenic Drive, Suite 307
The Dalles, Oregon 97058
Phone: 541-298-7255 ext. 230
Email: schwarz.bob@deq.state.or.us

For Quadgroup, LLC:
Brad Aspell
Quadgroup, LLC
c/o Aspell, Della-Rose & Richard
122 South 5th Street
Klamath Falls, Oregon 97624
Phone: 541-883-7754
Email: baspell@adrrlaw.com

E. DEQ Costs

- (1) Quadgroup will pay oversight costs incurred by DEQ associated with Quadgroup's implementation of this Agreement.
- (2) DEQ oversight costs payable by Quadgroup will include both direct and indirect costs. Direct costs include site-specific expenses, DEQ contractor costs, and DEQ legal costs. Indirect costs include general management, support, and program development costs of DEQ and the Land Quality Division allocable to DEQ oversight of this Agreement and not charged as direct site-specific costs. Indirect costs are based on a percentage of direct personal service costs.
- (3) Within thirty (30) days of receipt of the monthly statement, Quadgroup shall pay the amount of costs billed by check made payable to the "State of Oregon, Hazardous Substance

Remedial Action Fund.” Quadgroup shall pay simple interest of 9% per annum on the unpaid balance of any oversight costs, which interest shall begin to accrue at the end of the 30-day payment period, unless dispute resolution has been invoked.

F. Dispute Resolution

In the event of any disagreement between DEQ and Quadgroup regarding implementation of this Agreement, including but not limited to review and approval of a plan or activity or DEQ costs, DEQ and Quadgroup will, in the following order:

- (1) Make a good faith effort to resolve the dispute between project managers;
- (2) If necessary, refer the dispute for resolution by the immediate supervisors of the project managers; and
- (3) If necessary, provide to each other their respective positions in writing and refer the dispute for resolution to DEQ's Administrator of the Land Quality Division or Eastern Regional Division Administrator, and Quadgroup's General Manager. DEQ's final decision after such dialogue will be enforceable in accordance with Subsection 3.G. of this Agreement.

G. Enforcement of Agreement and Reservation of Rights

(1) In the event of any failure of Quadgroup to comply with any obligation of this Agreement, DEQ may enforce this Agreement under ORS 465.260(5) or exercise any authority or pursue any claim or cause of action that DEQ might have. Quadgroup reserves any defenses or counterclaims they might have in such an action by DEQ.

(2) In addition, without limiting the foregoing, upon any failure of Quadgroup to comply with any material obligation of this Agreement, DEQ may terminate this Agreement by written notice; provided that before such termination: (a) DEQ initiates dispute resolution in accordance with Subsection 3.F., (b) DEQ gives Quadgroup written notice of the deficiency

describing what is necessary to correct the deficiency, and (c) Quadgroup fails to cure the deficiency within 30 days of the notice, or conclusion of dispute resolution, whichever is later (or such longer period to which DEQ agrees in writing). Failure by DEQ to seek termination of this Agreement upon a failure of Quadgroup to comply with any material obligation of this Agreement will not constitute a waiver by DEQ of that or any other obligation. DEQ may not terminate this Agreement under this Paragraph 3.G.(2) during the pendency of any action to enforce or construe this Agreement.

(3) Except as provided in Subsections 3.H. and 3.I. of this Agreement, DEQ and Quadgroup reserve any claim or cause of action they respectively might have as to any person or entity not a signatory to this Agreement.

(4) Quadgroup does not admit any liability or violation of law by virtue of entering this Agreement.

(5) DEQ reserves its authority to perform source control or remedial measures regarding a release of hazardous substances at or from the Property.

H. Waivers

(1) Quadgroup waives any claim or cause of action it might have against the state of Oregon arising from contamination at or from the Property existing as of the date of Quadgroup's acquisition of ownership or operation of the Property.

(2) Quadgroup waives any right it might have under ORS 465.260(7) to seek reimbursement from the Hazardous Substance Remedial Action Fund or the Orphan Site Account for cost incurred under this Agreement or related to the Property.

I. Hold Harmless and Indemnification

Quadgroup will save and hold harmless the state of Oregon and its commissions, agencies, officers, employees, contractors, agents, and authorized representatives, and indemnify the foregoing, from and against any and all claims arising from acts or omissions related to this Agreement of Quadgroup or its officers, employees, contractors, agents, receivers, trustees, or assigns. DEQ will not be considered a party to any contract made by Quadgroup or its agents in carrying out activities under this Agreement.

J. Recording

(1) Within thirty (30) days of the date Quadgroup acquires an ownership interest in the Property, Quadgroup will record a copy or original of this Agreement (whichever is required by the county) in the real property records of Klamath County, state of Oregon. Quadgroup will provide DEQ with written evidence of such recording within seven (7) days of recording.

(2) Upon any termination of this Agreement, DEQ may record, or require Quadgroup to record, notice of such termination in the real property records of Klamath County, state of Oregon.

K. Transfer of Interest

Quadgroup will provide written notice to the DEQ project manager not less than thirty (30) days before transfer of any interest in the Property, or a portion of the Property, from Quadgroup to another person or entity. This notice requirement will remain in effect until DEQ issues an unconditional No Further Action determination or unconditional Certificate of Completion for the Property and Quadgroup completes all obligations required under this Agreement.

4. RELEASE FROM LIABILITY

A. Subject to the satisfactory performance by Quadgroup of its obligations under this Agreement, including compliance with ongoing obligations and institutional controls, as applicable, Quadgroup will not be liable to the state of Oregon under ORS 465.200 through 465.455 and 465.900 for any release of the hazardous substances at and from the Property existing as of the date of Quadgroup's acquisition of its interest in or operation of the Property. Quadgroup will bear the burden of proving that any hazardous substance release existed before the date of acquisition of their interest in or operation of the Property.

B. The release from liability under Subsection 4.A. of this Agreement will not apply to any liability regarding:

- (1) A release of hazardous substances at the Property after the date of Quadgroup's acquisition of an interest in or operation of the Property;
- (2) Contribution to or exacerbation of a release of hazardous substances;
- (3) Interference or failure to cooperate with DEQ, or with persons conducting remedial measures under DEQ's oversight at the Property;
- (4) Failure to exercise due care or take reasonable precautions with respect to any hazardous substance at the Property;
- (5) Violation of federal, state, or local law regarding hazardous substances;
- (6) Any ownership, operation, or release of hazardous substances at the Property by Quadgroup before the effective date of this Agreement;
- (7) Any ownership, operation, or other basis of liability of Quadgroup for a release of hazardous substances at an off-site location affecting the Property; and
- (8) Any matters as to which the state of Oregon is owed indemnification under Subsection 3.I. of this Agreement.

C. Neither the release of liability and covenant not to sue in Subsection 4.A. nor any other provision of this Agreement constitutes or will be construed as an obligation by the state of Oregon, or any commission, agency, officer or employee thereof to indemnify, defend or hold harmless any person, including without limitation Quadgroup, LLC, for costs or expenses arising from or related in any way to the Property, a release of hazardous substances at, to, or from the Property, or this Agreement.

5. PARTIES BOUND

A. This Agreement will be binding on and ~~inure to the benefit of the signatories~~ and their respective commissions, agencies, officers, assigns, successors, employees, contractors, agents, and authorized representatives. The undersigned representative of each party certifies that he or she is fully authorized to execute and bind such party to this Agreement. No change in ownership or corporate or partnership status relating to the Property will in any way alter Quadgroup's obligations under this Agreement, unless approved otherwise in writing by DEQ.

B. The benefits and burdens of this Agreement will run with the land; however, the release from liability and covenant not to sue set forth in Subsection 4.A. of this Agreement will limit or otherwise affect the liability only of persons who are not potentially liable under ORS 465.255 for a release of hazardous substances at the Property as of the date of that person's acquisition of ownership or operation of the Property and who assume, in writing, and are bound by the terms of this Agreement applicable to the Property as of the date of their acquisition of ownership or operation of the Property.

6. EFFECTIVE DATE

This Agreement will be effective after signature by all parties and the earlier of Quadgroup's acquisition of ownership or operation of the Property, whichever is earlier.

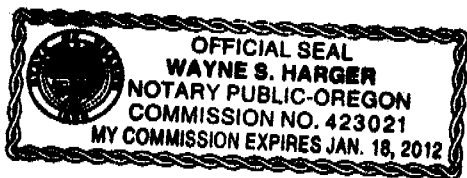
7. SIGNATURES

Brad Aspell

Brad Aspell, Member
Quadgroup, LLC

Date: May 3, 2010

SUBSCRIBED AND SWORN TO BEFORE ME this 3 day of
May, 2010 by Bradford Aspell in his capacity as
member of Quadgroup, LLC



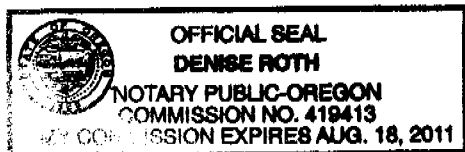
Wayne S. Harger
NOTARY PUBLIC FOR OREGON
My Commission expires: 01-18-12

Wendy Wiles

Wendy Wiles, Administrator
Land Quality Division
Oregon Department of Environmental Quality

Date: May 13, 2010.

SUBSCRIBED AND SWORN TO BEFORE ME this 13th day of
May, 2010 by Wendy Wiles in her capacity as
Administrator of the Land Quality Division, Oregon Department of
Environmental Quality.



Denise Roth
NOTARY PUBLIC FOR OREGON
My Commission expires: 8-18-2011

APPENDIX A

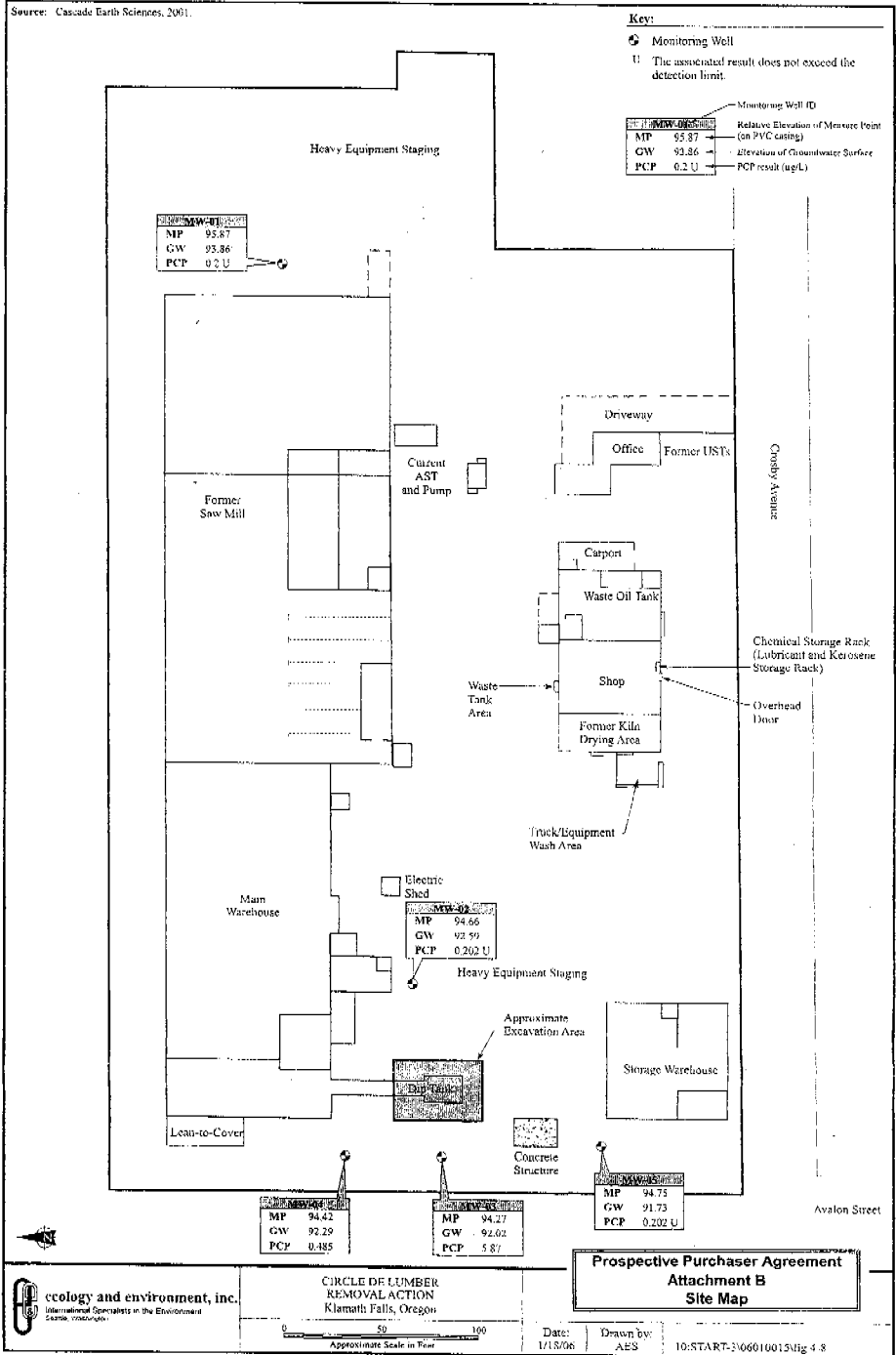
LEGAL DESCRIPTION OF THE REAL PROPERTY SUBJECT TO THE EASEMENT AND EQUITABLE SERVITUDE:

SE ¼, NW ¼, Section 3, Township 39 South, Range 9 East of the Willamette Meridian, described as follows: Beginning at a brass plug set in the pavement by Oregon State highway Department, said monument replacing the iron pipe set by E. B. Henry, Deputy County Surveyor, for the center one-fourth corner of said Section 3, said monument being the controlling point for the establishment of the centerline of Altamont Drive as established by "Altamont Acres" and "First Addition to Altamont Acres" subdivisions and said monument being North 87°18'30" East a distance of 27.45 feet from the center one-fourth of said Section 3 as established by W. R. Canton in 1937 and approved by F. Z. Howard, County Surveyor, shown on map filed in the Klamath County Surveyor's office and monumented by a brass plug in the pavement; thence South 0°17' West along the centerline of Altamont Drive a distance of 425.63 feet (South 0°20' West 426.4 feet by record) to the Northerly boundary line of "First Addition to Altamont Acres" extended Easterly; thence North 89°30' West along said boundary line and its extension (said line being North 89°27' West by record) a distance of 553.60 feet; and the true point of beginning; thence continuing North 89°30' West 766.40 feet to the legal 40 acres subdivision line; thence North on said line 422.3 feet to an iron pin which marks the Northwest corner of the NE ¼ SW ¼ of said Section 3; thence East on the 40 acre subdivision line 732 feet to the South boundary of the Oregon, California and Eastern Railroad; thence South 0°17' West 188.50 feet; thence South 89°43' East 25 feet; thence South 0°17' West 218.50 feet to the point of beginning.

Source: Cascade Earth Sciences, 2001.

Key:

- Monitoring Well
 - U The measured result does not exceed the detection limit.
- | Monitoring Well ID | Relative Elevation of Measure Point (on PVC casing) | Elevation of Groundwater Surface | PCP result (ug/L) |
|--------------------|---|----------------------------------|-------------------|
| MP | 93.87 | | |
| GW | 93.86 | | |
| PCP | | | 0.2 U |



ecology and environment, inc.
 International Specialists in the Environment
 2400 N. 10th Street, Vancouver, BC V6L 1A1

**CIRCLE DE LUMBER
 REMOVAL ACTION
 Klamath Falls, Oregon**

**Prospective Purchaser Agreement
 Attachment B
 Site Map**

0 50 100
 Approximate Scale in Feet

Date: 1/15/06 Drawn by: AES 10:START-5/06010015/fig 4.8