
Space above this line for Recorder's use.

After recording, return to:

Grantee

Oregon DEQ
Northwest Region
700 NE Multnomah St., Suite 600
Portland, OR 97232
Attention: Kevin Dana

Grantor

St. Helens Assets, LLC
c/o Brooks M. Foster
Chenoweth Law Group, PC
510 SW 5th Ave., 4th Floor
Portland, OR 97204

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes ("EES") is made on [Date], 2024 between St. Helens Assets, LLC ("**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 whose legal description is "Tract E, Elk Ridge Estates Phase 5," located north of the intersection of Hankey Road and Barrick Lane in the City of St. Helens, Columbia County, Oregon, and shown on Columbia County Tax Map 50132DC (the "**Property**"). The location of the Property is more particularly described in Exhibit A to this EES and depicted in Exhibit B to this EES. A surveyed, engineered cap is present atop an abandoned municipal solid waste landfill within the Property. The location of the cap is more particularly described in Exhibit C to this EES and depicted in Exhibit D to this EES.

B. Information on the Property is referenced under the name Elk Ridge Estates Development, ECSI #4857 in the files of DEQ's Northwest Region office located at 700 NE Multnomah Street, Suite 600, Portland, Oregon, and telephone 503-229-5696. Interested parties may contact the Northwest Region office to review a detailed description of the remedial action conducted at the Property and described in the Remedial Design/Remedial Action Implementation Report prepared by EVREN Northwest on April 3, 2023.

C. On June 29, 2020, 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. The remedial action selected required, among other things, regrading and capping the landfill with three feet of clean soils and recording institutional controls requiring long-term monitoring and maintenance of the landfill cap.

D. On November 24, 2021, EVREN Northwest submitted a “Remedial Design/ Remedial Action Work Plan” to DEQ on behalf of Grantor, under which Grantor agreed to implement the selected remedial action, including the required institutional controls.

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

F. 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 “Ecological receptor” has the meaning set forth in OAR 340-122-0115.

1.3 “Engineering control” 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. **Soil Cap Engineering Control.** Except upon prior written approval from DEQ, Owner may not conduct or allow operations or conditions on the Property or use of the Property in any way that might penetrate the soil cap at the Property 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 uncontrolled erosion. Owner will maintain the soil cap in accordance with the "Soil Cap Management Plan" prepared by EVREN Northwest on April 6, 2023 and approved in writing by DEQ on May 18, 2023.

3.2. **Land Use Restrictions.** The following operations and uses are prohibited on the Property: Enclosed structures of any type.

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.** 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 St. Helens zoning code or any successor code. As of the date of this EES, the base zone of the Property is Moderate Residential (R7).

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. In addition, Owner will maintain records documenting inspection and reporting as outlined in the DEQ approved "Soil Cap Management Plan" prepared by EVREN Northwest on April 6, 2023. 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 enforce this EES as provided in the ROD 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.

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

GRANTOR: St. Helens Assets, LLC

By: _____ Date: _____
Mark Zoller, Member

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument is acknowledged before me this _____ day of
_____, 20____, by Mark Zoller of St. Helens Assets, LLC, on its behalf.

NOTARY PUBLIC FOR OREGON
My commission expires: _____

GRANTEE: State of Oregon, Department of Environmental Quality

By: _____ Date: _____
Kevin Parrett, Cleanup Program Manager, Northwest Region

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument is acknowledged before me this _____ day of
_____, 20____, by _____ Kevin Parrett of the Oregon
Department of Environmental Quality, on its behalf.

NOTARY PUBLIC FOR OREGON
My commission expires: _____

EXHIBIT A

Legal Description of the Property

Tract E, Elk Ridge Estates Phase 5, Book 7, Page 78, Columbia County Plat Records

EXHIBIT B

Figure Depicting the Property

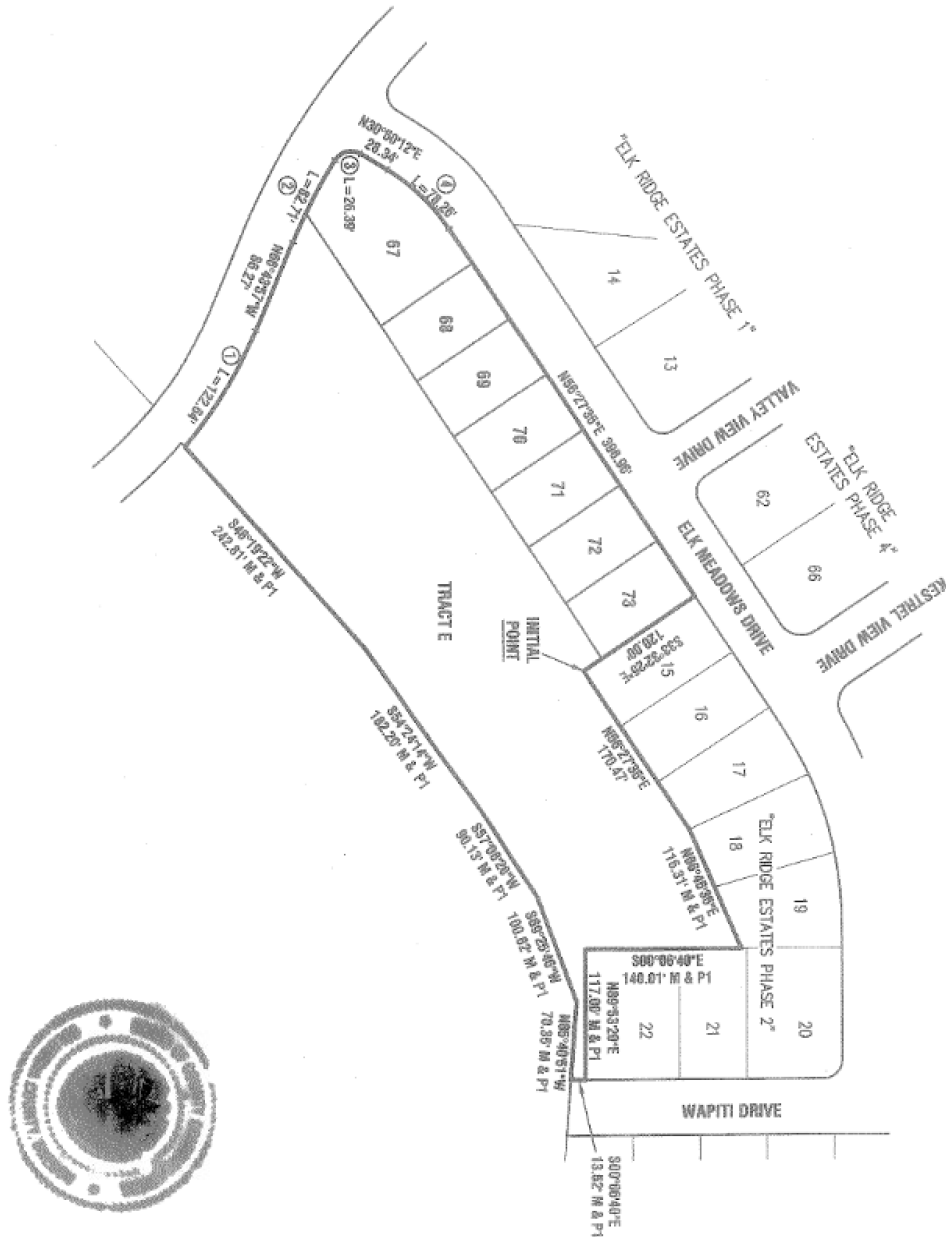


EXHIBIT C

Legal Description of Capped Landfill Area

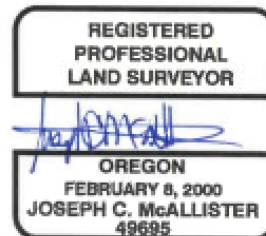


LEGAL DESCRIPTION
WASTE AREA
ELK RIDGE ESTATES PHASE 5

A TRACT OF LAND LOCATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 32, TOWNSHIP 5 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, COLUMBIA COUNTY OREGON, BEING A PORTION OF TRACT "E", "ELK RIDGE ESTATES, PHASE 5" A PLAT OF RECORD, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "COMPASS LAND SURVEYORS" AT THE SOUTHWEST CORNER OF THE AFOREMENTIONED TRACT "E", BEING ON THE NORTH RIGHT OF WAY LINE OF HANKEY ROAD, COUNTY ROAD NO. P-128 (25.00 FEET FROM CENTERLINE); THENCE ALONG THE NORTHWESTERLY LINE OF SAID TRACT "E" NORTH 59°08'33" EAST, 268.66 FEET; THENCE LEAVING SAID NORTHWESTERLY LINE, NORTH 65°55'08" EAST, 15.28 FEET; THENCE NORTH 57°39'27" EAST, 19.30 FEET; THENCE NORTH 73°09'37" EAST, 12.81 FEET; THENCE NORTH 66°44'19" EAST, 27.14 FEET; THENCE NORTH 72°01'06" EAST, 42.84 FEET; THENCE NORTH 85°05'30" EAST, 25.28 FEET; THENCE SOUTH 80°48'15" EAST, 53.70 FEET; THENCE NORTH 66°40'24" EAST, 71.50 FEET; THENCE NORTH 74°14'17" EAST, 42.12 FEET; THENCE NORTH 76°23'08" EAST, 51.61 FEET; THENCE NORTH 79°57'36" EAST, 24.77 FEET; THENCE SOUTH 73°12'50" EAST, 5.96 FEET; THENCE SOUTH 49°02'26" EAST, 3.82 FEET; THENCE SOUTH 28°57'03" EAST, 19.32 FEET; THENCE SOUTH 45°00'50" EAST, 14.27 FEET; THENCE SOUTH 01°32'04" WEST, 9.51 FEET; THENCE SOUTH 63°34'13" WEST, 20.14 FEET; THENCE SOUTH 61°59'59" WEST, 39.44 FEET; THENCE SOUTH 59°00'22" WEST, 45.62 FEET; THENCE SOUTH 57°26'12" WEST, 72.36 FEET; THENCE SOUTH 58°42'18" WEST, 98.49 FEET; THENCE SOUTH 55°54'18" WEST, 103.66 FEET; THENCE SOUTH 51°13'30" WEST, 58.03 FEET; THENCE SOUTH 49°33'52" WEST, 93.25 FEET TO THE NORTH RIGHT OF WAY LINE OF THE AFOREMENTIONED HANKEY ROAD (25.00 FEET FROM CENTERLINE); THENCE ALONG SAID NORTH RIGHT OF WAY LINE 99.76 FEET ALONG THE ARC OF A 411.40 FOOT RADIUS CURVE, CONCAVE SOUTHWEST, THROUGH A CENTRAL ANGLE OF 13°53'39" (CHORD BEARS NORTH 57°06'10" WEST, 99.52 FEET); THENCE NORTH 64°02'59" WEST, 86.27 FEET TO A POINT OF CURVATURE; THENCE 28.46 FEET ALONG THE ARC OF A 549.95 FOOT RADIUS CURVE, CONCAVE NORTHEAST, THROUGH A CENTRAL ANGLE OF 02°57'55" (CHORD BEARS NORTH 62°34'02" WEST, 28.46 FEET) TO THE POINT OF BEGINNING.

BASIS OF BEARINGS: OREGON STATE PLANE, NORTH ZONE, NAD 83, EPOCH 2010.00.



DATE OF SIGNATURE: 10/10/23
EXPIRES: 12/31/2024



4107 SE International Way, Suite 705, Milwaukie, Oregon 97222
Phone: 503.653.9093 Fax: 503.653.9095 Email: compass@compass-landsurveyors.com

EXHIBIT D

Figure Depicting Capped Landfill Area

