

2015-007878

Klamath County, Oregon

07/20/2015 02:16:18 PM

Fee: \$77.00

Space above this line for Recorder's use.

After recording, return to:

Grantee

Oregon DEQ
165 East 7th Ave, Suite 100
Eugene, OR 97401-3409
Attention: Greg Aitken

Grantor

Weyerhaeuser NR Company
Attention: Real Estate Services
33663 Weyerhaeuser Way South
Federal Way, WA 98003

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes ("**EES**") is made on July 8, 2015 between Weyerhaeuser NR Company ("**Grantor**") and the State of Oregon, acting by and through the Oregon Department of Environmental Quality ("**DEQ**" or "**Grantee**").

RECITALS

1ST AM

A. Grantor is the owner of certain real property located along State Highway 140, east of the town of Bly, OR, in Klamath County, Oregon in Klamath County Tax Map 37S14E03AA, Tax Lot 100 (the "**Property**") the location of which is more particularly described in Exhibit A to this EES, and as depicted in Exhibit B. The Property is referenced under the name Weyerhaeuser Bly Shop, ECSI #611 in the files of DEQ's Environmental Cleanup Program at its Eastern Region office located at 475 NE Bellevue Dr., Suite 110 Bend, OR 97701, Oregon, and online at <http://bit.ly/BlyShopWebdocs>. Interested parties may contact the DEQ office to review a detailed description of the risks from contamination remaining at the Property and described in *Weyerhaeuser Former Bly Truck Shop Final Report, GSI, 2015* available at: <http://bit.ly/BlyShopClosureReport>

B. On August 18, 2011, the Director of the Oregon Department of Environmental Quality or delegate selected the remedial action for the Property. The remedial action selected requires, among other things: institutional controls, including this EES and the March 2015 Contaminated Media Management Plan available on DEQ's website at <http://bit.ly/BlyShopCMMP>

C. On July 5, 2002, Grantor entered into a voluntary agreement with DEQ, under which Grantor agreed to implement the selected remedial action, including the required institutional controls.

D. This EES is intended to further the implementation of the selected remedial action and protect human health and the environment.

E. Nothing in this Easement and Equitable Servitude constitutes an admission by Grantor of any liability for the contamination described in the Easement and Equitable Servitude.

1. DEFINITIONS

- 1.1 "Beneficial use" has the meaning set forth in 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, but 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 "Remedial Action" has the meaning set forth in ORS 465.200 and OAR 340-122-0115.

2. GENERAL DECLARATION

2.1 Grantor, in consideration of Grantee's issuance of a No Further Action letter with conditions / approval of the Institutional controls described above, 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 must in future be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this EES.

2.2 Each condition and restriction set forth in this EES touches and concerns the Property and the equitable servitudes granted in Section 3 and easement granted in Section 4 below, runs with the land for all purposes, is binding upon all current and future owners of the Property as set forth in this EES, and inures 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 EES.

3. EQUITABLE SERVITUDES (REQUIRED ACTIONS AND RESTRICTIONS ON USE)

3.1. **Groundwater Use Restrictions.** Owner may not extract through wells or by other means or use the shallow groundwater at the Property for consumption or other beneficial use. This prohibition does 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 must 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. Owner may extract groundwater from a deeper aquifer provided: (a) the well is located at least 100 feet from the edge of the impacted shallow groundwater; (b) the well is located hydraulically upgradient of the impacted groundwater; and (c) the well is constructed with a deep annulus seal. The location and construction of the well must be approved by DEQ before the well is installed.

3.2. **Contaminated Media Management and Restrictions.** Owner will handle all media, including soil and groundwater, in compliance with the approved Contaminated Media Management Plan (GSI, March 2015). Any visually impacted material must be managed according to the plan and will be stockpiled, sampled and disposed of as described in the plan.

3.3. **Land Use Restrictions.** The following operations and uses are prohibited on the Property:

- a. Residential or transient residential use of any type;
- b. Agricultural (food-crop) use of any type, and
- c. Recreational or child care activities.

Use of the Property. Owner may not occupy or allow other parties to occupy the Property unless the controls listed in this Section 3 are maintained.

4. EASEMENT (RIGHT OF ENTRY)

During reasonable hours and subject to reasonable security requirements, DEQ may enter upon and inspect any portion of the Property to determine whether the requirements of this EES have been or are being complied with. Except when necessary to address an imminent threat to human health or the environment, DEQ will use its best efforts to notify the Owner 72 hours before DEQ entry to the Property. DEQ may 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 EES, 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. Any such entry by DEQ to evaluate compliance or to abate, mitigate, or cure a violation may not be deemed a trespass.

5. RELEASE OF RESTRICTIONS

5.1. Owner may request release of any or all of the conditions or restrictions contained in this EES by submitting such request to the DEQ in writing with evidence that the conditions or restrictions are no longer necessary to protect human health and the environment. The decision to release any or all of the conditions or restrictions in this EES will be within the sole discretion of DEQ.

5.2. Upon a determination pursuant to Subsection 5.1, DEQ will, as appropriate, execute and deliver to Owner a release of specific conditions or restrictions, or a release of this EES in its entirety.

6. GENERAL PROVISIONS

6.1. **Notice of Transfer/Change of Use.** Owner must notify DEQ within 10 days after 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. Such notice must include the full name and address of the Party to whom Owner has transferred an interest or right of occupancy. In addition, Owner must notify DEQ a minimum of 10 days before the effective date of any change in use of the Property that might expose human or ecological receptors to hazardous substances. Such notice must include complete details of any planned development activities or change in use. Notwithstanding the foregoing, Owner may not commence any development inconsistent with the conditions or restrictions in Section 3 without prior written approval from DEQ as provided in Subsection 3 of this EES or removal of the condition or restriction as provided in Subsection 5.1. This subsection does not apply to the grant or conveyance of a security interest in the Property.

6.2. **Zoning Changes.** Owner must notify DEQ no less than 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 Klamath County zoning code or any successor code. As of the date of this EES, the base zone of the Truck shop property is zoned industrial, with adjacent properties zoned exclusive farm use.

6.3. **Cost Recovery.** Owner will pay DEQ's costs for review and oversight of implementation of and compliance with the provisions in this EES, including but not limited to periodic review and tracking of actions required by this EES. This EES constitutes the binding agreement by the Owner 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 EES 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.

6.4. **Inspection and Reporting.** Owner will immediately notify DEQ of any condition or occurrence at the Property that does not conform with provisions of this EES. In addition, Owner will maintain records documenting inspection and reporting as outlined in the DEQ approved *Contaminated Media Management Plan Former Truck Shop Site, Bly, Oregon, GSI, March 2015*.

6.5. **Reference in Deed.** A reference to this EES, including its location in the public records, must be recited in any deed conveying the Property or any portion of the Property. Each condition and restriction contained in this EES runs with the land so burdened until such time as the condition or restriction is removed by written certification from DEQ, recorded in the deed

in this EES, whether or not any reference to this EES is contained in an instrument by which such person or entity occupies or acquires an interest in the Property, until such time a determination is reached pursuant to Subsection 5.1.

6.7. **Enforcement and Remedies.** Upon any violation of any condition or restriction contained in this EES, the State of Oregon, in addition to the remedies described in Section 4, may enforce this EES as provided in the Institutional Controls named in Section B, above, or seek available legal or equitable remedies to enforce this EES, including civil penalties as set forth in ORS 465.900.

6.8. IN WITNESS WHEREOF Grantor and Grantee have executed this Easement and Equitable Servitude 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: Weyerhaeuser NR Company

By: Kristen Sawin

Date: 6/18/15

Name: Kristen Sawin

Title: VICE President, Corporate Affairs

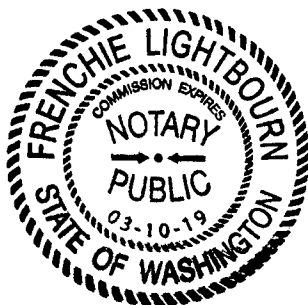
STATE OF WASHINGTON)

) ss.

COUNTY OF KING)

I certify that I know or have satisfactory evidence that Kristen Sawin is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument, and acknowledged it as the Vice President Corp Affairs of Weyerhaeuser NR Company, a Washington corporation to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Witness my hand and official seal this 18th day of June 2015.



Frenchie Lightbourn
NOTARY PUBLIC in for the State of Washington,
Print Name: Frenchie Lightbourn
Residing at: Federal Way, WA
My commission expires: 3-10-19

NOTARY PUBLIC in for the State of Washington,
Print Name: _____
Residing at: _____
My commission expires: _____

GRANTEE: State of Oregon, Department of Environmental Quality

By: David Anderson Date: 7/8/2015
David Anderson, Cleanup Manager, Eastern Region

STATE OF OREGON)
) ss.
COUNTY OF Deschutes

The foregoing instrument is acknowledged before me this 8 day of
July, 2015, by David Anderson of the Oregon Department of
Environmental Quality, on its behalf.

Lisa M. Clark
NOTARY PUBLIC FOR OREGON
My commission expires: 4/12/2017



EXHIBIT A

Legal Description of the Property

Bly Truck Shop
Legal for Deed Restriction only

Tax Parcel #3714-003AA-00100-000

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 2; THENCE EAST ALONG THE NORTH LINE OF SAID SECTION 2 FOR A DISTANCE OF 335 FEET TO A POINT; THENCE SOUTH 6 DEGREES WEST FOR A DISTANCE OF 672 FEET, MORE OR LESS, TO A POINT ON THE NORTHERLY LINE OF THE KLAMATH FALLS-LAKEVIEW HIGHWAY WHICH IS 287 FEET DISTANT SOUTH 66 DEGREES 43 MINUTES EAST FROM THE INTERSECTION POINT OF SAID NORTHERLY LINE WITH THE WEST LINE OF SAID SECTION 2; THENCE NORTH 66 DEGREES 43 MINUTES WEST ALONG SAID NORTHERLY LINE 287 FEET TO SAID INTERSECTION POINT; THENCE CONTINUING ALONG SAID NORTHERLY LINE FOR A DISTANCE OF 320 FEET, MORE OR LESS, TO A POINT ON THE EASTERLY LINE OF THE RIGHT OF WAY CONVEYED TO THE OREGON CALIFORNIA & EASTERN RAILWAY COMPANY BY T. M. EDSALL AND J. C. EDSALL AND WIFE BY THEIR DEED RECORDED IN VOLUME 80 PAGE 434, DEED RECORDS OF KLAMATH COUNTY, OREGON; THENCE NORTHWESTERLY ALONG SAID EASTERLY RIGHT OF WAY LINE FOR A DISTANCE OF 490 FEET, MORE OR LESS, TO A POINT ON THE SOUTHERLY LINE OF THE COUNTY ROAD ALONG THE NORTHERLY LINE OF SAID SECTION 3; THENCE EASTERLY ALONG SAID SOUTHERLY LINE FOR A DISTANCE OF 550 FEET, MORE OR LESS, TO A POINT ON THE EAST LINE OF SAID SECTION 3; THENCE NORTH ALONG SAID EAST LINE TO THE POINT OF BEGINNING; EXCEPTING FROM THAT PART OF SAID LOT 4 ABOVE DESCRIBED, A 30 FOOT STRIP ALONG THE NORTH LINE OF SAID LOT FOR COUNTY ROAD.

EXHIBIT B

Depiction of Property

Parcel 3714-003AA-00100 - 9.5 acres

