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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON, ex rel. LEAH
FELDMON, DIRECTOR OF
ENVIRONMENTAL QUALITY,

Plaintiff,

v.

BSS ALBINA, LLC.

Defendant.

Case No. 18CV49969

CERTIFICATION OF COMPLETION

1. Findings

A. On September 17, 2019, the Multnomah County Circuit Court entered Consent Judgment No. 18CV49969 (the “Consent Judgment”) regarding *Prospective Purchaser Agreement (PPA) DEQ No 9213756*, entered into by the Oregon Department of Environmental Quality (DEQ) with BSS Albina, LLC. PPA DEQ No. 9213756 concerns the property at 2100 N Albina Avenue, Portland, Oregon (the Site). The Site is also known as BSS Albina, Environmental Cleanup Site Information (ECSI) No. 6287. Under the terms of the PPA, BSS Albina, LLC agreed to perform and comply with all applicable provisions of the Consent Judgment and to work under DEQ oversight to perform agreed upon measures at its own cost.

B. The Consent Judgment designated the work to be performed in a Scope of Work (SOW) attached to and incorporated by reference into the Consent Judgment as Exhibit A. BSS Albina, LLC’s consultant, NV5 submitted a document entitled *Statement of PPA Completion Items*, dated April 4, 2023, which is attached as Attachment B.

1 C. On May 1, 2024, DEQ provided public notice and opportunity to comment on a
2 proposed Certification of Completion determination for the facility in accordance with ORS 465.320 and
3 465.325(10)(b). Copies of the work plans and reports completed for the project were available to
4 review at DEQ's Northwest Region office in Portland. The public notice was published on
5 May 1, 2024, in the *Oregon Secretary of State's Bulletin*, and in *The Oregonian* newspaper. The
6 comment period was closed on May 31, 2024. No comments were received.

7 D. Based on the reports and other information submitted by BSS Albina, LLC and DEQ's
8 inspection and oversight of activities, DEQ finds that BSS Albina, LLC has satisfactorily completed
9 the PPA scope of work.

10 **2. Conclusions**

11 A. BSS Albina, LLC has satisfactorily completed the site investigation and remedial
12 design, implemented the selected remedial action, and completed the source control evaluation at the
13 Site as required under the Consent Judgment.

14 B. No further remedial actions are required at the site to protect the public health, safety,
15 and welfare or the environment.

16 **3. Conditions**

17 A. This Certification of Completion applies only to the satisfactory completion of the work
18 conducted by BSS Albina, LLC pursuant to the Consent Judgment.

19 B. Conditions include: Institutional controls in the form of Easement and Equitable
20 Servitudes, dated December 4, 2023, that prohibits certain land use types, requires a soil cap,
21 prohibits the extraction of groundwater for consumption or other beneficial use, and requires the
22 submittal of a contaminated media management plan.

23 C. DEQ's determination that a source control decision is required at the Site may be
24 withdrawn upon discovery that Site controls have not been maintained, or discovery of new
25 information showing that public health, safety, and welfare or the environment are not being
26 protected.

1 D. DEQ does not, by this Certification, assume liability for any claim arising from acts or
2 omissions of BSS Albina, LLC or its officers, employees, agents, successors, subsidiaries, or assigns
3 relating to actions pursuant to the Consent Judgment.

4 **4. Notice**

5 This order constitutes Certification of Completion under ORS 465.325(10), and may be
6 appealed by any aggrieved person in accordance with ORS 465.325(10)(c).

7
8 **Issued By:**

9 State of Oregon
10 Department of Environmental Quality

State of Oregon
Department of Justice

11 By: Michael E. Kucinski
Michael E. Kucinski (Jun 27, 2024 11:06 PDT)
12 Michael E. Kucinski
Interim Land Quality Administrator

By: Gary Vrooman
13 Gary Vrooman, OSB No. 075832
Assistant Attorney General

14 06/27/2024

Date

07/01/2024

Date

Exhibit A
Scope of Work
BSS Albina LLC Prospective Purchaser Agreement
for the 2100 N. Albina Development Project

1. Defendant will characterize the lateral and vertical extent of lead-impacted fill material that qualifies as a Resource Conservation Recovery Act (RCRA) characteristic hazardous waste (i.e., TCLP lead at a concentration greater than 5 mg/L) detected in boring DP-6 (black, silty sand layer), at a depth between 7.5 and 9 feet BGS, as shown on Figure 1 (attached). Following demolition of the existing building, any fill material impacted by lead exceeding the characteristic waste criterion of 5 mg/L will be removed and disposed at a RCRA Subtitle C landfill. Soil will be managed subject to RCRA guidelines. Defendant will complete the characterization and soil removal and disposal within 180 days of building demolition. Work will be completed under a DEQ-approved plan, and include measures to ensure that contamination does not leave the site.
2. Defendant will perform a limited assessment of groundwater conditions, consisting of a minimum of three groundwater grab samples at the presumed hydraulically down-gradient property boundary, to support an evaluation of the groundwater-to-surface water pathway under a Source Control Evaluation (SCE). Investigation will supplement previous groundwater investigation work. Defendant will submit a work plan for the requested investigation to DEQ for review/comment and approval.
3. Defendant will conduct a source control evaluation in accordance with the *Portland Harbor Joint Source Control Strategy (JSCS)* guidance document (December 2005) utilizing data collected at the site. The SCE will be prepared within 12 months of Defendant's acquisition of the Property.
4. Defendant will prepare a Contaminated Media Management Plan (CMMP) for DEQ review and approval within 4 weeks of its acquisition of the Property and prior to any significant subsurface disturbance. The CMMP will describe the procedures and protocols to be followed for managing soil known or suspected to be impacted by environmental contaminants. The CMMP will also describe the procedures and protocols that will be used if impacted groundwater is encountered on-site during construction activities. For soil that is to be re-used on the site, an engineering control, in the form of a cap, will be required where contaminants are present at concentrations above DEQ Occupational Worker Risk-Based Concentrations for the direct contact (RBC_{ss}) or leaching to groundwater (RBC_{sw}) pathways. The impacted soil can be placed under a cap consisting of the future building or other hardscape, such as the proposed asphalt covered parking areas, or below two feet of clean fill. Impacted soils as described above will not be placed within three feet of mean high groundwater. If a cap is installed at the property, the Defendant will maintain the cap, in accordance with a DEQ approved inspection and maintenance plan.

Exhibit B

April 4, 2023

Oregon Department of Environmental Quality
Northwest Region
700 NE Multnomah Street, Suite 600
Portland, OR 97232

Attention: Mr. Rob Hood

Statement of PPA Completion Items

2100 N Albina Development
2100 and 2020 N Albina Avenue
Portland, Oregon
ECSI No. 6287
Project: NorthPoint-1-02-10

NV5 is pleased to submit this letter summarizing the items completed in accordance with the Potential Purchaser's Agreement (PPA) established for the 2100 N Albina development located at 2100 and 2020 N Albina Avenue in Portland, Oregon (subject property).

Following submittal of the Construction Completion Report¹ (CCR), we engaged in correspondence with the Oregon Department of Environmental Quality (DEQ) regarding any remaining requirements in order to issue a Certificate of Completion for the subject property. The CCR was intended to fulfil the final reporting requirements as established in the PPA; however, there was some confusion between NV5 and DEQ regarding final reporting requirements. Therefore, at DEQ's request, this letter summarizes each of the PPA requirements and details how the CCR (and other project deliverables) satisfy each of those requirements.

Relevant items from the PPA and related Scope of Work (SOW) are quoted below, with discussion and reference to the associated documentation previously submitted to DEQ.

PPA Section 3 (Work to be Performed); Section A (Measures to be Undertaken):

"Defendant will remove the historical site features and construct a large storage facility on the Property. In conjunction with the construction, Defendant will remove identified contaminated soils (the approximate location of which is shown on Figure 1 to the SOW, attached as Ex. C) and

¹ *Construction Completion Report*, 2100 N Albina Development, 2100 and 2020 N Albina Avenue, Portland, Oregon, ECSI No. 6287; prepared by NV5, dated July 14, 2022.

cap the site to prevent contact of soil with human and ecological receptors. Defendant will also prepare a Contaminated Media Management Plan (“CMMP”) for development activities on the Property and will conduct a source control evaluation in accordance with the Portland Harbor Joint Source Control Strategy guidance document (December 2005) utilizing data collected at the site. These measures are to be undertaken for the Property in accordance with the terms and schedules set for the in the SOW and the terms and schedules set forth in a DEQ-approved work plan.”

Discussion:

- Removal of the historic site features and redevelopment (construction of the storage facility) are detailed in Section 4 of the CCR.
- Remedial components of subject property development, including removal of the identified impacted soils, are detailed in Section 6 of the CCR. In addition, removal of former underground storage tanks (USTs) and associated remedial excavations are detailed in Section 7 of the CCR.
- Earthwork activities associated with subject property redevelopment were governed by a CMMP developed by NV5 and submitted to DEQ, which is discussed in Sections 3 and 8 of the CCR². The DEQ approved the CMMP in a letter dated June 20, 2019.
- NV5 completed a Source Control Evaluation (SCE) for the subject property in 2022, which is summarized in our Source Control Evaluation Report³. Based on the SCE, we recommended issuance of a Source Control Decision. The DEQ approved the SCE in a letter dated March 10, 2023.

PPA Section 9 (Certificate of Completion):

“Upon Defendant’s completion of work in accordance with the SOW, Defendant will submit a final closeout report to DEQ signed both by an Oregon-registered professional engineer and Defendant’s Project Manager certifying that the remedial action for the site has been completed in accordance with this Consent Judgment. The report must summarize the work performed and include all necessary supporting documentation.”

Discussion:

- The CCR summarized all remedial actions and other work performed in conjunction with subject property redevelopment and was signed by an Oregon-registered Professional Engineer and the Project Manager. The CCR also included other relevant discussion applicable to a final report including a detailed description of the engineering control (protective cap) elements of the redeveloped site (CCR Section 9), institutional controls (CCR Section 12), and a discussion of residual risk screening including land and beneficial water use determinations (CCR Section 10.2), a conceptual site model (CCR Section 10.3), and data screening (CCR Section 10.4) for

² Contaminated Media Management Plan, 2100 N Albina Development, 2100 N Albina Avenue, Portland, Oregon, ECSI No. 6287; prepared by NV5, dated June 24, 2019.

³ Revised Source Control Evaluation Report, 2100 N Albina Development, 2100 N Albina Avenue, Portland, Oregon, ECSI No. 6287; prepared by NV5, dated June 23, 2022.

potential future receptors. Supporting documentation, as required, was appended to The CCR and the other reports referenced therein.

- Other elements of the PPA SOW not described above included (1) a delineation of lead-impacted fill material qualifying as Resource Conservation and Recovery Act (RCRA) characteristic hazardous waste; and (2) performing a limited assessment of groundwater conditions to support the SCE work. Each of these tasks were completed in accordance with the SOW and are both summarized in our Phase II Environmental Site Assessment Report⁴, Supplemental Soil Evaluation⁵, and the CCR.

In closing, it is our professional opinion that the array of reports described herein, and submitted to DEQ adequately document completion of each required element of the project as prescribed in the PPA. We respectfully request that DEQ utilize and reference these reports in preparing a Certificate of Completion for the subject property.



Please call if you have questions concerning the information provided.

Sincerely,

NV5



Erik A. Hedberg, P.E.
Associate Engineer

EAH

One copy submitted

Document ID: NorthPoint-1-02-040423-envl-DEQ

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⁴ *Phase II Environmental Site Assessment*, 2100 N Albina Development, 2100 N Albina Avenue, Portland, Oregon, prepared by GeoDesign, Inc.(now NV5), dated May 8, 2018.

⁵ *Supplemental Soil Evaluation*, 2100 N Albina Development, 2100 N Albina Avenue, Portland, Oregon, prepared by GeoDesign, Inc.(now NV5), dated July 12, 2018.

1 **CERTIFICATE OF SERVICE**

2 I certify that on July 1, 2024, I served a true copy of the foregoing of CERTIFICATE OF
3 COMPLETION in BSS ALBINA, LLC, upon the party hereto by the method indicated below,
4 and addressed to the following:

5
6 Mr. Carson Bowler
7 Law Office of Carson Bowler
8 1050 SW 6th Ave, Ste 1100
9 Portland, OR 97204
10 Attorney for BSS ALBINA, LLC

Hand Delivery
 Mail Delivery
 Overnight Mail
 E-Mail

11
12 *Gary Vrooman*

13

Gary Vrooman, OSB #075832
14 Assistant Attorney General
15 Of Attorneys for Plaintiff
16 Department of Justice
17 100 SW Market Street
18 Portland, OR 97201
19 Phone: 971-673-1878
20 Fax: 971-673-1886
21 gary.l.vrooman@doj.state.or.us