



Cleanup Prospective Purchaser Agreement Application

ID 16466 Submitted Date 5/29/2024

Owner

Matthew Taylor

 mtaylor@portlandbg.org

 5032721199

 541-921-0316

 Portland Botanical Gardens

 108 NW 9th Ave, #201, Portland, OR 97209

Applicant Information

Matthew T. Taylor

 Project Director

 mtaylor@portlandbg.org

 503-272-1199

 541-921-0316

 108 NW 9th Ave, 201, Portland, Multnomah County, Oregon 97209 (45.524043,-122.679982)

Site Information

New Facility Information

New Facility Information

McCormick & Baxter Site

Abbreviation

M&B

Is the facility located on Native American Lands?

No

Email

sarah.miller@deq.oregon.gov

Phone

503-229-5040

Fax

Number of Employees

0

Comments:

Mailing Address

700 NE Multnomah St, suite 600, Portland, Multnomah County, Oregon 97232

Physical Location

6900 N Edgewater St, Portland, Multnomah County, Oregon 97203-5012 (45.580457,-122.740379)

Township

1N

Range

1E

Section

7

Size(acres)

58.15

County

Multnomah

Tax Lot(s)

Tax Lot(s)

Current use of the property

Operations & Maintenance of remedy

If property is vacant, how long has it been vacant?

19 years (after cleanup in 2005)

Current zoning of the property

EG2

Current Site Owner Information

Current Site Owner Contact

Charlie McCormick

 **McCormick & Baxter Creosoting Co.**

 **gfmgl@teleport.com**

 **503-502-3448**

Mailing Address

 **PO BOX 3048, Portland, OR 97208**

Is the current owner aware of your plans to seek a "Prospective Purchaser Agreement" with DEQ?

Y

To your knowledge, does the current owner have any objections or reservations regarding this proposed prospective purchaser agreement?

N

Applicant's Proposed Interest in the Property

Are you planning to buy the property described above?

Y

Nature and Timing of Pending Property Transaction

Please describe, if known, the nature and timing of the proposed property transaction in sufficient detail to give DEQ a sense of your needs and timetable. (Note: It is DEQ's goal to complete review and negotiation of most agreements within 4 - 6 months.)

Purchase and Sale Agreement signed 4/22/24, with closing scheduled for 4/22/25.

Agreement Type

Which type of Prospective Purchaser Agreement are you planning?

true

Proposed Land Use

Describe the proposed development or reuse of the property. Attach site maps and supplemental information describing the intended development or reuse if available. (Note: site design maps and supplemental information are required if proposed buildings, parking lots, drainage systems or other developments could impact current or future environmental cleanup activities)

PBG proposes to build on the site a community-serving botanical garden with outdoor pathways, pavilions, and educational greenhouses showcasing endangered plants, Northwest regional botany collections and general biogeographic exhibits that bring plants and people together. Design in preliminary phase. Applicant intends to gather additional input on proposed use from stakeholders before proposing design/layout.

Local Planning Authority

Bureau of Development Services

 **City of Portland**

 **Local Planner**

 **bds@portlandoregon.gov**

 **503-823-7300**

Please summarize any conversations you have had with the local government planning department

No conversations as of the date of this application.

Summary of Contamination & Investigation Status

To your knowledge, is there an additional cleanup project or additional leaking underground storage tank (LUST) project on this property?

N

Has a Phase I Environmental Site Assessment been conducted at the Property?

N

Has sampling or other environmental investigation been conducted at the Property?

Y

Please summarize results

See documents in DEQ file, ESCI 74.

Have cleanup activities been conducted at the Property?

Y

Please summarize activities

See documents in DEQ file, ESCI 74.

Does DEQ have a copy of relevant reports?

Y

Known or suspected contaminant source(s)

Historical releases from McCormick & Baxter wood treating operations.

Known or suspected contaminant(s)

Primary contaminants include creosote, pentachlorophenol, and metals (arsenic, copper, chromium, and zinc).

Type of Release

Briefly describe the nature of the hazardous substance release at the property. You may attach sampling results or additional information, or reference prior materials sent to DEQ by title and date. At a minimum, please provide basic information in the space below (e.g., list the known contaminants in soil, groundwater, surface water, sediments, etc.)

Hazardous substances associated with wood treatment solutions are present in soil, groundwater and sediment. See 1996 Record of Decision (ROD) and 1998 ROD Amendment for pre-remedy site conditions.

In what year (or years) did the release (or releases) of hazardous substance(s) occur?

During site operations (approximately 1944 - 1972) and continuing releases thereafter.

Cleanup Activities Underway or Completed

Please provide a summary of removal or remedial activities which have been undertaken or completed at the property already, if any

Creosote extraction and groundwater treatment from 1994 to 2000. Manual creosote pumping/recovery from 2000 to 2011. An 18-acre, fully encompassing, impermeable subsurface barrier wall (from 45 to 80 feet below ground surface) was installed in the summer of 2003. Two feet of soil (approximately 33,000 tons) were removed in 1999, and a 15-acre impermeable cap was also constructed within the 18-acre impermeable barrier wall. The cap includes a storm water collection system that discharges to a shoreline outfall. The cap area was seeded with native grasses and several thousand native trees and shrubs were planted in 2005 and 2006. Sediment Cap. In 2004 and 2005, more than 1600 pilings were removed from the shoreline and a two-foot thick sand cap with a one-foot layer of protective armoring was constructed to contain 23 acres of contaminated sediment in the Willamette River.

Proposed Cleanup Activities

Describe in general terms removal or remedial activities to be performed in the future, of which you are aware

Currently just Operations and Maintenance of remedy – no further cleanup planned.

Proposed Funding for Cleanup Activities

Funds for the cleanup and/or management of future project cleanup activities will be provided by

- ☒ The applicant
- ☐ The current owner
- ☐ The applicant and current owner will share responsibility for the cleanup
- ☐ DEQ-funded
- ☐ Other (please specify)

Please describe the cleanup project lead and roles of the various parties in detail sufficient to give a clear understanding of who will be performing or paying for cleanup activities

To be detailed in final Scope of Work for PPA.

Prospective Purchaser Liability

Indicate why the applicant is not presently liable under ORS 465.255 for an existing release of hazardous substance at the property. You may attach additional information if necessary. For purposes of these questions, "applicant" includes individuals, partnerships, corporations, trusts and other legal entities in which the applicant has or previously had a legal interest

Applicant has no previous or current legal interest in the property.

Has the applicant ever owned a legal interest in any facility which is known or suspected to be a source of hazardous substances now found on the property subject to this agreement?

N

Has the applicant ever owned a legal interest in any portion of the property subject to this agreement?

N

Has the applicant ever operated a business located on any portion of the property subject to this agreement?

N

Has the applicant, by any act or omission, caused, contributed to or exacerbated any release of hazardous substance now located on the property subject to this agreement?

N

Please describe the nature of any past business or contractual relationship with the seller of this property

None

Public Benefit

The law requires that a substantial public benefit will result from the Prospective Purchaser Agreement. Substantial public benefits may include but are not limited to

- The generation of substantial funding or other resources facilitating remedial measures at the facility in accordance with this section;
- A commitment to perform substantial remedial measures at the facility in accordance with this section;
- Productive reuse of a vacant or abandoned industrial or commercial facility; or
- Development of a facility by a governmental entity or nonprofit organization to address an important public purpose.

Please provide a brief summary of the public benefit(s) this Prospective Purchaser Agreement will provide to the local community and/or the State of Oregon:

PBG intends to extend the Willamette River Greenway along the entire waterfront, providing permanent public access to over ten (10) acres of restored riparian area and rubble beach. PBG also intends to work with tribal authorities, public agencies, and leading conservation groups to design and steward the native riparian landscape and shallows, and collaborate with educational institutions to develop and share horticultural knowledge throughout the region.

Additional Application Contacts

"DEQ Invoices should be sent to:"

Invoice Contact

Will Bours

 **Portland Botanical Gardens**

 **wbours@portlandbg.org**

 **503-272-1199**

 **503-360-7135**

 **108 NW 9th Ave, 201, Portland, Multnomah County, Oregon 97209 (45.524043,-122.679982)**

Environmental Consulting Firm

Mailing Address

 , OR

Attorney/Law Firm

Carson Bowler

 **Law Office of Carson Bowler**

 **Carson@Bowler-Law.com**

 **503-910-6295**

Mailing Address

 **1050 SW 6th Ave, Ste 1100, Portland, OR 97204-1156**

DEQ Contacts

Please list the names of any DEQ staff that you have talked with regarding this property

Sarah Miller Kevin Parrett Lorenzo Danielson

Cost Recovery Agreement between you and the Department of Environmental Quality (DEQ)

- 1) This serves as an Agreement between you and DEQ regarding DEQ's review and oversight of the investigation and/or cleanup of hazardous substances or for the preparation of a Prospective Purchaser Agreement (PPA) at the facility.
- 2) DEQ agrees to review relevant environmental and other documents submitted by you or on your behalf, to review related information available in DEQ's files, and to conduct a site visit(s) if necessary. Additional details regarding DEQ oversight will be established upon review of the initial site data.
- 3) DEQ will provide public notice and opportunity for comment on any proposal to release a party from liability under Oregon Revised Statutes (ORS) 465.327, any proposed remedial action, or proposed "no further action" determination, as appropriate, in accordance with ORS 465.320 for Voluntary Cleanup Program (VCP) and Independent Cleanup Pathway (ICP) sites or Oregon Administrative Rule (OAR) 340-122-0260 for leaking underground storage tank (LUST) sites.
- 4) DEQ requires an Applicant requesting DEQ review and oversight of investigation and cleanup activities or DEQ preparation of a PPA agree to the terms of this Agreement and pay project oversight costs. DEQ will require an initial deposit, up to \$5,000, for VCP, ICP, and PPA projects as an advance against costs which DEQ will incur.
- 5) Electing not to enter into this Agreement does not release you from any responsibility that you might have for any response actions, reporting requirements, or violations of OAR or ORS.
- 6) DEQ costs include direct costs and indirect costs. Direct costs include site-specific expenses and legal costs. Indirect costs are those general management and support costs of DEQ and the Land Quality Division which are 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. Review, preparation, and oversight costs shall not include any unreasonable costs or costs not otherwise recoverable by DEQ under ORS 465.255.
- 7) DEQ will provide you with a monthly invoice and direct labor summary. If project costs exceed the account balance, payment is due to DEQ within thirty (30) days of issuance of the monthly invoice. Nine (9) percent interest shall be charged on past due accounts. If project costs do not exceed the account balance, DEQ will refund within 60 days of the close of the project any amount remaining in excess of the actual costs. Prospective Purchaser projects may opt to have DEQ apply the remaining amount towards oversight of actions performed under the PPA.
- 8) Either you or DEQ may terminate this Agreement by giving 15 days advance written notice to the other. Only those costs incurred or obligated by DEQ before the effective date of any termination of this Agreement are recoverable under this Agreement. Termination of this Agreement will not affect any other right DEQ may have for recovery of costs under applicable law.
- 9) You agree to hold DEQ harmless and indemnify DEQ for any claims (including but not limited to claims of property damage or personal injury) arising from activities reviewed under this Agreement.
- 10) This Agreement is not and shall not be construed to be an admission by you of any liability under ORS 465.255 or any other law or as a waiver by you of any defense to such liability. This Agreement is not and shall not be construed to be a waiver, release, or settlement of claims that DEQ may have against you or any other responsible person nor is this Agreement a waiver of any enforcement authority that DEQ may have.
- 11) You will provide DEQ with data and records related to investigation and cleanup activities at the facility, excluding any privileged documents identified as such by you.

☒ I have read and agree to the above agreement

Deposit is not due at the time of submittal