

Space above this line for Recorder's use.

After recording, return to:

Grantee

Oregon Department of Environmental Quality
400 E. Scenic Drive, Suite 307
The Dalles, Oregon 97058
Attention: Bob Schwarz, P.E.

Grantor

Oregon Department of Transportation
63055 N Highway 97, Building M
Bend, Oregon 97703
Attention: Ryan Franklin, C.E.G.

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes ("EES") is made on October 3, 2019 between the Oregon Department of Transportation ("ODOT" or "***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 2557 Altamont Drive, Klamath Falls in Klamath County, Oregon in Klamath County Tax Map 39S09E03DB, Tax Lot 01000 (the "***Property***") the location of which is more particularly described in Exhibit A to this EES. The Property is referenced under the name ODOT – Klamath Falls Maintenance Facility, ECSI # 4599 in the files of DEQ's Environmental Cleanup Program at Eastern Region office located at 400 E. Scenic Drive, Suite 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 the site files.

B. On March 18, 2019 the Director of the Oregon Department of Environmental Quality or delegate issued a Staff Report in support of a conditional No Further Action Determination, and on August 7, 2019, it issued its No Further Action letter with conditions. The conditional No Further Action letter requires notification to utility owners about possible exposure to contaminants by excavation workers; implementation of a deed restriction (easement and equitable servitudes) prohibiting use of shallow groundwater at this site; and conformance with a contaminated media management plan prepared by Grantor and dated March 21, 2018.

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

D. 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 "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 "Ecological receptor" has the meaning set forth in OAR 340-122-0115.
- 1.3 "Hazardous substance" has the meaning set forth in ORS 465.200
- 1.4 "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.
- 1.5 "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. **Water Use Restrictions.** The following operations and uses are prohibited on the Property without prior DEQ approval: Use of shallow groundwater.
- 3.2. **Contaminated Media Management Plan (CMMP):** Owner will implement the conditions of the CMMP. The CMMP is on file with the DEQ Eastern Region Office, 400 E. Scenic Drive, Suite 307, The Dalles, Oregon, and telephone 541-298-7255.
- 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 Klamath County zoning code or any successor code. As of the date of this EES, the base zone of the Property is General Commercial.

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.

Available Funding. The State of Oregon's payment obligations under this Agreement are conditioned upon ODOT receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. Nothing in this Agreement is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. ODOT shall employ good-faith efforts to request and seek funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODOT to perform its payment obligations throughout the term of this Agreement.

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. Owner will submit inspector records to DEQ within 30 days of receipt of a notice letter from DEQ of its periodic review of compliance with this EES. Reports provided to DEQ in response to this notification must include sufficient detail to allow DEQ to determine compliance with EES requirements, and include a photographic log that supports the report's narrative.

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 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.

6.6. **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.

6.7. **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 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: Oregon Department of Transportation

By: [Signature] Date: 10/21/19
Scott C. Claus, State Right of Way Manager – Utility – Railroad – Section Manager

STATE OF OREGON)
) ss.
County of Marion)

The foregoing instrument is acknowledged before me this 21 day of October, 2019, by Scott C. Claus of Oregon Department of Transportation, on its behalf.



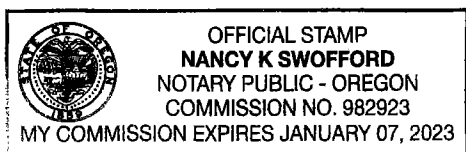
[Signature]
NOTARY PUBLIC FOR OREGON
My commission expires: 11/13/21

GRANTEE: State of Oregon, Department of Environmental Quality

By: [Signature] Date: 10/14/2019
David Anderson, Tanks, Cleanup and Emergency Response Manager, Eastern Region

STATE OF OREGON)
) ss.
County of Deschutes)

The foregoing instrument is acknowledged before me this 14th day of October, 2019, by _____ David Anderson of the Oregon Department of Environmental Quality, on its behalf.



[Signature]
NOTARY PUBLIC FOR OREGON
My commission expires: 1/7/2023

EXHIBIT A

Legal Description of the Property

Beginning at the iron pin which is the center of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon and running thence South 0° 20' West a distance of 260.5 feet; thence South 89° 40' East a distance of 30.0 feet to the Point of Beginning of the Tract, which Point of Beginning is 30 feet east of the center of the road and 50 feet southwesterly from the center line of the Oregon, California and Eastern Railroad, being on the southerly right of way line of said railroad; thence from the above described point of beginning South 0° 20' West a distance of 361.7 feet to a point which is 30.0 feet east of the center line of the road; thence South 89° 40' East a distance of 625.6 feet; thence North 27° 61' West a distance of 145.6 feet, more or less, to a point on the southerly right of way line of the Oregon, California and Eastern railroad and South 66° 56' East 603.7 feet from the point of beginning; thence North 66° 56' West, along the southerly right of way line of the Oregon, California and Eastern Railroad, a distance of 603.7 feet to the said Point of Beginning described above.

