

108

AFTER RECORDING RETURN TO:

Return a copy to:
Assistant City Recorder, Kelly Burgoyne
P.O. Box 3040
Oregon City, Oregon 97045-0304

Oregon City: *Grantor*
State of Oregon-DEQ: *Grantee*

Clackamas County Official Records
Sherry Hall, County Clerk

2012-019062



\$92.00

01569675201200190620100102

03/30/2012 12:42:52 PM

D-E Cnt=1 Stn=1 JANISKEL
\$50.00 \$16.00 \$16.00 \$10.00

CITY OF OREGON CITY, OREGON

EASEMENT AND EQUITABLE SERVITUDES

RE-RECORDED

DOCUMENT COVER PAGE

NOTE: Document has been re-recorded at the request of the City of Oregon City to correct the notary block on page 5 previously recorded as document number 2012-010299.



\$87.00

01559906201200102990090096

02/23/2012 01:29:20 PM

D-E Cnt=1 Stn=1 JANISKEL
\$45.00 \$16.00 \$16.00 \$10.00

Space above this line for Recorder's use.

~~After recording, return to:~~

Oregon DEQ
475 NE Bellevue Drive, Suite 110
Bend, Oregon 97701-7415
Att: Cliff Walkey

After recording, return a copy to:
Kelly Burgoyne, Asst. City Recorder
City of Oregon City
P. O. Box 3040
Oregon City, Oregon 97034

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes is made January 16, 2012 between the Oregon City ("**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 1757 Washington Street in Oregon City, Oregon in Clackamas County Tax Map 2-2E-29, Tax Lot 1403 (the "**Property**") the location of which is more particularly described in Attachment A to this Easement and Equitable Servitudes, and referenced under the name Amtrak Depot (former Stimson Lumber), ECSI # 2288 in the files of DEQ's Environmental Cleanup Program at the DEQ Bend, Oregon office. Interested parties may contact the DEQ's Bend, Oregon office to review a detailed description of the residual risks present at the Property and found in the report titled *Results of Soil and Groundwater Investigation Former Stimson Lumber Mill Facility, Parcel 1, Oregon City, Oregon* (Roy F. Weston, Inc., March 4, 1998. In addition, a complimentary report titled *Phase 2 Remedial Closure Report Amtrak Station 1757 Washington Street Oregon City, Oregon* (Weston Solutions, Inc., July 2011) may also be reviewed for pertinent site information.

B. During April, 2002, the Director of the Oregon Department of Environmental Quality or delegate selected the remedial action for the Property set forth in the Record of Decision (ROD) for the Property [*Record of Decision Selected Remedial Action for Soil at the Former Stimson Lumber Company – Parcel 1 Oregon City, Oregon*]. The remedial action selected requires, among other things, that a plan be developed for long-term maintenance of the cap and recordation of an appropriate covenant governing future use.

C. On July 25, 2011, Grantor entered into an Independent Cleanup Agreement (***Agreement***) with DEQ, under which Grantor agreed to implement the selected remedial action, including the required institutional controls.

D. The provisions of this Easement and Equitable Servitudes are intended to further the implementation of the selected remedial action and thereby protect human health and the environment.

1. DEFINITIONS

- 1.1 "Acceptable risk level" has the meaning set forth in Oregon Revised Statute (ORS) 465.315 and Oregon Administrative Rule (OAR) 340-122-0115.
- 1.2 "Beneficial use" has the meaning set forth in OAR 340-122-0115.
- 1.3 "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.
- 1.4 "Ecological receptor" has the meaning set forth in OAR 340-122-0115.
- 1.5 "Engineering control" has the meaning set forth in OAR 340-122-0115.
- 1.6 "Hazardous substance" has the meaning set forth in ORS 465.200
- 1.7 "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, 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.
- 1.8 "Property" means the real property described in Attachment A to this Easement and Equitable Servitudes.

2. GENERAL DECLARATION

Grantor, in consideration of Grantee's issuance of a No Further Action (NFA) determination, grants to DEQ an Easement for access and accepts the Equitable Servitudes described in this instrument and, in so doing, declares that the Property described in Attachment A to this Easement and Equitable Servitudes, is now subject to and shall in future be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this Easement and Equitable Servitudes. Each condition and restriction set forth in this Easement and Equitable Servitudes touches and concerns the Property and the equitable servitudes granted in paragraph 3 and easement granted in paragraph 4 below, shall run with the land for all purposes, shall be binding upon all current and future owners of the Property as set forth in this Easement and Equitable Servitudes, and shall inure 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 Easement and Equitable Servitudes.

3. EQUITABLE SERVITUDES (RESTRICTIONS ON USE)

3.1 Groundwater Use Restrictions: Owner shall not extract through wells or by other means or use the groundwater at the Property for consumption or other beneficial use, as long as the hazardous substance concentrations exceed the acceptable risk level for such use. This prohibition shall 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 shall 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 Soil Cap Engineering Control Use Restrictions: Except upon prior written approval from DEQ, Owner shall not conduct operations on the Property or use the Property in any way that will or likely will penetrate the soil cap or jeopardize the soil cap's protective function as an engineering control that prevents exposure to contaminated soil, including without limitation any excavation, drilling, scraping, or erosion. Owner shall maintain the soil cap in accordance with the monitoring and maintenance plan as described in the report titled *Phase 2 Remedial Closure Report Amtrak Station 1757 Washington Street Oregon City, Oregon* (Weston Solutions, Inc., July 2011 (July 2011 Weston Phase 2 Closure Report); the DEQ April 2002 Record of Decision (ROD); and, as approved in writing by DEQ (DEQ, January 16, 2012) .

3.3 Access Restrictions: Owner shall install and maintain a fence to restrict access to the area capping residually contaminated soils.

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

- a. Residential use of any type; and
- b. Agricultural [food-crop] use of any type.

3.5 Use of the Property. Owner shall not occupy or allow other parties to occupy the Property unless the controls listed in this Paragraph 3 are maintained and an annual inspection completed as specified in the July 2011 Weston Phase 2 Closure Report, and as approved in writing by DEQ (DEQ, January 16, 2012). Owner shall submit to DEQ the Report's completed Annual Site Inspection Form (see Attachment B) and at least two photographs taken in conjunction with the inspection documenting that the restrictions and prohibitions of this Easement and Equitable Servitudes are intact and continue to protect public health and the environment.

3.6 **Notice of Transfer.** Owner shall notify DEQ at least ten (10) days before 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, or the start of any development activities or change in use of the Property that might expose human or ecological receptors to hazardous substances at the Property. Notwithstanding the foregoing, Owner shall not commence any development inconsistent with the conditions or restrictions in this Paragraph 3 without prior written approval from DEQ as provided in Paragraph 3.2 or removal of the condition or restriction as provided in Paragraph 5.1 below.

3.7 **Zoning Changes.** Owner shall notify DEQ no less than thirty (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 Oregon City and/or Clackamas County zoning code or any successor code. As of the date of this Easement and Equitable Servitudes, the base zone of the Property Mixed Use Downtown.

3.8 **Cost Recovery.** Owner shall reimburse DEQ's reasonable costs to review and oversee implementation of, and compliance with, the provisions in this E&ES, except that such costs shall not exceed the equivalent of three (3) hours each year unless extraordinary circumstances warrant the expenditure of additional resources. 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.

4. EASEMENT (RIGHT OF ENTRY)

During reasonable hours and subject to reasonable security requirements, DEQ shall have the right to enter upon and inspect any portion of the Property to determine whether the requirements of this Easement and Equitable Servitudes have been or are being complied with. DEQ shall have the right, privilege, and license to 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 Easement and Equitable Servitudes, 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 shall not be deemed a trespass, and DEQ shall not be subject to liability to Owner for such entry and any action taken to abate, mitigate, or cure a violation.

5. GENERAL PROVISIONS

5.1 Each condition and restriction contained in this Easement and Equitable Servitudes shall be recited in any deed conveying the Property or any portion of the Property, and shall run 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 in order to protect human health or the environment.

5.2 Upon the recording of this Easement and Equitable Servitudes, all future Owners, as defined in Paragraph 2.2 above, shall be conclusively deemed to have consented and agreed to every condition and restriction contained in this Easement and Equitable Servitudes, whether or not any reference to this Easement and Equitable Servitudes is contained in an instrument by which such person or entity occupies or acquires an interest in the Property.

5.3 Upon any violation of any condition or restriction contained in this Easement and Equitable Servitudes, DEQ, in addition to the remedies described in Paragraph 4 above, may enforce this Easement and Equitable Servitudes, or may seek any other available legal or equitable remedy to enforce this Easement and Equitable Servitudes.

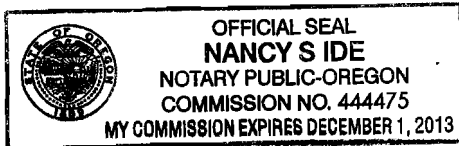
IN WITNESS WHEREOF Grantor and Grantee have executed this Easement and Equitable Servitudes as of the date and year first set forth above.

GRANTOR:[Oregon City]

By: David W. Frasher Date: 2-17-12
David Frasher, City Manager

STATE OF OREGON)
County of Clackamas) ss.

The foregoing instrument is acknowledged before me this 17th day of February, 2012, by Kathy Griffin City of Oregon City, on its behalf. and Nancy Ide David Frasher and 2012



Nancy S. Ide
NOTARY PUBLIC FOR OREGON
My commission expires: 12/01/2013

Approved by Nancy J.T. Kraushaar, P.E., as City Engineer and Public Works Director of the City of Oregon City.

Nancy J.T. Kraushaar
Nancy J.T. Kraushaar

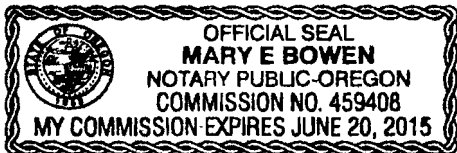
02/16/2012
Date

GRANTEE: State of Oregon, Department of Environmental Quality

By: Sheila Monroe Date: 1/5/12
Sheila Monroe, Cleanup Manager, Eastern Region

STATE OF OREGON)
) ss.
County of Wasco)

The foregoing instrument is acknowledged before me this 5th day of Jan, 2012, by Sheila Monroe of the Oregon Department of Environmental Quality, on its behalf.



Mary E Bowen
NOTARY PUBLIC FOR OREGON
My commission expires: 6-2015



Exhibit A
1757 Washington Street

**DAVID EVANS
AND ASSOCIATES INC.**

ORCT0000-0012
JSW
1/16/01
Revised 9/10/01

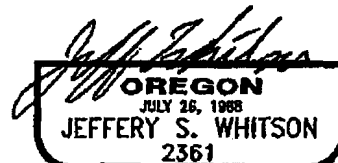
**Legal Description
Adjusted Parcel 1 of Partition Plat 1996-30**

A portion of Parcel 1 and Parcel 2 of Partition Plat 1996-30, situated in the George Abernethy D.L.C. No. 58 and in the Hiram Straight D.L.C. No. 42, in the northwest and southwest one-quarters of Section 29 in Township 2 South and Range 2 East of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, being more particularly described as follows:

Beginning at a 5/8" iron rod with yellow plastic cap stamped "KAMPE ASSOCIATES, INC." at the northwesterly corner of said Parcel 1, said iron rod also being on the southeasterly right-of-way line of the Union Pacific Railroad; and running thence tracing said southeasterly right-of-way line and the northwesterly line of said Parcel 1 and continuing along the northwesterly line of said Parcel 2 North 42° 00' 00" East 489.61 feet; thence leaving said southeasterly right-of-way line South 48° 00' 00" East 149.00 feet; thence South 42° 00' 00" West 300.00 feet to the northeasterly line of said Parcel 1; thence tracing said northeasterly line South 56° 37' 37" East 177.73 feet to the southeasterly corner thereof, said corner being on the northwesterly right-of-way line of Washington Street at a point of non-tangent curvature; thence tracing said right-of-way line along the arc of a 1402.39 foot-radius curve to the right, through a central angle of 2° 24' 16", an arc distance of 58.85 feet (the long chord of which bears South 42° 58' 45" West 58.85 feet); thence continuing along said right-of-way line South 44° 10' 53" West 109.02 feet to the southwesterly corner of said Parcel 1; thence leaving said right-of-way line and tracing the southwesterly line of said Parcel 1 North 56° 37' 37" West 323.22 feet to the point of beginning.

Containing an area of 100,260 square feet, more or less.

Based on Partition Plat 1996-30, as it is recorded in the Clackamas County Surveyor's Office.



RENEWAL 6/30/08

o:\project\o\orc0000-0012\survey\general files\orc112p1.doc

INSPECTION AND MAINTENANCE PLAN PARCEL 1, OREGON CITY, OREGON

The Inspection and Maintenance Plan (IMP) describes activities to be performed to ensure that the selected remedial alternative is implemented in accordance with the requirements proposed in the ODEQ Staff Report and any maintenance is conducted so the integrity of the cap is maintained. The primary tasks outlined in the IMP include annual inspections and performing maintenance as needed.

Annual Inspections

Annual inspections will be conducted to verify that the cap is prohibiting human contact in the area of residual soil concentrations, and water infiltration in this area is also minimized. Following the completion of Phase 1, observed areas of soil erosion or pavement damage would require prompt repair. Following the installation of the columns and grade beams during Phase 2, the area beneath the depot building will be repaved. The depot and building platform will also act as a cap because steel mesh fencing around the perimeter of the building platform will prohibit access to the area of residual soil concentrations. The ability of the fencing to prohibit access to the area of residual soil concentrations will be verified. Cracked or damaged asphalt in the area of residual soil should be noted for repair to limit the infiltration of storm water runoff from the railroad platform that will flow beneath the building.

A form has been developed for inspections following the completion of Phase 2. A copy of the forms is included in this plan. In addition to completing the appropriate form, a minimum of two photos will be submitted to document the current condition of the cap. The completed forms and photo documentation will be submitted to the Oregon DEQ at the following address:

Oregon Department of Environmental Quality
Northwest Region
2020 SW Fourth Avenue—Suite 400
Portland, OR 97201

Maintenance Activities

Maintenance and repairs to the cap will be a requirement of the property owners/operators. Observed areas of cracked and/or damaged pavement would require prompt repair. Potential maintenance items could include repairs to paving, fencing, and drainage structures. In the event that the cap is fully breached and the soil from the area of residual PCP or TPH concentrations is exposed, the need for a site-specific health and safety plan should be evaluated to conduct the repairs. A maintenance report will be completed following significant repairs to the cap and submitted to the Oregon DEQ at the address listed above. Routine maintenance (i.e., removing debris from drainage structures) would not require a report but should be listed on the inspection form.

**ANNUAL SITE INSPECTION FORM
FOLLOWING PHASE 2 COMPLETION**

**AMTRAK DEPOT SITE
1757 WASHINGTON STREET
OREGON CITY, OREGON**

Date: _____ Name: _____

1. Integrity of Cap

a) Is access beneath the cap formed by the depot and railroad platform possible?

Yes _____ No _____

b) Is direct contact of residual soil concentrations possible?

Yes _____ No _____

Comments: (required for all yes answers)

2. Potential for Water Infiltration

a) Any signs of water infiltration in the area of residual soil concentrations?

Yes _____ No _____

b) Are drainage features and/or the asphalt cap failing to divert water away from the area of residual soil concentrations?

Yes _____ No _____

Comments: (required for all yes answers)

3. Repairs

If present, describe any cap breaches or repairs, and how the repairs were handled. Use additional sheets, as needed.

**Adjusted Taxlot
2-2E-29 -01403**

RECORD OF SURVEY

FOR
THE CITY OF OREGON CITY
OF
PROPERTY LINE ADJUSTMENT

Exhibit B
1757 Washington Street

SITUATED IN THE GEORGE ABERNETHY D.L.C. NO. 58, AND THE HIRAM STRAIGHT
D.L.C. NO. 42 AND THE NORTHWEST AND SOUTHWEST ONE-QUARTERS OF SECTION 29
IN TOWNSHIP 2 SOUTH AND RANGE 2 EAST OF THE WILLAMETTE MERIDIAN,
CITY OF OREGON CITY, CLACKAMAS COUNTY, OREGON

SCALE: 1"=100'

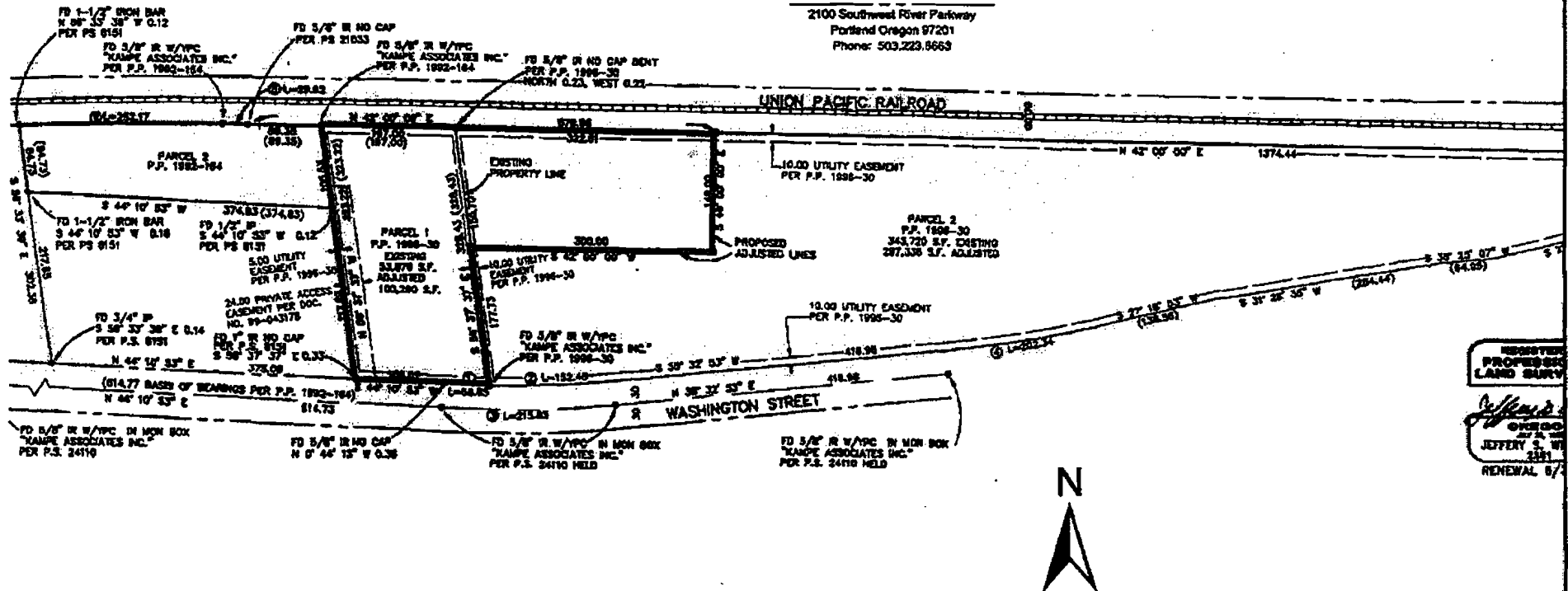
OREGON CITY PLANNING FILE NO. LLO1-01

DECEMBER 15, 2002



**DAVID EVANS
AND ASSOCIATES INC.**

2100 Southwest River Parkway
Portland Oregon 97201
Phone: 503.223.9663



REGISTERED
PROFESSIONAL
LAND SURVEYOR
Jeffery S. W.
JEFFERY S. W.
2001
RENEWAL 6/2

**City of Oregon City
Amtrak Station Taxlot
2-2E-29 -01403**

This map is not suitable for survey,
engineering, legal, or navigation purposes.
Data errors and omissions may exist.

City of Oregon City
P.O. Box 320
Warner Mine Rd
Oregon City, OR 97045
(503) 857-0501 phone
(503) 857-0520 fax
www.oregoncity.org

