

2018-013178

Klamath County, Oregon



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10/29/2018 03:03:55 PM

Fee: \$152.00

Space above this line for Recorder's use.

After recording, return original to:

Grantee

Oregon DEQ
800 SE Emigrant Ave., Suite 330
Pendleton, OR 97801
Attention: Katie Robertson

Return a certified copy to:

Grantor

North Ridge Estates Receivership LLC
606 Columbia St NW, Suite 212
Olympia, WA 98501
Attention: Dan Silver

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes ("EES") is made on 10/22/2018 between North Ridge Estates Receivership LLC ("Grantor" or "Owner") 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 on North Ridge Dr. in Klamath Falls, Klamath County, Oregon in Klamath County Tax Map 38S9E15D, Tax Lot 3100 (the "***Property***") the location of which is more particularly described in Exhibit A to this EES. The Property is referenced under the name North Ridge Estates (NRE) Site, Operable Unit No. 1 (OU1), ECSI No. 2335 and under the name NRE Parcel MBK-B, ECSI No. 6027 in the files of DEQ's Eastern Region office located at 800 SE Emigrant Ave., Suite 330, Pendleton, Oregon, and telephone 541-276-4063.

B. A detailed description of the residual risks present at the Property is presented in the "North Ridge Estates Site, Klamath County, Oregon Risk Investigation Report" prepared by CDM Federal Programs Corporation for the U.S. Environmental Protection Agency (EPA) and dated January 18, 2010. This report is available for review at the DEQ office referred above and through EPA under CERCLIS Identification Number ORD 001002476. The NRE OU1 Superfund file may also be viewed at the EPA Region 10 Records Center located at 1200 Sixth Ave., Suite 900, Seattle, Washington, and telephone 206-553-4494.

C. The Property is located within the NRE Site OU1, which is a part of a National Priority List (NPL) site. The NPL site consists of over 50 primarily residential or vacant properties. The obligations of the Grantor under this EES run to the Property only and not to any other portion of the NPL site. The NPL site boundaries are shown on the figure included as Exhibit B. The Property is identified as Parcel MBK-B on the figure.

D. EPA issued the Record of Decision, NRE Operable Unit 1, dated September 2011 (ROD), for the NRE site OU1, which includes the Property. The Director of the DEQ concurred with the selected remedy in a letter dated September 16, 2011. The remedial action selected requires, among other things: excavation of the majority of surface and subsurface soils contaminated by hazardous substances to a maximum depth of four feet below ground surface; capping of remaining soils on the NRE Site OU1 parcels after soil removal with clean materials; consolidating and placing all excavated contaminated soils or materials in one or more on-site repositories; and applying institutional and engineering controls.

E. DEQ and EPA have entered into an agreement, dated May 19, 2014, titled "Superfund State Contract for North Ridge Estates Site, Operable Unit #1" in which DEQ assures that institutional controls, considered part of operation and maintenance (O&M) of the implemented CERCLA funded remedial actions, will be monitored and retained.

F. Remedial actions were performed on the Property from 2016 to 2018. Remedial actions included the excavation and off-Property disposal of contaminated soil and materials, backfilling and construction of a protective cap, and restoration.

G. The provisions of this EES are intended to protect human health and the environment and to meet the substantive institutional control requirements set forth in the ROD.

H. Nothing in this EES constitutes an admission by Grantor of any liability for the contamination described in the EES.

1. DEFINITIONS

- 1.1 "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.
- 1.2 "Engineering control" has the meaning set forth in Oregon Administrative Rule (OAR) 340-122-0115. The primary engineering control used at NRE OU1 is a protective cap.
- 1.3 "EPA" means the United States Environmental Protection Agency, and its employees, agents, and authorized representatives. "EPA" also means any successor or assign of EPA under the laws of the United States, including but not limited to any entity or instrumentality of the United States authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by EPA.

- 1.4 "Hazardous substance" has the meaning set forth in Oregon Revised Statute (ORS) 465.200.
- 1.5 "Institutional control" has the meaning set forth in OAR 340-122-0115.
- 1.6 "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.
- 1.7 "Property" means the real property described in Exhibit A to this EES.
- 1.8 "Remedial Action" has the meaning set forth in ORS 465.200 and OAR 340-122-0115 and Section 101(24) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601(24).

2. GENERAL DECLARATION

2.1 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 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 **Engineering Control & Earthwork Restrictions.** The following protective caps are present at the Property: 1) a minimum of a two foot soil cap placed over the Property.

Except upon prior written approval from DEQ, Owner may not conduct or allow operations or conditions on the Property or use of the Property that will or likely will penetrate the protective cap or jeopardize the protective cap's function as an engineering control that prevents exposure to contaminated materials.

Owner does not need written approval from DEQ for minor activities performed within the soil cap such as installation of fence posts, plantings, or other such activities that go no deeper than two feet below the ground surface as long as Owner restores the two-foot protective cap after the activities are completed.

Owner is required to maintain the protective cap present on the Property. This includes ensuring vegetation on the soil cap is maintained to prevent erosion, drainage on the Property is maintained to prevent the soil cap from eroding.

Owner shall submit a *North Ridge Estates Earthwork Notification and Reporting Form* (example included as Exhibit C) to DEQ at least 90 days prior to the date any ground disturbing (i.e. grading, trenching, digging) that will alter and/or reduce the thickness of the protective cap or penetrate below the protective cap except for emergencies, system failures, or time-critical repairs. Owner must receive written approval from DEQ before proceeding with activities. DEQ will make good faith efforts to review plans promptly so there are no undue delays. DEQ shall determine if an Oregon-licensed asbestos abatement company is required based on the work to be performed and review of records regarding remedial activities on the Property. If DEQ determines that the work must be performed by an Oregon-licensed company, Owner must utilize an Oregon-licensed asbestos abatement company during any action that may disturb a contaminated area.

Owner shall complete the reporting section of the *North Ridge Estates Earthwork Notification and Reporting Form* and re-submit to DEQ within 45 days of the completion of work.

3.2 Building Restriction. Owner may not construct any buildings on the Property. This includes but is not limited to house, barn, shop, shed, or other out buildings.

3.3 Stormwater Conveyance System. Owner shall routinely maintain stormwater features located on the Property to preserve stormwater conveyance capacity. Stormwater features include culverts, surface channels, and other miscellaneous features such as inlet structures. Owner shall not alter, impede, or restrict the flow of stormwater conveyed by these features through the Property.

3.4 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 provided written notice of the failure to maintain controls is given to Owner describing what is necessary to correct the failure and Owner fails to maintain the controls within the time specified in such notice, which shall be reasonable under the circumstances.

4. EASEMENT (RIGHT OF ENTRY)

4.1. Owner agrees to provide DEQ and EPA entry upon and inspection of any portion of the Property during reasonable hours and in accordance with Subsections 4.2 and 4.3, for the following:

- (1) To determine whether the requirements of this EES have been or are being complied with;
- (2) To determine whether the provisions of the ROD have or are being complied with;

- (3) To conduct all investigation, removal, and remedial measures and inspections described in the ROD; and
- (4) To conduct all other investigation, removal, and remedial measures and inspections that DEQ or EPA may require in the future at the Property.

Except when necessary to address an imminent threat to human health or the environment, DEQ or EPA will use best efforts to notify the Owner 48 hours before their entry to the Property. DEQ or EPA 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 written notice of the violation is given to Owner describing what is necessary to correct the violation and Owner fails to cure the violation within the time specified in such notice, which shall be reasonable under the circumstances. Any such entry by DEQ or EPA to evaluate compliance or to abate, mitigate, or cure a violation may not be deemed a trespass, and neither DEQ nor EPA shall be subject to liability to the Owner of the Property for such entry and any action taken to abate, mitigate, or cure a violation.

4.2. Access

A. Owner agrees to allow DEQ, EPA, and their officers, agents, authorized representatives, employees, and contractors to enter the Property for the purpose of performing remedial activities. Such remedial activities at the Property may include but are not limited to:

- (1) Sampling and inspecting air, water, and/or soil at the Property;
- (2) Constructing or excavating soil borings, test pits, and/or excavations at the Property;
- (3) Removing contaminated soils or materials from the Property;
- (4) Temporarily storing equipment, vehicles, tools, and other materials at the Property;
- (5) Temporarily storing wastewaters and related materials and wastes;
- (6) Restoring the surface condition of areas disturbed by remedial activities and repairing any structures or improvements damaged by remedial activities; and
- (7) Photographing portions of the property and structures, objects, and materials at the Property as necessary to facilitate remedial measures.

B. All tools, equipment, and other materials brought upon the Property by or at the direction of DEQ or EPA remain property of DEQ or EPA, respectively, and will be removed by DEQ or EPA upon completion of remedial activities at the Property. DEQ or EPA also will remove any wastes or wastewaters they generated upon completion of the remedial activities.

C. No later than completion of remedial activities at the Property, DEQ or EPA intend to restore the surface condition of areas disturbed by remedial activities, to the maximum extent

reasonably practicable, and to the extent permitted by law, to a condition equivalent to the condition existing before remedial activities.

D. DEQ or EPA will coordinate their activities with the Owner and any tenant to minimize, to the maximum extent reasonably practicable, any impairment of access by residents or guests on the Property and any inconvenience to or disruption of residents on the Property due to activities of DEQ or EPA.

E. Before undertaking any remedial activity at the Property, except for emergencies, system failures, or time-critical repairs, DEQ or EPA will use best efforts to provide the Owner and any tenant at least 48 hours verbal notice of the activity.

F. The Owner, or its authorized representative, may observe DEQ or EPA while DEQ or EPA are undertaking remedial activities at the Property; provided, any observer entering the defined work zone must have health and safety training consistent with the requirements of the applicable health and safety plan.

G. The Owner will not interfere with or otherwise limit any activity conducted at the Property pursuant to and consistent with this EES by DEQ, EPA, or their officers, employees, agents, contractors, or authorized representatives. This obligation also applies to and is binding upon any and all tenants of the Owner at the Property.

4.3. Nothing in this Section 4 is intended to convey a property interest to EPA. Conditions agreed upon by Owner in this Section 4 pertaining to EPA are pursuant to EPA's access and response authority in Section 104 of CERCLA, 42 U.S.C. § 9604.

5. THIRD PARTY BENEFICIARY RIGHTS OF EPA

5.1. EPA shall have the right, but shall not be obligated, to monitor and to enforce, by all means available in law or equity, the terms of this EES as a third party beneficiary of this EES.

5.2. EPA's rights provided in this Section 5 are in addition to, and not in derogation of, all rights of DEQ to enforce the terms of this EES. Nothing in this Section 5 shall be construed to create, either expressly or by implication, the relationship of agency between EPA and DEQ and neither EPA nor DEQ is authorized by this Section 5 to represent or act on behalf of the other in the enforcement of rights granted under this EES.

5.3. Grantor represents that it has notified EPA of EPA's status as a third party beneficiary under Section 5 of this EES.

6. RELEASE OF RESTRICTIONS

6.1. Owner may request release of any or all of the conditions or restrictions contained in this EES by submitting such request to 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 discretion of

DEQ and EPA, and will require their joint approval in writing unless DEQ and EPA agree otherwise in writing.

6.2. Upon a determination pursuant to Subsection 6.1, 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.

7. GENERAL PROVISIONS

7.1. **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 30 days before the effective date of any change in use of the Property that might expose human 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 6.1, unless DEQ agrees otherwise in writing. This subsection does not apply to the grant or conveyance of a security interest in the Property.

7.2. **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 Property is low density residential (RL).

7.3. **Partition.** Owner shall notify DEQ not less than 30 days before Owner's petitioning for or filing of any document initiating a partition of the Property, or relating to a possible partition of the Property. The restrictions in this EES shall run with any partitions of the Property.

7.4. **Payment of Costs or Expenses.** Unless necessary to a removal or remedial action performed by DEQ or EPA in accordance with the ROD, Owner shall pay all costs or expenses incurred related to future construction, excavation, use, or occupation of the Property, including but not limited to (a) demolition, design, engineering, permitting, construction, grading, excavation, and modifications, including architectural, structural, fixtures, utilities, or engineering modifications and HVAC modifications; (b) landscaping modifications; or (c) construction worker health or safety measures. This includes but is not limited to costs for an Oregon licensed asbestos abatement contractor, the removal, management and disposal of disturbed soils or material required to accommodate future construction, excavation, use, or occupation of the Property, and the subsequent repair of the cap (i.e. placement of clean soil, liner, rock, asphalt, etc.) described in Subsection 3.1 above.

7.5. **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. Notification

provided to DEQ must include sufficient detail to allow DEQ to determine compliance with EES requirements and include a photographic log.

7.6. **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 release 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.

7.7. **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.

7.8. **Enforcement and Remedies.** Upon any violation of any condition or restriction contained in this EES, the State of Oregon and the United States, in addition to the remedies described in Sections 4 and 5, may enforce this EES through any available means, seeking any available legal or equitable remedies.

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

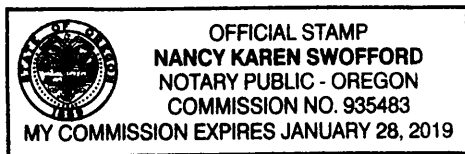
*(The remainder of this page is intentionally left blank.
Signature page follows.)*

GRANTEE: State of Oregon, Department of Environmental Quality

By: David Anderson Date: 10/22/2018
David Anderson, Cleanup Program Manager, Eastern Region

STATE OF OREGON)
) ss.
County of Deschutes)

The foregoing instrument is acknowledged before me this 22nd day of
October, 2018, by David Anderson as Cleanup Program Manager of the Oregon
Department of Environmental Quality, on its behalf.

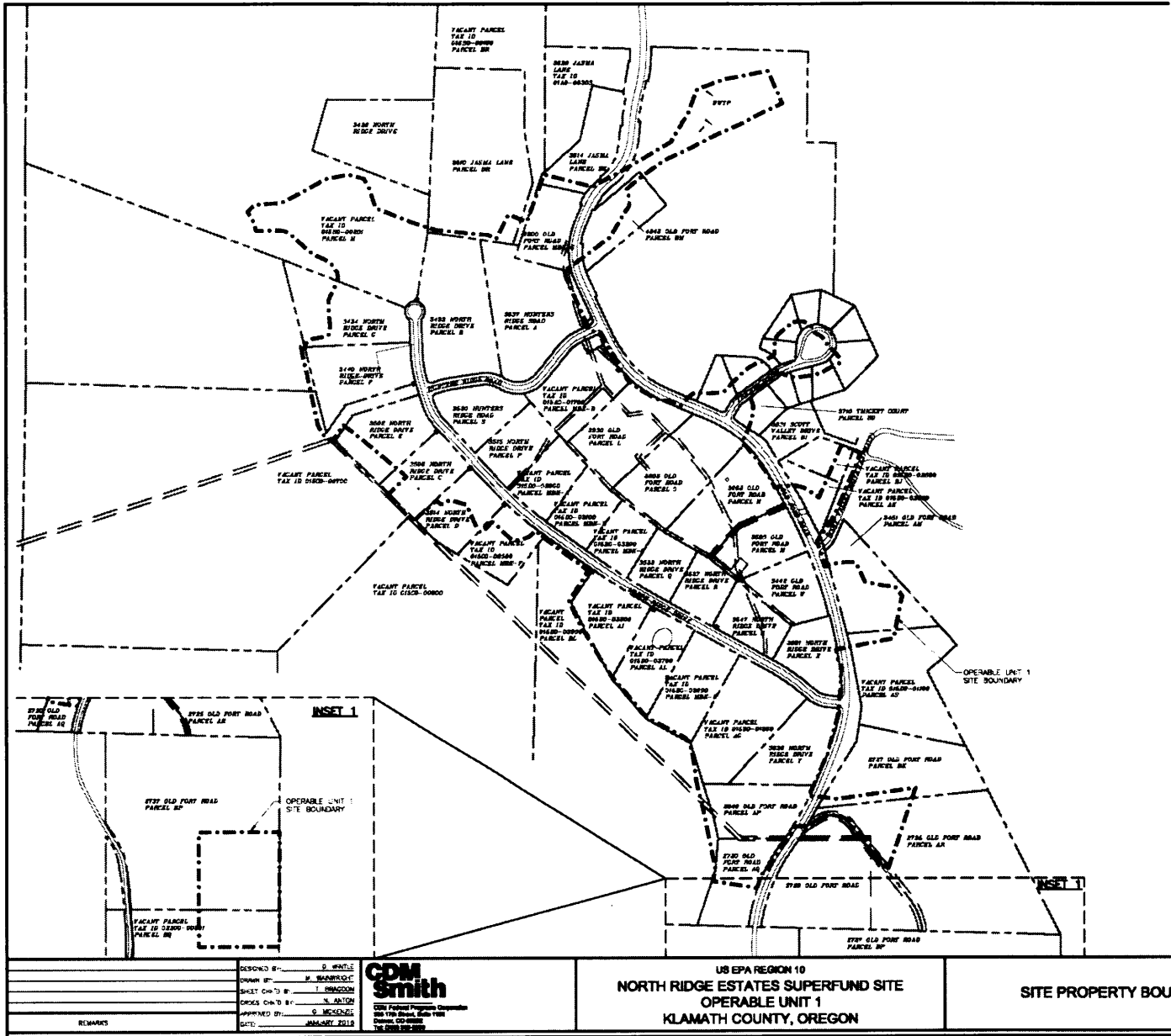


Nancy Karen Swofford
NOTARY PUBLIC FOR OREGON
My commission expires: 1/28/2019

EXHIBIT A

Legal Description of the Property

Lot 5 of TRACT 1306, SECOND ADDITION TO NORTH RIDGE ESTATES, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.



Easement and Equitable Servitudes

North Ridge Estates Receivership LLC

EXHIBIT C – EXAMPLE OF NORTH RIDGE ESTATES EARTHWORK NOTIFICATION AND REPORTING FORM



North Ridge Estates Earthwork Notification and Reporting Form

This Form consists of two parts: *Notification* and *Reporting*. The Notification Section is required to be completed and submitted by the property owner or representative to the Department of Environmental Quality (DEQ) at least 90 days prior to the date any ground disturbing or construction activities are scheduled to begin except for emergencies, system failures, or time-critical repairs. **Written approval from DEQ is required before proceeding with activities.** The Reporting Section is required to be completed and submitted by the property owner or representative to the DEQ within 45 days of the completion of work.

This Form is not required for minor activities such as installation of fence posts, plantings, or other such activities that go no deeper than two feet below the ground surface and conclude with the protective cap being restored to original grade.

Owners should ensure excavation work does not impact underground utilities by calling the Oregon Utility Notification Center (811) prior to performing any excavation activities.

Am I required to complete this form and perform associated requirements? Yes. The submittal of this *North Ridge Estates Earthwork Notification and Reporting Form* and following any requirements (i.e. using an Oregon-licensed asbestos abatement company during ground disturbing action) specified by DEQ is required by the Easement & Equitable Servitude (deed restriction) recorded on your property. Failure to submit the Form and follow requirements may result DEQ enforcing the EES through any available means, including any available legal or equitable remedies.

Why do I have to do this? Asbestos contaminated material and asbestos fibers remain in soils under the protective cap constructed on your property. Working with DEQ will prevent exposure to you, other residents, and workers to asbestos fibers in soil, prevent migration of asbestos contamination to clean areas, and ensure contaminated soil is properly handled and disposed.

Who pays for preparation of the form and any requirements? The property owner is responsible for all costs (including the Oregon-licensed asbestos abatement company) associated with any voluntary ground disturbing or construction activities performed on their property in accordance with the Easement & Equitable Servitude. There is no cost associated with the review of the Form by DEQ.

What does the protective cap look like? Multiple types of materials were used as protective caps including but not limited to minimum of two-feet of clean soil, asphalt and concrete surfaces, large rock surfaces, and liners (i.e., below covered porches and in crawlspaces).

Where is the protective cap located on my property? Protective caps were installed on the entire property of the majority of homes within the North Ridge Estates

Subdivision following excavation activities. Some properties, generally on the east side of Old Fort Rd., have protective caps on only a portion of the property. As-built drawings for each property were prepared following the completion of the cap installation. These drawings show the location excavated and capped areas.

Where can I find a copy of the easement & equitable servitude and as-built drawings for my property? These documents may be viewed on-line through DEQ's Environmental Cleanup Site Information (ECSI) database.

Go to <http://www.oregon.gov/deq/pages/index.aspx> under the "Hazards and Cleanup" section, select "Environmental Cleanup Site Information Database" select "Search complete ECSI database", then enter NRE in the Site Name box and click "Submit" at the bottom of the page. Next, find your property and click the Site ID No. (i.e. 6014) in the Site ID/Info column. Scroll down to the Site Document section to select the documents. If you do not have web access or need assistance, please contact the DEQ project manager listed below.

Where do I submit this form? Submit the form to the DEQ project manager listed below.

Who do I call with questions? Please contact the DEQ project manager listed below with any questions.

Katie Robertson
DEQ Project Manager
Phone: 541-278-4620
Fax: 541-278-0168
800 SE Emigrant Ave., Suite 330
Pendleton, OR 97801
Email: Robertson.Katie@deq.state.or.us

EXHIBIT C – CONTINUED

North Ridge Estates Earthwork Notification and Reporting Form Notification Section

Contact Person Information

Name: _____
Company: _____
Mailing Address: _____
City: _____ State: _____ Zip: _____
Phone: _____
Email: _____

Property Owner Information

Same as Contact Person? ☐ Yes ☐ No
Name: _____
Mailing Address: _____
City: _____ State: _____ Zip: _____
Phone: _____
Email: _____

Property Address Where Work Will be Performed: _____

Form Completed By: _____

Describe Work to be Performed: _____

Expected Depth of Work: _____ feet below ground surface

Date Excavation or Construction Actions Expected to Start: _____

Visit www.Oregon.gov/DEQ for a list of Oregon licensed asbestos abatement contractors. Select the *Asbestos Information for Homeowners* topic and then select the *Hiring the Right Contractor* topic to view the current list.

Proposed Asbestos Abatement Company Name: _____

Contact: _____ Phone: _____

- ☐ Attach a drawing showing the approximately location of work (See the cover page for directions on finding your as-built drawings on-line). Drawing must show at a minimum major site features (i.e. house, driveway) and location of planned excavation or construction activities.

Submit the form to:

Katie Robertson, DEQ Project Manager

Via Email: Robertson.Katie@deq.state.or.us

Via Mail: 800 SE Emigrant Ave., Suite 330, Pendleton, OR 97801

Questions? Call 541-278-4620

Via Fax: 541-278-0168

DEQ to Complete

Date Received: _____

Will work breach protective cap?

☐ Yes Reason: ☐ work deeper than cap ☐ work disturbed liner ☐ other: _____

If Yes, use of Oregon licensed asbestos abatement contractor required to perform ground disturbing portions of work and manage contaminated material generated. Excavated soil required to go to a landfill that accepts asbestos contaminated materials.

☐ No Reason: ☐ work less than cap depth ☐ work will not disturb liner ☐ other: _____

If no, completion of Reporting Section not required.

☐ Additional Information Needed. Specify: _____

Additional Information Received on: _____

☐ DEQ approves work described above to proceed.

Approved by: _____ Date Approved: _____

☐ DEQ approval not required as work is not expected to breach cap (i.e. cap is > 2 feet in this area).

Reviewed by: _____ Date: _____

EXHIBIT C – CONTINUED

North Ridge Estates Earthwork Notification and Reporting Form *Reporting Section*

Reporting Section Completed By:

Name:	_____
Company:	_____
Mailing Address:	_____
City:	_____ State: _____ Zip: _____
Phone:	_____
Email:	_____

Asbestos Abatement Company that performed the cap disturbing work:

Same as Contact Person?	☐ Yes ☐ No
Name:	_____
Company:	_____
Mailing Address:	_____
City:	_____ State: _____ Zip: _____
Phone:	_____
Email:	_____

Dates Asbestos Abatement Company performed work: _____

Attach the following:

- ☐ Drawing showing actual location of cap disturbing work
- ☐ Photos of Restored Area
- ☐ Documentation from the Asbestos Abatement Company for work completed
- ☐ Landfill Disposal Receipts for asbestos contaminated material

Submit the form to:

Katie Robertson, DEQ Project Manager

Questions? Call 541-278-4620

Via Email: Robertson.Katie@deq.state.or.us

Via Mail: 800 SE Emigrant Ave., Suite 330, Pendleton, OR 97801

Via Fax: 541-278-0168

DEQ to Complete

Date Received: _____

All required documentation provided? ☐ Yes ☐ No Explain: _____

Follow-up Required? ☐ Yes Explain: _____ ☐ No

☐ Cap restoration confirmed during annual site inspection or other site visit.

Inspected by: _____ ☐ DEQ ☐ Contractor _____

Date Inspected: _____