



00205512201700067490080081

06/20/2017 02:02:38 PM

Fee: \$77.00

Space above this line for Recorder's use.

After recording, return to:

Grantee

Oregon DEQ
400 E. Scenic Dr., Suite 307
The Dalles, OR 97058
Attention: Bob Schwarz

Grantor

Estate of Rod Slade
5905 NE 32nd Place
Portland, OR 97211
Attention: Dwight Slade

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes ("EES") is made on JUNE 16, 2017 between the Estate of Rod Slade ("**Grantor**") and the State of Oregon, acting by and through the Oregon Department of Environmental Quality ("DEQ" or "**Grantee**").

RECITALS

1. Grantor is the owner of certain real property located at 977 South Spring Street, Klamath Falls, 97601 in Klamath County, Oregon, Tax Lot 400 (the "**Property**") the location of which is more particularly described in Exhibit A to this EES. The Property is referenced under the name Clough Oil Co., ECSI #27 in the files of DEQ's Environmental Cleanup Program at the Eastern Region office located at 400 E. Scenic Drive, Suite 2.307, The Dalles, Oregon, and telephone 541-298-7255. Interested parties may contact the Eastern Region office to review a detailed description of the risks from contamination remaining at the Property and described in *Focused Feasibility Study, former May-Slade Oil Company Properties (865 and 953 Spring Street) and former Ferrell's Fuel Network Property (977 Spring Street)*, prepared by ETG and dated August 2, 2013.

2. On November 1, 2016, the Director of the Oregon Department of Environmental Quality or delegate selected the remedial action for the Property set forth in the Staff Report for the Property (*Staff Report, Recommended Remedial Action For ECSI # 27 (Clough Oil Company), ECSI # 2332 (May-Slade Oil Co.), ECSI # 2726 (May-Slade Oil Co. - North), Klamath Falls, Oregon*). The remedial action selected requires implementation of a deed restriction for the 977 South Spring Street property, prohibiting residential use of the property as long as soil concentrations exceed residential risk based concentrations (RBCs), and preventing the use of groundwater for ingestion, as long as groundwater concentrations exceed residential RBCs.

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

4. 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, 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 groundwater at the Property for consumption or other beneficial use, until it can be demonstrated that contaminant concentrations in groundwater are below acceptable risk levels. 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.

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

3.2.1 Residential use of any type, until it can be demonstrated that contaminant concentrations in soil are below acceptable risk levels.

3.3 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 City of Klamath Falls zoning code or any successor code. As of the date of this EES, the base zone of the Property is Industrial.

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. 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 records of the County in which the Property is located, certifying that the condition or restriction is no longer required to protect human health or the environment.

6.5. Effect of Recording. Upon the recording of this EES, all future Owners are conclusively deemed to have consented and agreed to every condition and restriction contained 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.

6.6. 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 or seek available legal or equitable remedies to enforce this EES, including civil penalties as set forth in ORS 465.900.

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

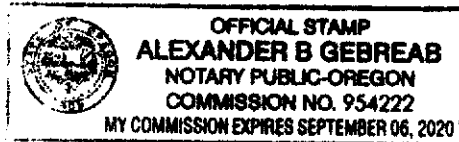
BY SIGNATURE BELOW, THE STATE OF OREGON APPROVES AND ACCEPTS THIS CONVEYANCE PURSUANT TO ORS 93.808.

GRANTOR: Estate of Rod Slade

By: [Signature], PR Date: 6-15-17
Dwight Slade, Personal Representative

STATE OF OREGON)
County of Multnomah) ss.

The foregoing instrument is acknowledged before me this 15th day of June, 20 17, by Dwight Slade of the Estate of Rod Slade, on its behalf.



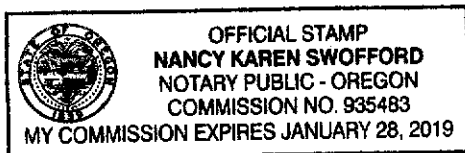
[Signature]
NOTARY PUBLIC FOR OREGON
My commission expires: 09/06/2020

GRANTEE: State of Oregon, Department of Environmental Quality

By: [Signature] Date: 6/6/2017
David Anderson, Cleanup, Emergency Response, Hydrogeology Manager,
Eastern Region

STATE OF OREGON)
County of Deschutes) ss.

The foregoing instrument is acknowledged before me this 6th day of June, 20 17, by David Anderson of the Oregon Department of Environmental Quality, on its behalf.



[Signature]
NOTARY PUBLIC FOR OREGON
My commission expires: 1/28/19

EXHIBIT A

Legal Description of the Property

THE FOLLOWING IS A LEGAL DESCRIPTION OF THE PROPERTY:

THE FOLLOWING IS A LEGAL DESCRIPTION OF THE PROPERTY:

Returned @ Cause

2012-004708

Klamath County, Oregon



00117653201200047080020029

05/04/2012 11:29:08 AM

Fee: \$42.00

After recording return to:

DONALD R. CRANE
Attorney at Law
37070 Highway 62
Chiloquin, OR 97624

Until a change is requested all tax statements
shall be sent to the following address:

SOS Properties *Attn: Kathy Cates*
No. 11, 84
Alturas, CA 96101

WARRANTY DEED

Edwin J. Clough III, Grantor, conveys and warrants to SOS Properties, a California Partnership,
Grantee, the following described real property free of encumbrances except as specifically set forth herein:

Lot 23, Block 19, SECOND RAILROAD ADDITION TO THE CITY OF KLAMATH
FALLS, according to the official plat thereof as filed in the office of the County
Clerk, Klamath County, Oregon.

ALSO that portion of the Northwest Quarter of the Southwest Quarter of Section
33, Township 38 South, Range 9 East of the Willamette Meridian, in the County of
Klamath, State of Oregon, being more particularly described as follows:

Beginning at a point 1136.5 feet South of the Southwest corner of Block 11 in
Railroad Addition to the City of Klamath Falls, Oregon, according to the duly recorded
plat in the office of said Klamath County; thence East 150 feet to the right of way of the
California Northeastern Railroad; thence South 150 feet to the North side of the County
Road; thence North 55 degrees West along said County Road 183 feet; thence North 45
feet to the place of beginning.

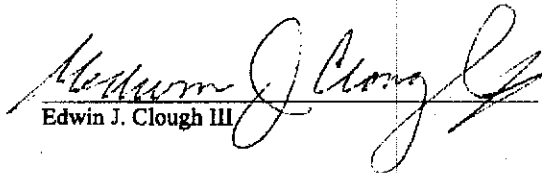
ALSO that portion of vacated South 6th Street more particularly described as
follows: Beginning at a point where the East line of Spring Street in the City of Klamath
Falls, Klamath County Oregon, intersects the Northerly line of South 6th Street, thence
along the East line of Spring Street extended, Southerly to a point on the center line of
South 6th Street, which line lies 30 feet Southerly, when measured at right angles to the
Northerly line of South 6th Street; thence Southeasterly and parallel to the Northerly line
South 6th Street to a point where it intersects the East line of Block 19, Second Railroad
Addition extended; thence North along said extended East line of said Block 19 to the
Northerly line of South 6th Street; thence Northwesterly along the Northerly line of
South 6th Street to the point of beginning.

The true consideration for this conveyance is \$-0-. However, the actual consideration consists of
or includes other property or value given or promised which is the whole of the consideration.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE
TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300,
195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007,
AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. THIS INSTRUMENT DOES
NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF

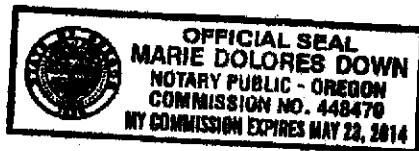
APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009."


Dated this 4th day of May, 2012.


Edwin J. Clough III

STATE OF OREGON)
) ss.
County of Klamath)

On this 4th day of May, 2012, personally appeared before me the above named Edwin J. Clough III and acknowledged the foregoing instrument to be his voluntary act and deed.




Notary Public for Oregon
My commission expires: 5-23-2014

Edwin J. Clough III,
to
SOS Properties, a California Partnership,

Grantor,
Grantee.