

LINN COUNTY, OREGON	2024-02362
E-EAS	03/08/2024 09:20:00 AM
Stn=10122 S. WILSON	
\$40.00 \$5.00 \$11.00 \$10.00 \$60.00	\$145.00
\$19.00	
I, Marcie Richey, County Clerk for Linn County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.	
Marcie Richey - County Clerk	

Space above this line for Recorder's use.

After recording, return to:

Grantee

Oregon DEQ
 165 E. 7th Avenue, Suite 100
 Eugene, OR 97401
 Attention: Bruce Scherzinger

Grantor

BNSF Railway Company
 Attn: Dean Ferris
 BNSF Director of Right of Way and Real Estate Management
 2650 Lou Menk Drive
 Fort Worth, TX 76131

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes (“EES”) is made on December 6, 2023 between BNSF Railway Company (“**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 1414 Southeast Salem Avenue, Albany, 97321 in Linn County, Oregon. Map Tax Lot 11S03W05CC04300 (the “**Property**”), the location of which is more particularly described in Exhibit A to this EES. The Property is referenced under the name Truax Bulk Petroleum Storage Facility (Former), ECSI # 1961 in the files of DEQ’s Environmental Cleanup Program at the Western Region office located at 4026 Fairview Industrial Dr SE Salem Oregon, and telephone (503) 378-8240. Interested parties may contact the Western Region office to review a detailed description of the risks from contamination remaining at the Property and described in the Soil Gas and Groundwater Sampling Results report completed by Kennedy/Jenks Consultants in June 2022.

B. On 11/22/2022, 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 set forth in the Staff Memo for the Property Equity Easement Servitude. The remedial action selected requires, among other things: restricting future groundwater extraction; residential development; and a Contaminated Media Management Plan (CMMP) prepared by Kennedy/Jenks will be made available to contractors for any future site development within the footprint of the existing property in the event contaminated soil and groundwater is encountered.

C. On December 6, 2023 the Grantor entered into an Equitable Easement Servitude (EES) 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 "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 "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. 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 wastewater according to applicable laws.

3.2 **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.

3.3 **Contaminated Media Management Plan.** Implement the Contaminated Media Management Plan dated October 25, 2023 (located in WebDocs under ECSI # 1961: <https://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/ecsi.aspx>) as may be amended from time to time with DEQ's written approval.

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.

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.** The Property, along with the adjacent right-of-way is currently the subject of a lease to the Portland & Western Railroad. Owner must notify DEQ within 10 days after the effective date of any future 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 Linn County zoning code or any successor code. As of the date of this EES, the base zone of the Property is RM, Residential Medium Density.

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.

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 enforce this EES as provided in the Agreement 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.



AKS ENGINEERING & FORESTRY
3700 River Road N, Suite 1, Keizer, OR 97303
P: (503) 400-6028

AKS Job #10245

OFFICES IN: BEND, OR | KEIZER, OR | THE DALLES, OR | TUALATIN, OR | VANCOUVER, WA | WHITE SALMON, WA

EXHIBIT A

Description

A unit of land located in the Southwest One-Quarter of Section 5, Township 11 South, Range 3 West, Willamette Meridian, City of Albany, Linn County, Oregon, and being more particularly described as follows:

Commencing at the southeasterly corner of Parcel 1 of Partition Plat No. 2012-30, recorded as County Survey 25517, Linn County Survey Records, being the southeasterly corner of Block 17 of the plat "Hacklemans 3d Addition to Albany Or.", recorded as County Survey 1999-F, Linn County Survey Records, also being the intersection of the westerly right-of-way line of SE Pine Street (30.00 feet from centerline) and the northerly right-of-way line of SE Salem Avenue (30.00 feet from centerline); thence South $83^{\circ}37'02''$ East 326.55 feet to the northeasterly corner of a fence enclosure, and the Point of Beginning; thence tracing said fence enclosure the following courses: thence South $09^{\circ}22'23''$ East 80.45 feet; thence along a curve to the right with a Radius of 70.00 feet, a Delta of $23^{\circ}55'42''$, a Length of 29.23 feet, and a Chord of South $02^{\circ}35'28''$ West 29.02 feet; thence South $14^{\circ}33'18''$ West 30.65 feet; thence along a curve to the left with a Radius of 70.00 feet, a Delta of $22^{\circ}18'54''$, a Length of 27.26 feet, and a Chord of South $03^{\circ}23'51''$ West 27.09 feet; thence South $07^{\circ}45'36''$ East 29.41 feet; thence South $15^{\circ}49'07''$ East 45.78 feet; thence South $64^{\circ}13'02''$ West 239.82 feet; thence North $09^{\circ}00'58''$ West 247.45 feet; thence North $81^{\circ}09'09''$ East 119.77 feet; thence North $05^{\circ}40'12''$ West 65.06 feet; thence North $83^{\circ}05'06''$ East 124.78 feet to the Point of Beginning.

The above described unit of land contains 1.32 acres, more or less.

The Basis of Bearings for this description are based on the Oregon Coordinate Reference System (OCRS), Salem Zone, NAD83(2011) Epoch: 2010.00.

11/15/2023

**REGISTERED
PROFESSIONAL
LAND SURVEYOR**

DIGITALLY SIGNED

11/15/2023 11:19:52 AM

**OREGON
NOVEMBER 9, 2021
JOSEPH F. SULLIVAN
86458LS**

RENEWS: 6/30/2024

