

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

STATE OF OREGON, ex rel.
LEAH FELDMAN, DIRECTOR
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

v.

UPLAND DATA CENTER, LLC,
Defendant.

Case No. 24CV39588

CONSENT JUDGMENT
General Judgment

ORS 20.140 - State fees deferred at filing

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1 **Purpose**

2 This Consent Judgment is filed simultaneously with and for the purpose of resolving the
3 underlying complaint by the State of Oregon. Plaintiff State of Oregon *ex rel.* the Director of the
4 Department of Environmental Quality (“DEQ”) and Defendant Upland Data Center, LLC
5 (“Defendant”) (collectively, the “Parties”) desire to resolve this action without litigation and have
6 agreed to entry of the Consent Judgment without admission or adjudication of any issue of fact or
7 law. The mutual objectives of the Parties are: (a) to protect public health, safety, and welfare and
8 the environment in accordance with ORS 465.200 through 465.410, and regulations promulgated
9 thereto; (b) to facilitate productive reuse of property; and (c) to provide Defendant with protection
10 from potential liabilities in accordance with applicable law.

11 **Stipulations and Findings**

12 A. Defendant stipulates:

13 (1) To entry of this Consent Judgment;
14 (2) To perform and comply with all provisions of this Consent Judgment; and
15 (3) To not litigate, in any proceeding brought by DEQ to enforce this Consent
16 Judgment or to assess penalties for noncompliance with this Consent Judgment, any issue other
17 than Defendant’s compliance with this Consent Judgment.

18 B. DEQ and Defendant stipulate that, for the purpose of the Consent Judgment:

19 (1) “Site” or “Facility” as defined in ORS 465.200(13), means: (a) the Property;
20 and (b) the full extent of existing known or unknown contamination by hazardous substances of
21 any media on, above, or below the Property, or that has migrated, might have migrated, or
22 hereafter migrates to anywhere from the Property. The Site has been assigned Environmental
23 Cleanup Site Information (“ECSI”) number 91 by DEQ.

24 (2) “Property” means the real property located at 1645 Railroad Avenue,
25 St. Helens, Oregon 97051, in Section 9 of Township 4 North and Range 10 West, Columbia
26 County, Oregon, consisting of approximately 175 acres of land located above the ordinary low

1 water line of Scappoose Bay as illustrated generally in the Vicinity Map provided in Exhibit A to
2 this Consent Judgment and legally described in Exhibit B to this Consent Judgment. All
3 attachments are incorporated into this Consent Judgment by this reference.

4 (3) For purposes of selecting and implementing remedial actions, the Site has been
5 divided into the Upland Operable Unit (“Upland OU”) and the Lowland/In-water Operable Unit
6 (“Lowland/In-water OU”) as illustrated generally in Exhibit C. The Upland OU is the developed
7 portion of the Site where former fiberboard operations are located. The Lowland/In-water OU
8 includes submerged and submersible wetland, intertidal areas and in-water areas adjacent to the
9 Upland OU. Exhibit D provides the surveyed boundaries of the Upland OU.

10 (4) “Matters Addressed” means all investigation, removal, and remedial actions
11 taken or to be taken and all remedial action costs incurred or to be incurred at or in connection
12 with a release of hazardous substances at the Facility.

13 (5) “Existing Hazardous Substance Releases” means: (a) any release of hazardous
14 substances, as defined in ORS 465.200, at the Facility existing as of the date of Defendant’s
15 acquisition of ownership or operation of the Property; (b) any spill or release of oil or hazardous
16 material, as defined in ORS 466.605, at the Facility existing as of the date of Defendant’s
17 acquisition of ownership or operation of the Property; and (c) the entry of oil into the waters of
18 the state, as defined in ORS 468B.300, from the Facility before the date of Defendant’s
19 acquisition of ownership or operation of the Property.

20 C. DEQ finds, and Defendant neither admits nor denies:

21 (1) Defendant is a limited liability company organized under the laws of
22 California, and is in the business of redevelopment of former industrial properties and creation of
23 mitigation sites.

24 (2) The Defendant proposes to purchase the Property that is currently owned by
25 Armstrong World Industries, Inc. (“AWI”). The location of the Property is illustrated generally in
26 the Vicinity Map, Exhibit A to this Consent Judgment. The legal description of the Property is set

1 forth in Exhibit B to this Consent Judgment. All attachments are incorporated into this Consent
2 Judgment by this reference.

3 (3) Beginning in approximately 1930, the Property was used to manufacture a
4 variety of mineral fiber and wood fiber building products, including ceiling boards and tiles, carpet
5 board, and roof insulation. In 1929, the site was purchased by Fir-Tex Insulation Board Co. ("Fir-
6 Tex"). Fir-Tex constructed a manufacturing plant on the Property where it made wood, paper, and
7 wood fiber products. Dant & Russell acquired Fir-Tex in 1938, but the facility continued to be
8 operated as Fir-Tex until 1956. From 1956 to 1978, Kaiser Gypsum Company, Inc. ("Kaiser")
9 owned the Property and manufactured wood and mineral fiber products, including ceiling tile and
10 panels, carpet board, roof insulation, sheathing, and expansion joints, and maintained an asphalt
11 coating operation. Owens Corning purchased the Property in August 1978 and manufactured
12 wood fiber and mineral wool building products through 1981, then ceased all operations and
13 mothballed the plant. In early 1987, Owens Corning sold the Property and certain assets to AWI.
14 AWI manufactured acoustical ceiling tiles at the Property until May 2018.

15 (4) In June 2018, DEQ issued a Record of Decision ("ROD") that presented the
16 selected remedial action for the Upland OU. The selected remedial action addressed the presence
17 of arsenic and dioxins/furans in upland soil and consists of the following elements: (i) hot spot
18 soil excavation and off-Site disposal; (ii) engineering controls, including capping with buildings,
19 pavement and/or gravel; (iii) grading as appropriate to prevent stormwater not captured by the
20 stormwater conveyance system from flowing from unremediated areas into the lowland area; (iv)
21 long-term monitoring and maintenance of the cap; (v) placement of a demarcation layer in all
22 capping areas prior to placement of adequate paving or a minimum of one foot of clean imported
23 cap material; (vi) institutional controls including a deed restriction in the form of an Easement and
24 Equitable Servitudes ("EES") and a site management plan ("SMP"); and (vii) periodic land and
25 water use review.

26 (5) On June 18, 2019, DEQ entered into Consent Judgment No. 19-CV-26021 with

1 AWI. In exchange for a release of liability, the AWI Consent Judgment required that AWI
2 provide payment to DEQ for remedial action costs and natural resource damages for the
3 Lowland/In-water OU and allowed for DEQ to complete a ROD and perform the ROD-required
4 remedial action for the Lowland/In-water OU. It also required AWI to complete remedial design
5 and remedial action to address contaminated soil at the Upland OU portion of the Site. The AWI
6 Consent Judgment designated the following work to be performed: (i) payment of remedial action
7 costs and natural resource damages; (ii) completion of remedial design and remedial action for the
8 Upland OU; (iii) periodic review; and (iv) site restrictions.

9 (6) On July 16, 2019, DEQ entered into Consent Judgment No. 19-CV-29293 with
10 Owens Corning Sales, LLC (“Owens Corning”). The Owens Corning Consent Judgment required
11 that Owens Corning provide \$1,500,000 payment to DEQ for remedial action costs and natural
12 resource damages, in exchange for a release of liability. Payment was received by DEQ on
13 August 19, 2019.

14 (7) On November 19, 2019, AWI recorded with the Columbia County Clerk the
15 EES specified in the Upland OU ROD and DEQ-AWI Consent Judgment No. 19-CV-26021
16 (“Upland EES”).

17 (8) On February 3, 2020, DEQ issued a Certification of Completion concluding
18 that: (i) AWI provided payment in the amount of \$8,620,000 for remedial action costs and natural
19 resource damages; (ii) AWI satisfactorily completed the implementation of the selected remedial
20 action for the Upland OU as required under the AWI Consent Judgment; and (iii) no further
21 remedial actions are required for the Upland OU to protect the public health, safety, and welfare
22 or the environment, except as provided in the Upland EES.

23 (9) On March 20, 2020, DEQ entered into Consent Judgment No. 20-CV-11950
24 with Kaiser Gypsum Company, Inc., Hanson Permanente Cement, Inc., and Lehigh Hanson, Inc.
25 (“Kaiser Gypsum”). The Kaiser Gypsum Consent Judgment required Kaiser Gypsum to provide
26 \$67,000,000 payment to DEQ for remedial action costs and natural resource damages, in

1 exchange for a release of liability. The settlement was approved by the Circuit Court for the State
2 of Oregon for the County of Multnomah (case #16CV32181) on September 13, 2021, following
3 confirmation of Kaiser Gypsum’s plan for relief under chapter 11 of the Bankruptcy Code in the
4 United States Bankruptcy Court for the Western District of North Carolina
5 (case # 16-31602), and payment was made to DEQ on October 12, 2021.

6 (10) DEQ is performing a remedial investigation and feasibility study and will
7 implement remedial actions for the Lowland/In-water OU using funds received from the Consent
8 Judgments with Owens Corning, AWI, and Kaiser Gypsum. The remedial action will be
9 documented in a ROD and is anticipated to address contaminated soil, sediment and groundwater
10 through excavation, dredging, capping, off-Site disposal, on-Site consolidation, in situ treatment,
11 enhanced natural recovery, monitored natural recovery, long-term monitoring and maintenance,
12 and institutional controls. The remedial action will be designed and constructed in compliance
13 with federal, state and local permitting requirements, and is anticipated to include on-Site and off-
14 Site habitat mitigation and restoration subject to consultations with the permitting agencies and
15 natural resource agencies.

16 (11) The Defendant intends to bring the Property back into productive use as data
17 center(s), renewable battery storage, warehouse storage, and will explore restoration and
18 mitigation opportunities in the Lowland/In-water OU (in consultation with DEQ), which will
19 create jobs, generate property tax revenue, and benefit the local economy and environment in St.
20 Helens and Columbia County.

21 (12) The primary contaminants of concern (“COCs”) are dioxins/furans, arsenic,
22 mercury, and polycyclic aromatic hydrocarbons (“PAHs”). The nature and extent of these and
23 other contaminants are described in several remedial investigation reports that are contained in the
24 administrative record for this Site. These contaminants are “hazardous substances” within the
25 meaning of ORS 465.200(16). The presence of hazardous substances at the Property constitutes a
26 “release” of hazardous substances within the meaning of ORS 465.200(22), and makes the

1 Property a “facility” within the meaning of ORS 465.200(13).

2 (13) Pursuant to ORS 465.255(1)(b), Defendant could become liable to DEQ and
3 other persons for releases of hazardous substances at or from the Property by becoming the owner
4 or operator of the Property with actual or constructive knowledge of the releases. On December
5 12, 2023, Defendant applied to DEQ for a “prospective purchaser” agreement under ORS 465.327
6 and agreed to reimburse DEQ’s costs of technical review and preparation. This Consent
7 Judgment is intended to protect Defendant from potential liability for pre-acquisition releases of
8 hazardous substances at or from the Property, in return for Defendant undertaking certain
9 obligations, as described in this Consent Judgment. In determining to propose this Consent
10 Judgment, DEQ considered reasonably anticipated future land uses at the Property and
11 surrounding properties and consulted with the City of St. Helens Planning Department. This
12 Consent Judgment is entered into pursuant to ORS 465.325 and ORS 465.327.

13 (14) On February 1, 2024, DEQ published notice of this proposed Consent
14 Judgment and provided opportunity for public comment in accordance with ORS 465.320(1) and
15 465.325(4)(d). The comment period ended March 8, 2024. Comments were received and
16 considered by DEQ, as documented in the administrative record.

17 (15) Consistent with ORS 465.327(1):

- 18 (a) Defendant is a “person” within the meaning of ORS 465.200(21);
19 (b) Defendant is not currently liable under ORS 465.255, 466.640, or
20 468B.310 for the Existing Hazardous Substance Releases;
21 (c) Removal or remedial action is necessary at the Property to protect human
22 health or the environment;
23 (d) Defendant’s ownership and operation of the Property will not cause,
24 contribute to, or exacerbate existing contamination, increase health risks, or interfere with existing
25 remedial measures in the Upland OU or future remedial measures to be implemented by DEQ in
26 the Lowland/In-water OU; and

1 (e) A substantial public benefit will result from this Consent Judgment.

2 (16) Based on the administrative record, the Director of DEQ determines that: (a)

3 the release from liability set forth in Subsection 5.B satisfies the criteria set forth in

4 ORS 465.327(1); (b) the covenant not to sue set forth in Subsection 5.D satisfies the criteria set

5 forth in ORS 465.325(7)(a) and (d); and (c) this Consent Judgment and Defendant's commitments

6 under this Consent Judgment will expedite removal or remedial action, minimize litigation, be

7 consistent with rules adopted under ORS 465.400, and be in the public interest.

8 **3. Work to be Performed**

9 A. Measures to be Undertaken

10 (1) Defendant will perform the measures to be undertaken for the Site in

11 accordance with the terms and schedules set forth in the Scope of Work ("SOW") attached to and

12 incorporated by reference into this Consent Judgment as Exhibit E.

13 B. Modification of SOW or Related Work Plans

14 (1) If DEQ determines that modification to the measures specified in the SOW

15 and/or in work plans developed pursuant to the SOW is necessary in order to implement or

16 maintain the effectiveness of the remedies set forth in the Upland OU or Lowland/In-water OU

17 RODs, DEQ may require that such modification be incorporated in the SOW; provided, any such

18 modification may be required pursuant to this paragraph only to the extent that the modification is

19 consistent with the scope of the remedy selected in the Upland OU and Lowland/In-water OU

20 RODs to protect public health and the environment.

21 (2) Subject to dispute resolution under Subsection 7.M., Defendant will modify the

22 SOW and/or work plans as required by DEQ and implement any work required by the

23 modifications. Before invoking dispute resolution under Subsection 7.M., Defendant and DEQ

24 will make a good-faith effort to resolve any dispute regarding DEQ-requested modifications by

25 informal discussions for no more than 30 days following notice from DEQ of a requested

26 modification.

1 C. Additional Measures

2 Defendant may elect at any time during the term of this Consent Judgment to
3 undertake measures, beyond those required under this Consent Judgment and the SOW, necessary
4 to address the release or threatened release of hazardous substances or associated with habitat
5 enhancement at the Property. Such additional measures are subject to prior approval by DEQ.
6 DEQ's approval will be granted if DEQ determines that the additional measures are consistent
7 with the remedial action objectives in the Upland OU and Lowland/In-water OU RODs and will
8 not threaten human health or the environment.

9 D. Site Restrictions and Periodic Reviews

10 (1) Within 30 days of entry of this Consent Judgment, Defendant will record with
11 the County Clerk, Columbia County, the Lowland/In-water OU EES attached to this Consent
12 Judgment as Exhibit G. Defendant will provide DEQ a file-stamped copy of the EES within five
13 working days of recording.

14 (2) Property subject to the Lowland/In-water OU EES may be freely alienated at
15 any time after recording, provided the deed or other instrument of conveyance refers to or
16 incorporates the Easement and Equitable Servitude.

17 (3) Any deed, title, or other instrument of conveyance regarding the Property must
18 contain a notice that the Property is the subject of this Consent Judgment. Defendant, in any such
19 deed or conveyance, must also reserve such access (by easement, right-of-way, or otherwise) as
20 might be necessary to carry out Defendant's obligations under this Consent Judgment.

21 (4) At least once every five years, DEQ will review the remedy to ensure that the
22 Property remains protective of public health, safety, and welfare and the environment. Periodic
23 reviews will include evaluation of monitoring data, progress reports, inspection and maintenance
24 reports, land and water uses, compliance with institutional controls, and any other relevant
25 information.

1 **4. General Provisions**

2 **A. Project Managers**

3 (1) To the extent possible, all reports, notices, and other communications required
4 under or relating to this Consent Judgment must be directed to:

5 DEQ Project Manager

6 Sarah Greenfield
7 Department of Environmental Quality
8 Northwest Region
9 700 NE Multnomah Street, Suite 600
10 Portland, OR 97232
11 Phone: (503) 229-5245
12 Email: sarah.greenfield@oregon.deq.gov

Defendant Project Manager

 Andy Gregg
 General Counsel
 Upland Data Center, LLC
 6210 Medau Place, Suite B
 Oakland, CA 94611
 Phone: (714) 580-2004
 Email: andyg@restorcap.com

11 (2) The Project Managers or their respective designees must be available and have
12 the authority to make day-to-day decisions necessary to complete the work described under
13 Section 3.

14 **B. Supervising Contractor**

15 (1) All aspects of the work to be performed by Defendant pursuant to this Consent
16 Judgment must be performed under the direction and supervision of a qualified employee or
17 contractor having experience in hazardous substance remediation and knowledge of applicable
18 state and federal laws, regulations, and guidance.

19 (2) Before initiation of ground disturbing activities at the Upland OU and/or
20 Lowland/In-water OU associated with work by Defendant under this Consent Judgment,
21 including clearing of vegetation, Defendant will review and comply with the SMP and EES,
22 including notifying DEQ in writing of the name, title, and qualifications of any proposed
23 supervising contractor where required by the SMP or EES. DEQ may for good cause disapprove
24 the proposed contractor. In the event of such disapproval, DEQ will notify Defendant in writing
25 of the reasons for its disapproval within 14 days of receipt of the initial notice from Defendant.
26 Defendant, within 14 days of receiving DEQ's notice of disapproval, will notify DEQ of the

1 name, title, and qualifications of an alternate supervising contractor, subject to DEQ's right to
2 disapprove under the terms and schedule specified above.

3 (3) If, during the course of work required under this Consent Judgment, Defendant
4 proposes to change its supervising contractor, Defendant will notify DEQ in accordance with the
5 provisions of the preceding paragraph. DEQ may disapprove such contractor, under the terms
6 and schedule specified in the preceding paragraph.

7 C. DEQ Approvals

8 (1) Where DEQ review and approval is required for any plan or activity under this
9 Consent Judgment, Defendant may not proceed to implement the plan or activity prior to DEQ
10 approval. Any DEQ delay in granting or denying approval correspondingly extends the time for
11 completion by Defendant. Prior approval is not required in emergencies, provided Defendant
12 notifies DEQ immediately after the emergency and evaluates the impact of its actions.

13 (2) After review of any plan, report, or other item required to be submitted for
14 DEQ approval under this Consent Judgment, DEQ will: (a) approve the submission in whole or in
15 part; or (b) disapprove the submission in whole or in part, and notify Defendant of its deficiencies
16 and/or request modifications to cure the deficiencies.

17 (3) DEQ approvals, rejections, or identification of deficiencies will be given in
18 writing within the time specified in the SOW or as soon as practicable, and will state DEQ's
19 reasons with reasonable specificity.

20 (4) In the event of DEQ disapproval or request for modification of a submission,
21 Defendant will, within 30 days of receipt of the DEQ notice or such longer time as may be
22 specified in the notice, correct the deficiencies and resubmit the revised report or other item for
23 approval.

24 (5) In the event of two deficient submittals of the same deliverable that are
25 deficient for the same reasons due to Defendant's failure in good faith to cure the original
26 deficiency, DEQ may modify the submission to cure the deficiency.

1 (6) In the event of approval or modification of a submission by DEQ, Defendant
2 will implement the action(s) required by the plan, report, or other item, as so approved or
3 modified, or invoke dispute resolution under Subsection 4.M.

4 D. Access to Property

5 (1) Defendant will allow DEQ and its officers, agents, authorized representatives,
6 employees, and contractors to enter all portions of the Site owned by or under the control of
7 Defendant at all reasonable times for the purpose of overseeing Defendant's performance under
8 this Consent Judgment and for purposes of performing investigations, removal actions, and/or
9 remedial actions in the Lowland/In-water OU. DEQ's right of access hereunder includes but is
10 not limited to inspecting records relating to work under this Consent Judgment; conducting such
11 tests and taking such samples as DEQ deems necessary; verifying data submitted to DEQ by
12 Defendant; conducting periodic review; and using camera, sound recording, or other recording
13 equipment. DEQ will make available to Defendant, upon Defendant's request, any photographs
14 or recorded or videotaped material taken.

15 (2) Before undertaking any remedial activity at the Upland OU and/or Lowland/In-
16 water OU, except for in the event of an emergency, DEQ shall provide Defendant at least 72
17 hours verbal notice of the activity. Prior to staging any equipment or placing any temporary
18 structures on the Property, DEQ shall provide Defendant no less than 30 days written notice of the
19 activity and provide Defendant an opportunity to review and comment on the location and design
20 of remedial activities.

21 (3) DEQ shall comply with all applicable federal, state, and local laws at all times
22 while on the Property and, subject to ORS 465.315(3), secure all necessary permits and
23 authorizations in connection with remedial activities at the Property. Defendant shall cooperate
24 with DEQ as necessary for DEQ to obtain and remain compliant with all necessary permits and
25 authorizations.

26 (4) DEQ shall conduct all activities on the Property in a manner to limit impacts

1 on the Property operations to the extent reasonably practicable taking into consideration
2 Defendant's reasonable privacy and security requirements. DEQ shall provide to Defendant plans
3 for any operations in the upland OU to minimize interference with Defendant's known operations
4 in the Upland OU. DEQ shall restore the surface condition of any areas of the Property disturbed
5 by DEQ's remedial activities to the extent reasonably practicable to the condition they were in
6 prior to commencement of DEQ's activities or better.

7 (5) DEQ shall be responsible for the health and safety of its agents, employees,
8 contractors, or assigns entering or moving about the Site to perform investigation or removal or
9 remedial action. To the extent permitted by Article XI, Section 7, of the Oregon Constitution and
10 by the Oregon Tort Claims Act, the State of Oregon will indemnify and hold harmless Defendant
11 and its respective directors, members, shareholders, partners, affiliates, officers, representatives,
12 tenants, employees, contractors, agents, successors, and assigns from and against any and all
13 liability for any and all claims to the extent the liability arises from acts or omissions related to
14 DEQ's performance of remedial measures at the Property under this Consent Judgment by the
15 State of Oregon or its commissions, agencies, officers, employees, contractors, or agents. This
16 indemnity does not extend to liability for any claim to the extent caused by wrongful acts or
17 omissions of Defendant or its tenants or agents, or those of a third party, or for any claim to the
18 extent attributable to contamination already existing at the Facility at the time of entry of this
19 Consent Judgment, except to the extent the indemnity claim arises out of gross negligence or
20 intentional misconduct by DEQ that exacerbates existing contamination.

21 (6) DEQ's activities at the Property may include but are not limited to: (a)
22 sampling and inspecting water, sediment, and/or soil in the Upland OU and/or Lowland/In-water
23 OU; (b) removing, capping, or otherwise remediating contaminated sediment and soil in the
24 Lowland/In-water OU; (c) dewatering contaminated sediment and soil in the upland area; (d)
25 temporarily storing equipment, vehicles, tools, and other materials; (e) temporarily storing
26 wastewaters and related materials and wastes; (f) restoring the surface condition of areas

1 disturbed by DEQ activities; (g) photographing portions of the Property and structures, objects,
2 materials at the Property as necessary to facilitate remedial measures; and (h) activities necessary
3 for implementation of Lowland/In-water OU remedial actions including (i) sediment dewatering,
4 (j) water management, (k) truck and or rail car loading, (l) temporary offices, (m) contractor
5 parking, and (n) all other activities reasonably required to safely and efficiently complete the
6 remedial actions.

7 (7) All tools, equipment, and other property brought upon the Property by or at
8 DEQ's direction remain DEQ's property, and shall be removed by DEQ no later than completion
9 of applicable investigation, removal, or remedial activities at the Property. Any activity requiring
10 more than 30 days' consecutive presence or the treating/dewatering of contaminated sediment or
11 soil at the Property must be specifically negotiated with Defendant and is otherwise subject to this
12 Subsection 4.D. In negotiating access for activities for implementation of a Lowland/In-water
13 OU remedial action or otherwise which requires access on or through the Upland OU, Defendant
14 will give reasonable access for such activities subject to DEQ making reasonable
15 accommodations so as to limit interference with then-existing or planned usage or operations on
16 the Upland OU. DEQ shall manage and dispose of all waste generated by DEQ in accordance
17 with all applicable federal, state, and local laws, and DEQ shall be designated as the generator of
18 all such waste. Except with the written consent of Defendant, DEQ may not store, dispose of, or
19 discharge at the Property any waste generated by DEQ's remedial activities.

20 (8) Defendant, or their authorized representatives, may observe DEQ while DEQ
21 is undertaking investigation, removal, or remedial activities in the Lowland/In-water OU;
22 provided that any observer must have health and safety training consistent with the requirements
23 of the health and safety plan for DEQ's activities and fully indemnifies DEQ, its consultants and
24 Contractors. Upon request with 30 days prior notice, DEQ shall provide Defendant a split or
25 duplicate sample taken in connection with this Consent Judgment, as well as a copy of all test
26 data, final sample results and analysis reports, toxicity evaluations, and other written reports that

1 arise from DEQ's investigation, removal, or remedial activities at the Property, unless the record
2 is exempt from disclosure under the Oregon Public Records Law. DEQ shall conduct sampling,
3 sample transport, and sample analysis in accordance with the Quality Assurance/Quality Control
4 ("QA/QC") provisions of a work plan consistent with DEQ's *Quality Assurance Policy for the*
5 *Environmental Cleanup Programs* (DEQ10-LQ-0063-QAG).

6 (9) DEQ may use its statutory authority to obtain access to property on behalf of
7 Defendant if DEQ determines that access is necessary and that Defendant has exhausted all good
8 faith efforts to obtain access.

9 E. Records

10 (1) In addition to those reports and documents specifically required under this
11 Consent Judgment, Defendant will provide to DEQ, within 10 days of DEQ's written request,
12 copies of QA/QC memoranda and audits, raw data, final plans, task memoranda, field notes (not
13 made by or at the direction of Defendant's attorney), and laboratory analytical reports relating to
14 the work to be performed under this Consent Judgment.

15 (2) Defendant will preserve all records and documents in possession or control of
16 Defendant or its employees, agents, or contractors that relate in any way to activities under this
17 Consent Judgment for at least five years after their creation. Following this retention period,
18 Defendant will provide DEQ 60 days notice before destruction or other disposal of such records
19 or documents.

20 (3) Subject to Paragraph 4.E.(4), Defendant may assert a claim of confidentiality
21 under the Oregon Public Records Law regarding any documents or records submitted to or copied
22 by DEQ pursuant to this Consent Judgment. DEQ will treat documents and records for which a
23 claim of confidentiality has been made in accordance with ORS 192.410 through 192.505. If
24 Defendant does not make a claim of confidentiality at the time the documents or records are
25 submitted to or copied by DEQ, the documents or records may be made available to the public
26 without notice to Defendant.

1 (4) Defendant will identify to DEQ (by addressor-addressee, date, general subject
2 matter, and distribution) any document, record, or item withheld from DEQ on the basis of
3 attorney-client or attorney work product privilege, except to the extent that such identifying
4 information is itself subject to a privilege. Attorney-client or work product privilege may not be
5 asserted with respect to any records required to be submitted under Paragraph 4.E.(1). DEQ
6 reserves its rights under law to obtain documents DEQ asserts are improperly withheld by
7 Defendant.

8 F. Notice and Samples

9 (1) Defendant will make every reasonable effort to notify DEQ of any excavation,
10 drilling, sampling, or other fieldwork to be conducted under this Consent Judgment at least five
11 working days before such activity, but in no event less than 24 hours before such activity. Upon
12 DEQ's verbal request, Defendant will make every reasonable effort to provide a split or duplicate
13 sample to DEQ or allow DEQ to take a split or duplicate of any sample taken by Defendant while
14 performing work under this Consent Judgment. DEQ will provide Defendant with copies of all
15 analytical data from such samples as soon as practicable. Defendant's work under this Consent
16 Judgment shall not interfere with DEQ implementation of any Lowland/In-Water OU remedial
17 action, except with the express written consent of DEQ.

18 (2) If DEQ or its contractors will be accessing the Property, DEQ or its contractors
19 will, except in an emergency, make every reasonable effort to notify Defendant at least 72 hours
20 before such access (and in an emergency will provide notice as soon as possible before accessing
21 the Property). Upon Defendant's verbal request, DEQ will make every reasonable effort to
22 provide a split or duplicate sample to Defendant or allow Defendant to take a split or duplicate of
23 any sample taken by DEQ, and will provide Defendant with copies of all analytical data for such
24 samples. Defendant will provide DEQ with copies of all analytical data from such samples as
25 soon as practicable.

26

1 G. Quality Assurance

2 (1) Defendant will conduct all sampling, sample transport, and sample analysis in
3 accordance with the QA/QC provisions approved by DEQ as part of the work plan. All plans
4 prepared and work conducted as part of this Consent Judgment must be consistent with DEQ's
5 *Quality Assurance Policy for the Environmental Cleanup Programs* (DEQ10-LQ-0063-QAG).
6 Defendant will make every reasonable effort to ensure that each laboratory used by Defendant for
7 analysis performs such analyses in accordance with such provisions.

8 (2) If DEQ conducts sampling or analysis in connection with this Consent
9 Judgment, DEQ will conduct sampling, sample transport, and sample analysis in accordance with
10 the QA/QC provisions of the approved work plan. Upon written request, DEQ will provide
11 Defendant with copies of DEQ's records regarding such sampling, transport, and analysis.

12 H. Progress Reports

13 [This Section Intentionally Omitted]

14 I. Other Applicable Laws

15 (1) Subject to ORS 465.315(3), all activities under this Consent Judgment must be
16 performed in accordance with all applicable federal, state, and local laws.

17 (2) All activities under this Consent Judgment must be performed in accordance
18 with any applicable federal, state, and local laws related to archeological objects and sites and
19 their protection. If archeological objects or human remains are discovered during any
20 investigation, removal, or remedial activity at the Property, Defendant will, at a minimum: (a)
21 stop work immediately in the vicinity of the find; (b) provide any notifications required by
22 ORS 97.745 and ORS 358.920; (c) notify the DEQ Project Manager within 24 hours of the
23 discovery; and (d) use best efforts to ensure that Defendant and its employees, contractors,
24 counsel, and consultants keep the discovery confidential, including but not limited to refraining
25 from contacting the media or any third party or otherwise sharing information regarding the
26 discovery with any member of the public. Any project delay caused by the discovery of

1 archeological object or human remains is a Force Majeure under Subsection 4.L.

2 J. Reimbursement of DEQ Costs

3 (1) DEQ will submit to Defendant a monthly invoice of costs upon entry of this
4 Consent Judgement in connection with: (a) development and approval of this Consent Judgment;
5 (b) amendment of the DEQ-AWI Consent Judgment No. 19-CV-26021, EES and SMP that relates
6 to this Consent Judgment and Defendant's acquisition of the Property; (c) DEQ's assistance with
7 any other approvals requested by Defendant or AWI that relate to Defendant's acquisition or
8 redevelopment of the Property; and (d) any activities related to the oversight and periodic review
9 of Defendant's implementation of this Consent Judgment. Each invoice must include a summary
10 of costs billed to date.

11 (2) DEQ shall not charge or invoice Defendant for work related to the Lowland/In-
12 water OU unless specified in other provisions of this Consent Judgment, Upland OU EES,
13 Lowland/In-water OU EES, or SMP.

14 (3) DEQ oversight costs payable by Defendant include direct and indirect costs.
15 Direct costs include site-specific expenses, DEQ contractor costs, and DEQ legal costs actually
16 and reasonably incurred by DEQ under ORS 465.200 *et seq.* DEQ's direct cost summary must
17 include a Land Quality share direct labor summary showing the persons charging time, the
18 number of hours, and the nature of work performed. Indirect costs include those general
19 management and support costs of DEQ and of the Land Quality share allocable to DEQ oversight
20 under this Consent Judgment and not charged as direct, site-specific costs. Indirect charges are
21 based on actual costs and applied as a percentage of direct personal services costs. DEQ will
22 maintain work logs, payroll records, receipts, and other documents to document work performed
23 and expenses incurred under this Consent Judgment and, upon request, will provide copies of
24 such records to Defendant.

25 (4) Within 30 days of receipt of DEQ's invoice, Defendant will pay the amount of
26 costs billed by check payable to the "State of Oregon, Hazardous Substance Remedial Action

Fund,” or invoke dispute resolution under Subsection 4.M. After 30 days, any unpaid amounts that are not the subject of pending dispute resolution, or that have been determined owing after dispute resolution, become a liquidated debt collectible under ORS 293.250 or other applicable law.

(5) Defendant will pay simple interest of 9% per annum on the unpaid balance of any DEQ oversight costs, which interest will begin to accrue at the end of the 30-day payment period, unless dispute resolution has been invoked. Interest on any amount disputed under Subsection 4.M will begin to accrue 30 days from final resolution of any such dispute.

K. Financial Assurance

[This Section Intentionally Omitted]

L. Force Majeure

(1) If any event occurs that is beyond Defendant’s reasonable control and that causes or might cause a delay or deviation in performance of the requirements of this Consent Judgment despite Defendant’s reasonable efforts (“Force Majeure”), Defendant will promptly, upon learning of the event, notify DEQ’s Project Manager verbally of the cause of the delay or deviation, its anticipated duration, the measures that have been or will be taken to prevent or minimize the delay or deviation, and the timetable by which Defendant proposes to carry out such measures. Defendant will confirm in writing this information within five working days of the verbal notification. Failure to comply with these notice requirements precludes Defendant from asserting Force Majeure for the event and for any additional delay caused by the event.

(2) If Defendant demonstrates to DEQ’s satisfaction that the delay or deviation has been or will be caused by Force Majeure, DEQ will extend times for performance of related activities under this Consent Judgment as appropriate. Circumstances or events constituting Force Majeure might include but not be limited to acts of God, unforeseen strikes or work stoppages, unanticipated site conditions, fire, explosion, riot, sabotage, war, and delays in receiving a governmental approval or permit. Normal inclement weather, increased cost of performance or changed business or economic circumstances may not be considered Force Majeure.

1 M. Dispute Resolution

2 (1) If Defendant disagrees with DEQ regarding any matter relating to this Consent
3 Judgment, Defendant will promptly notify DEQ in writing of its objection. DEQ and Defendant
4 then will make a good-faith effort to resolve the disagreement within 21 days of Defendant's
5 written objection. At the end of the 21-day period, DEQ will provide Defendant with a written
6 statement of its position from DEQ's Northwest Region Cleanup Program Manager. If Defendant
7 still disagrees with DEQ's position, then Defendant, within 21 days of receipt of DEQ's position
8 from the Cleanup Manager, will provide Defendant's position and rationale in writing to DEQ's
9 Northwest Region Administrator. The Region Administrator may discuss the disputed matter
10 with Defendant and, in any event, will provide Defendant with DEQ's final position in writing as
11 soon as practicable after receipt of Defendant's written position.

12 (2) If Defendant refuses or fails to follow DEQ's final position pursuant to
13 Paragraph 4.M.(1), and DEQ seeks to enforce its final position, the Parties, subject to Subsection
14 2.A. and Section 7, are entitled to such rights, remedies, and defenses as are provided by
15 applicable law.

16 (3) During the pendency of any dispute resolution under this subsection, the time
17 for completion of work or obligations affected by such dispute is extended for a period of time not
18 to exceed the actual time taken to resolve the dispute. Elements of work or obligations not
19 affected by the dispute must be completed in accordance with the applicable schedule.

20 N. Effect of Consent Judgment

21 (1) If Defendant fails to comply with this Consent Judgment, DEQ may seek civil
22 penalties under ORS 465.900 and enforcement of this Consent Judgment by this Court. If DEQ
23 seeks enforcement of this Consent Judgment by this Court, DEQ may seek monetary sanctions,
24 such as civil penalties, only if DEQ has not assessed and collected any civil penalties under
25 ORS 465.900 regarding the same violation.

26 (2) Subject to Section 2, Defendant does not admit any liability, violation of law,

1 factual or legal findings, conclusions, or determinations asserted in this Consent Judgment.

2 (3) Nothing in this Consent Judgment is intended to create any cause of action in
3 favor of any person not a party to this Consent Judgment.

4 (4) Subject to Section 2 and Section 7, nothing in this Consent Judgment prevents
5 DEQ, the State of Oregon, or Defendant from exercising any rights each might have against any
6 person not a party to this Consent Judgment.

7 (5) If for any reason the Court declines to approve this Consent Judgment in the
8 form presented, this settlement is voidable at the sole discretion of any Party and the terms of the
9 settlement may not be used in evidence in any litigation among or against the Parties.

10 (6) DEQ and Defendant intend for this Consent Judgment to be construed as a
11 judicially-approved settlement by which Defendant has resolved its liability to the State of
12 Oregon, within the meaning of Section 113(f)(2) of the Comprehensive Environmental Response,
13 Compensation and Liability Act (CERCLA), 42 U.S.C. § 9613(f)(2), regarding Matters
14 Addressed, and for Defendant not to be liable for claims for contribution regarding Matters
15 Addressed to the extent provided by Section 113(f)(2) of CERCLA, 42 U.S.C. §§ 9613(f)(2).

16 (7) Unless specified otherwise, the use of the term “days” in this Consent
17 Judgment means calendar days.

18 (8) This Consent Judgment is void and of no effect if Defendant does not complete
19 acquisition of the Property by October 31, 2024.

20 O. Indemnification and Insurance

21 (1) Defendant will indemnify and hold harmless the State of Oregon and its
22 commissions, agencies, officers, employees, contractors, and agents from and against any and all
23 claims arising from acts or omissions related to this Consent Judgment of Defendant or its
24 officers, employees, contractors, agents, receivers, trustees, or assigns. DEQ may not be
25 considered a party to any contracts made by Defendant or its agents in carrying out activities
26 under this Consent Judgment.

1 (2) To the extent permitted by Article XI, Section 7, of the Oregon Constitution
2 and by the Oregon Tort Claims Act, the State of Oregon will indemnify and hold harmless
3 Defendant and its respective officers, employees, contractors, and agents, and indemnify the
4 foregoing, from and against any and all claims arising from acts or omissions related to this
5 Consent Judgment of the State of Oregon or its commissions, agencies, officers, employees,
6 contractors, or agents (except for acts or omissions constituting approval or disapproval of any
7 activity of Defendant under this Consent Judgment). Defendant may not be considered a party to
8 any contract made by DEQ or its agents in carrying out activities under this Consent Judgment.

9 (3) Before commencing any on-site work under this Consent Judgment, Defendant
10 will obtain and maintain for the duration of this Consent Judgment comprehensive general
11 liability and automobile insurance with limits of \$2 million, combined single limit per occurrence,
12 naming as an additional insured the State of Oregon. Upon DEQ request, Defendant will provide
13 DEQ a copy or other evidence of the insurance. If Defendant demonstrates by evidence
14 satisfactory to DEQ that its contractor(s) or subcontractor(s) maintain equivalent coverage, or
15 coverage for the same risks but in a lesser amount or for a lesser term, Defendant may provide
16 only that portion of the insurance that is not maintained by its contractor(s) or subcontractor(s).

17 P. Parties Bound

18 This Consent Judgment is binding on the Parties and their respective successors,
19 agents, and assigns. The undersigned representative of each party certifies that he or she is fully
20 authorized to execute and bind such party to this Consent Judgment. No change in ownership,
21 corporate, or partnership status relating to the Property in any way alters Defendant's obligations
22 under this Consent Judgment, unless otherwise approved in writing by DEQ.

23 Q. Modification

24 DEQ and Defendant may modify this Consent Judgment by written agreement,
25 subject to approval by this Court. DEQ and Defendant may modify the SOW, Upland OU EES,
26 Lowland/In-water OU EES, or SMP without having to obtain court approval, provided the

1 modification does not negatively impact DEQ's ability to select and implement protective and
2 feasible remedial actions for the Lowland/In-water OU and is consistent with the Upland OU
3 ROD.

4 R. Recording

5 Within 14 days of Defendant's acquisition of the property, Defendant will submit a
6 copy or original of this Consent Judgment (whichever is required by the county) to be recorded in
7 the real property records of Columbia County, Oregon. Defendant will provide DEQ with written
8 evidence of such recording within seven days of recording.

9 S. Service

10 Each Party designates in Exhibit G the name and address of an agent authorized to
11 accept service of process by mail on behalf of the Party with respect to any matter relating to this
12 Consent Judgment. Each Party agrees to accept service in such manner, and waives any other
13 service requirements set forth in the Oregon Rules of Civil Procedure or local rules of this Court.
14 The Parties agree that Defendant need not file an answer to the complaint in this action unless or
15 until the Court expressly declines to approve this Consent Judgment.

16 **5. Releases from Liability and Covenant Not to Sue**

17 A. Pursuant to ORS 465.327(3), this Consent Judgment is a "prospective purchaser
18 agreement" entered as a judicial consent judgment in accordance with ORS 465.325. Thus, this
19 Consent Judgment contains related but independent liability provisions pursuant to both
20 ORS 465.327 and 465.325. The ORS 465.327 liability provisions are set forth below in
21 Subsections 5.B. and 6.B. The ORS 465.325 liability provisions are set forth below in
22 Subsections 5.D., 6.A., and 6.C. In addition to these state law provisions, this Consent Judgment
23 may affect Defendant's rights and liabilities under federal and other laws, as described in
24 Paragraph 4.N.(6) and Subsection 5.E.

25 B. Pursuant to ORS 465.327, and subject to Subsection 5.C. and the satisfactory
26 performance by Defendant of its obligations under this Consent Judgment, Defendant is not liable

1 to the State of Oregon under ORS 465.200 to 465.545 and 465.900, 466.640, or 468B.310
2 regarding Existing Hazardous Substance Releases. Defendant bears the burden of proving by a
3 preponderance of the evidence that a hazardous substance release (for all hazardous substances,
4 hazardous materials, and oil described in Paragraph 2.B.(3)) existed as of the date of Defendant's
5 acquisition of ownership or operation of the Property.

6 C. The release from liability under Subsection 5.B. does not affect liability of
7 Defendant for claims arising from:

8 (1) A release of hazardous substances, spill or release of oil or hazardous material,
9 or entry of oil into the waters of the state at or from the Property on or after the date of
10 Defendant's acquisition of ownership or operation of the Property;

11 (2) Contribution to or exacerbation, on or after the date of Defendant's acquisition
12 of ownership or operation of the Property, of a release of hazardous substance, spill or release of
13 oil or hazardous material, or entry of oil into the waters of the state at or from the Property;

14 (3) Interference or failure to cooperate, on or after the date of Defendant's
15 acquisition of ownership or operation of the Property, with DEQ or other persons conducting
16 remedial measures under DEQ's oversight at the Property;

17 (4) Failure to exercise due care or take reasonable precautions, on or after the date
18 of Defendant's acquisition of ownership or operation of the Property, with respect to any
19 hazardous substance at the Property;

20 (5) Disposal or management of hazardous substances or solid waste removed from
21 the Property by or on behalf of Defendant;

22 (6) Criminal liability;

23 (7) Violation of federal, state, or local law on or after the date of Defendant's
24 acquisition of ownership or operation of the Property;

25 (8) Any matters as to which the State of Oregon is owed indemnification under
26 Paragraph 4.O.(1); and

(9) Claims based on any failure by Defendant to meet any requirements of this Consent Judgment.

D. Pursuant to ORS 465.325, subject to satisfactory performance by Defendant of its obligations under this Consent Judgment, the State of Oregon covenants not to sue or take any other judicial or administrative action against Defendant under ORS 465.200 to 465.545 and 465.900 regarding Matters Addressed, except that the State of Oregon reserves all rights against Defendant with respect to claims and liabilities described in Subsection 5.C.

E. Subject to satisfactory performance by Defendant of its obligations under this Consent Judgment, DEQ releases Defendant from liability to DEQ under any federal or state statute, regulation, or common law, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, regarding the release or threatened release of hazardous substances addressed in this Consent Judgment, except that DEQ reserves all rights against Defendant with respect to claims and liabilities described in Subsection 5.C.

6. Third-Party Actions

A. This Consent Judgment is a judicially-approved settlement within the meaning of ORS 465.325(6)(b), pursuant to which Defendant has resolved its liability to the State of Oregon and is not liable for claims for contribution regarding Matters Addressed.

B. Subject to the satisfactory performance by Defendant of its obligations under this Consent Judgment, Defendant is not liable to any person under ORS 465.200 to 465.545, 466.640, or 468B.310 regarding Existing Hazardous Substance Releases.

C. Subject to Section 7, Defendant may seek contribution in accordance with ORS 465.325(6)(c)(B).

7. Defendant Waivers

A. Defendant waives any claim or cause of action it might have against the State of Oregon regarding Existing Hazardous Substance Releases, provided Defendant reserves all rights

concerning the obligations of DEQ under this Consent Judgment.

B. Defendant waives any rights it might have under ORS 465.260(7) and 465.325(2) to seek reimbursement from the Hazardous Substance Remedial Action Fund or the Orphan Site Account for costs incurred under this Consent Judgment or related to the Property.

8. Benefits and Burdens Run with the Land

A. Pursuant to ORS 465.327(5), the benefits and burdens of this Consent Judgment run with the land, provided the releases from liability and covenant not to sue set forth in Section 5 limit or otherwise affect the liability only of persons who: (1) are not potentially liable under ORS 465.255, 466.640, or 468B.310 for Existing Hazardous Substance Releases; and (2) expressly assume in writing, and are bound by, the terms of this Consent Judgment applicable to the Property as of the date of their acquisition of ownership or operation.

B. Upon transfer of ownership of the Property, or any portion of the Property, from Defendant to another person or entity, Defendant and the new owner will provide written notice to the DEQ Project Manager within 10 days after the transfer. No change in ownership of the Property or the corporate or partnership status of Defendant in any way alters Defendant's obligations under this Consent Judgment, unless otherwise approved in writing by DEQ.

9. Certification of Completion

A. Upon Defendant's recording of the Lowland/In-water OU EES in accordance with the SOW, DEQ will provide public notice and opportunity to comment on a proposed certification decision in accordance with ORS 465.320 and 465.325(10)(b). After consideration of public comment, the Director of DEQ will issue a final certification decision. The certification decision will subsequently be submitted by DEQ to this Court. A certification of completion does not affect Defendant's remaining obligations under this Consent Judgment.

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This Court retains jurisdiction over the Parties and the subject matter of this Consent
ent.

1 STATE OF OREGON, DEPARTMENT OF ENVIRONMENTAL QUALITY

2
3 By: Christine Svetkovich Date: 08/08/2024
4 Christine Svetkovich
5 Administrator, Operations Division

6 By: Gary Vrooman Date: 08/16/2024
7 Gary Vrooman, OSB No. 075832
8 Assistant Attorney General
9 Oregon Department of Justice
10 100 SW Market Street
11 Portland, OR 97201
12 Attorney for DEQ

13
14 UPLAND DATA CENTER, LLC

15 By: Andy Gregg Date: 08/14/2024
16 Andy Gregg
17 General Counsel

18 By: Brien Flanagan Date: 08/14/2024
19 Brien Flanagan (Aug 14, 2024 15:12 PDT)
20 Brien Flanagan, OSB No. 023044
21 1211 SW Fifth Ave, Suite 1900
22 Portland, OR 97212
23 Attorney for RestorCap
24
25
26

1
2 CERTIFICATE OF COMPLIANCE with UTCR 5.100
3

4 The Parties to this to this action have stipulated to and approved of the Consent Judgment
5 pursuant to ORS 465.325 and ORS 465.327.

6 This proposed order or judgment is ready for judicial signature because:

7 1. ☒ Each opposing party affected by this order or judgment has stipulated to the order
8 or judgment, as shown by each opposing party's signature on the document being submitted.

9 2. ☒ Each opposing party affected by this order or judgment has approved the order or
10 judgment, as shown by signature on the document being submitted or by written confirmation of
11 approval sent to me.

12 3. ☐ I have served a copy of this order or judgment on all parties entitled to service and:

13 a. ☐ No objection has been served on me.

14 b. ☐ I received objections that I could not resolve with the opposing party despite
15 reasonable efforts to do so. I have filed a copy of the objections I received and indicated which
16 objections remain unresolved.

17 c. ☐ After conferring about objections, [role and name of opposing party] agreed to
18 independently file any remaining objection.

19 4. ☐ The relief sought is against an opposing party who has been found in default.

20 5. ☐ An order of default is being requested with this proposed judgment.

21 6. ☐ Service is not required pursuant to subsection (3) of this rule, or by statute, rule, or
22 otherwise.

23 ///

24 ///

25 ///

26 ///

1 7. [] This is a proposed judgment that includes an award of punitive damages and notice
2 has been served on the Director of the Crime Victims' Assistance Section as required by
3 subsection (4) of this rule.

4
5 DATED this 16th day of August, 2024.

6
7 Attorney General
 ELLEN F. ROSENBLUM

8 *Gary Vrooman*

9 _____
10 Gary Vrooman, OSB #075832
11 Assistant Attorney General
 Of Attorneys for Plaintiff
12 Department of Justice
 100 SW Market Street
13 Portland, OR 97201
 Phone: 971-707-8227
14 Fax: 971-673-1884
 Gary.L.Vrooman@doj.oregon.gov



Exhibit A

Location of Property/Vicinity Map

Former Armstrong World Facility
St. Helens, Oregon

Legend

 Site Boundary



0 0.3 0.5 1 Miles

EXHIBIT B
Legal Description

The Land referred to herein below is situated in the County of Columbia, State of Oregon, and is described as follows:

PARCEL 1:
UPLAND AREA

A PORTION OF THAT TRACT OF LAND CONVEYED TO ARMSTRONG WORLD INDUSTRIES INC. IN [BOOK 267, PAGE 931](#), COLUMBIA COUNTY DEED RECORDS IN THE WEST HALF OF SECTION 9, TOWNSHIP 4 NORTH, RANGE 1 WEST OF THE WILLAMETTE MERIDIAN, COLUMBIA COUNTY, OREGON BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS BEGINNING AT A POINT A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC" AT THE MOST NORTHERLY CORNER OF PARCEL 1 OF THAT TRACT OF LAND CONVEYED TO COLUMBIA COUNTY IN DOCUMENT NO. [2003-09772](#), COLUMBIA COUNTY DEED RECORDS, SAID POINT BEING ON THE SOUTHWESTERLY LINE OF THE RAILROAD RIGHT OF WAY CONVEYED TO SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY IN DEED BOOK 54, PAGE 265, COLUMBIA COUNTY DEED RECORDS; THENCE SOUTH 50°32'41" WEST ALONG THE WESTERLY LINE OF SAID PARCEL 1, 45.21 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC", THENCE CONTINUING ALONG SAID WESTERLY LINE SOUTH 6°04'55" EAST 500.72 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "PHIL DEWEY PLS 847" THENCE CONTINUING ALONG SAID WESTERLY LINE SOUTH 39°18'48" EAST 339.87 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE LEAVING SAID WESTERLY LINE SOUTH 69°18'29" WEST 52.33 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 44°09'22" WEST 100.97 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 56°56'02" WEST 86.64 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 18°49'01" EAST 42.79 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 66°58'55" WEST 125.65 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 16°30'50" WEST 31.03 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 69°47'09" WEST 191.45 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 21°22'49" EAST 96.95 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 35°45'28" EAST 68.36 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 57°02'45" EAST 39.50 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 70°57'27" EAST 96.50 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 40°41'46" EAST 48.24 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 66°23'09" EAST 27.72 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 87°22'48" EAST 76.95 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 79°40'38" EAST 46.56 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 16°57'34" EAST 52.14 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 25°17'14" EAST 53.33 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS

SURVEYING INC"; THENCE SOUTH 61°23'00" EAST 78.88 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 86°00'43" EAST 46.75 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 6°32'34" WEST 45.55 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 28°27'26" EAST 27.93 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 3°57'07" WEST 21.53 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 59°23'17" WEST 34.65 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 12°15'45" WEST 95.95 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 70°39'49" EAST 30.41 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 34°21'29" EAST 45.27 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 28°34'42" WEST 55.90 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 82°45'34" WEST 87.55 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 65°23'09" WEST 125.55 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 35°31'22" WEST 84.91 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 54°52'19" WEST 67.80 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 82°59'05" WEST 67.48 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 83°22'48" WEST 94.96 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 31°17'55" WEST 65.94 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 74°10'30" WEST 74.61 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 30°12'57" WEST 150.44 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 38°59'25" WEST 118.62 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 52°01'58" WEST 57.30 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 73°59'35" WEST 542.02 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 88°31'32" WEST 45.28 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 42°43'37" WEST 28.16 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 15°09'50" WEST 119.18 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 19°05'24" EAST 33.11 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 58°15'28" EAST 84.19 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 31°59'01" WEST 60.39 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 52°46'56" WEST 52.07 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 18°17'45" WEST 130.40 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 89°47'45" WEST 32.14 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 34°16'33" WEST 59.91 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 42°02'48" EAST 128.77 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 18°10'41" EAST 147.53 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 3°34'39" WEST 64.71 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 43°22'26" WEST 48.89 FEET TO A 5/8"

IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 43°27'39" WEST 26.20 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 11°35'35" EAST 20.13 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 87°14'05" EAST 100.17 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 25°08'19" EAST 87.99 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 34°54'31" EAST 61.23 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 75°41'30" EAST 24.61 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 26°44'34" EAST 59.57 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 56°05'59" EAST 62.43 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 24°08'32" EAST 194.21 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 13°07'49" WEST 50.50 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 8°55'57" EAST 68.55 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 5°22'12" WEST 77.69 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 16°13'52" EAST 30.32 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 29°29'05" EAST 47.25 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 59°33'06" EAST 20.88 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 4°58'30" EAST 16.51 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 13°04'19" WEST 62.50 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 82°53'49" WEST 62.62 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 66°11'45" WEST 9.64 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 19°43'20" WEST 49.77 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 49°38'26" EAST 130.19 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 42°19'10" EAST 83.96 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 43°50'32" EAST 99.26 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 27°55'13" EAST 99.44 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 47°18'39" EAST 86.62 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 56°42'25" EAST 108.25 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 47°03'37" EAST 89.54 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 67°45'41" EAST 97.62 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 75°12'34" EAST 130.82 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE SOUTH 12°18'45" EAST 126.42 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 67°18'24" EAST 23.11 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 26°01'44" EAST 137.66 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 06°08'37" WEST 606.18 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC"; THENCE NORTH 29°51'59" WEST 192.37 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC" ON THE SOUTHWESTERLY LINE OF THE RAILROAD RIGHT OF WAY CONVEYED TO SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY IN

DEED [BOOK 54, PAGE 265](#), COLUMBIA COUNTY DEED RECORDS THENCE ALONG SAID SOUTHWESTERLY LINE SOUTH 39°27'19" EAST 335.73 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "KLS SURVEYING INC" AT THE POINT OF BEGINNING.

PARCEL 2:
LOWLAND AREA

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHERLY BOUNDARY OF THE OLD PORTLAND-ST. HELENS COUNTY ROAD WITH THE LINE BETWEEN THE DONATION LAND CLAIMS OF POSEY WILLIAMS AND THOMAS H SMITH, SAID POINT BEING SOUTH 8°43' EAST 1020.0 FEET FROM THE NORTHEAST CORNER OF THE SAID POSEY WILLIAMS DONATION LAND CLAIM, TOWNSHIP 4 NORTH, RANGE 1 WEST OF THE WILLAMETTE MERIDIAN, COLUMBIA COUNTY, OREGON; THENCE FROM THIS PLACE OF BEGINNING AND FOLLOWING THE SOUTHERLY BOUNDARY OF THE SAID OLD PORTLAND-ST HELENS COUNTY ROAD NORTH 64°24 1/2' EAST 370.17 FEET; THENCE NORTH 55°36' EAST 178.0 FEET; THENCE NORTH 36°39' EAST 138.0 FEET; THENCE NORTH 19°46' EAST 496.0 FEET; THENCE NORTH 23°50' EAST 204.0 FEET; THENCE NORTH 28°42' EAST 361.0 FEET; THENCE NORTH 41° 53' EAST 426.58 FEET TO AN INTERSECTION WITH THE WESTERLY RIGHT OF WAY LINE OF THE ST. HELENS DOCK AND TERMINAL COMPANY RAILROAD, THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE, SOUTH 39°41' EAST 530 0 FEET; THENCE SOUTH 40°48' EAST 686.0 FEET; THENCE LEAVING THE ABOVE SAID WESTERLY RIGHT OF WAY LINE, SOUTH 49°14' WEST 45.20 FEET; THENCE SOUTH 07°27' EAST 500.32 FEET; THENCE SOUTH 40°46' EAST 1814.40 FEET TO THE CENTERLINE OF THE CHANNEL OF SCAPPOOSE BAY; THENCE ALONG SAID CENTERLINE SOUTH 43°30' WEST 1640.0 FEET; THENCE SOUTH 46°05' WEST 1254.54 FEET TO AN INTERSECTION WITH THE SOUTHEASTERLY EXTENSION OF THE LINE BETWEEN THE ABOVE SAID DONATION LAND CLAIM OF POSEY WILLIAMS AND THOMAS H. SMITH; THENCE ALONG THE EXTENSION OF THE DONATION LAND CLAIM LINE, NORTH 25°53' WEST 2497.3 FEET; THENCE NORTH 8°43' WEST 993.0 FEET TO THE PLACE OF BEGINNING.

EXCEPTING ALL THAT PART THEREOF LYING BELOW LOW WATER LINE IN SCAPPOOSE BAY.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO COLUMBIA COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF OREGON, BY DEED RECORDED OCTOBER 31, 1956 IN [BOOK 130, PAGE 448](#), DEED RECORDS OF COLUMBIA COUNTY, OREGON. EXCEPTING THEREFROM THAT TRACT OF LAND DESCRIBED AS EXHIBIT A IN CLERKS INSTRUMENT NO. [2019-09635](#), COLUMBIA COUNTY DEED RECORDS.

NOTE: This legal description was created prior to January 1, 2008.



Exhibit C

Operable Units

Former Armstrong World Facility
St. Helens, Oregon

Legend

 Operable Units



0 0.1 0.2 0.4
Miles

Exhibit D - Boundary Survey

RESTORCAP, LLC
1645 RAILROAD AVENUE,
ST HELENS, OREGON 97051

LOCATED IN THE WEST 1/2 OF SECTION 9,
TOWNSHIP 4 NORTH, RANGE 1 WEST, W.M.,
CITY OF ST HELENS,
COLUMBIA COUNTY, OREGON

LEGEND OF SYMBOLS & ABBREVIATIONS

- FOUND MONUMENT AS NOTED
- FOUND A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "CLS SURVEYING (NC)" PER CS NO. 6327
- MONUMENT POINT NO.
- YELLOW PLASTIC CAP
- ASPHALT PAVED AREA
- GRAVELLED AREA
- CONCRETE AREA
- +++++ CENTER OF RAIL ROAD TRACKS
- APPROXIMATE MEAN HIGH WATER LINE
- S--- SANITARY SEWER LINE
- P--- POWER POLE
- O--- OVERHEAD POWER LINE
- P--- PARKING LOT LINES
- H--- HANDICAPPED PARKING LINES
- F--- SEE PER FEMA PANEL NO. 41009C454D
- X--- FENCE
- B.F.E.--- BASE FLOOD ELEVATION

REFERENCES:

- SURVEYS
- 1 - CS NO. 249
 - 2 - CS NO. 282
 - 3 - CS NO. 784
 - 4 - CS NO. 784
 - 5 - CS NO. 848
 - 6 - CS NO. 976
 - 7 - CS NO. 1730
 - 8 - CS NO. 1744
 - 9 - CS NO. 1786
 - 10 - CS NO. 1948
 - 11 - CS NO. 2845
 - 12 - CS NO. 3038
 - 13 - CS NO. 3166
 - 14 - CS NO. 3238
 - 15 - CS NO. 3431
 - 16 - CS NO. L-1186
 - 17 - CS NO. L-1759
 - 18 - CS NO. L-2261
 - 19 - PARTITION PLAT NO. 2009-17
 - 20 - SOUTH ST. HELENS PLAT BOOK 1, PAGE 34
 - 21 - COUNTY ROAD No. 1
 - 22 - COUNTY ROAD D
 - 23 - D.D.T. MAP (B-26-18)
 - 24 - BT BOOK "CS", PAGE 83
 - 25 - BT BOOK "CS", PAGE 376

MONUMENT NOTES:

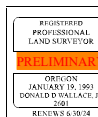
- [11] SK. CORNER OF THE FORBY WILLIAMS D.L.C. FOUND A 2" IRON PIPE, A COLUMBIA COUNTY PADDLE BEARS NORTH 12°, PER CS NO. 784 (FIELD).
- [658] FOUND A 4" IRON PIPE FILLED WITH CONCRETE WITH BRASS SCREW IN TOP AS NOTED ON CS NO. 282 (FIELD).
- [822] CL INTERSECTION OF ST. HELENS AND 9TH STREET FOUND A 2 1/2" BRASS DISK IN A MONUMENT BOX, ORIGIN UNKNOWN.
- [2024] FOUND A 5/8" IRON ROD WITH A Y.P.C. MARKED "PHIL DEWEY PLS 847" PER CS NO. 1948 (FIELD).
- [2026] FOUND A 1 1/2" IRON PIPE PER CS NO. 3038.
- [2027] FOUND A 5/8" IRON ROD WITH A Y.P.C. MARKED "PHIL DEWEY PLS 847" PER CS NO. 1948 (FIELD).
- [3233] FOUND A 1/2" IRON PIPE AS SHOWN ON CS NO. L-1759 (FIELD).
- [9041] FOUND A 2" IRON PIPE WITH A 2 1/2" BRASS DISK MARKED "INITIAL POINT, MCNUITY CR. RD. PARK, R.S. CORNER P. WILLIAMS D.L.C., P. DEWEY L84847" PER BT BOOK "CS", PAGE 376 (FIELD).
- [9043] FOUND A 1 1/2" IRON PIPE WITH A WITH A 2 1/4" BRASS CAP UP 6" MARKED "EAST POSEY WILLIAMS D.L.C. OR LINE COLUMBIA COUNTY SURVEY MONUMENT DO NOT DISTURB" PER BT BOOK "CS", PAGE 83 (FIELD).
- [9054] FOUND A 5/8" IRON ROD WITH A Y.P.C. MARKED "SELLERS 10601 PROP. COR." PER CS NO. 3166 (FIELD).
- [9055] FOUND A 1" IRON ROD, PER CS NO. 3228 (FIELD).

Line Table

LINE	BEARING	DISTANCE
L1	S84°08'43"W	239.50
L2	S25°18'56"W	222.43
L3	S20°39'36"W	276.82
L4	S60°54'56"W	68.80
L5	S49°36'20"W	101.98
L6	S60°54'56"W	100.00
L7	S72°13'32"W	101.98
L8	S60°54'56"W	138.26

Curve Table

CURVE	ARC LENGTH	RADIUS	DELTA	BEARING	DISTANCE
C1	569.80	1879.56	17°22'11"	S34°29'55"W	567.62
C2	168.92	1879.56	0°08'58"	S23°14'26"W	168.87
C3	206.32	265.00	45°02'31"	S40°47'26"W	203.00



ALTA / NSPS TITLE SURVEY FOR
RESTORCAP, LLC
1645 RAILROAD AVENUE,
ST HELENS, OREGON 97051

SHEET 3 OF 6
DRAWN BY: D.L.
FIELD SKETCHMAN
EQUIPMENT:
200 MG. STATION
DATE: 08/01/2024
REVISIONS:

Exhibit D
Page 1 of 1

Exhibit E
Scope of Work for Consent Judgment
1645 Railroad Avenue, St. Helens, Oregon

This Scope of Work (“SOW”) describes measures to be taken by the Defendant in Consent Judgment Case No. [REDACTED] (“Defendant”) to ensure timely implementation and long-term protectiveness of the remedial actions for the Upland Operable Unit (“Upland OU”) and Lowland/In-water Operable Unit (“Lowland/In-water OU”) of the Site. The Upland OU remedial action was completed in 2019 as documented in the Upland Operable Unit Remedial Action Construction Completion/Final Closeout Report dated January 2020. DEQ issued a Conditional No Further Action letter on February 3, 2020, which provides DEQ’s determination that the remedial action is complete and no further action is required except for compliance with institutional controls as provided in the Easement and Equitable Servitude (“EES”) for the Upland OU and Site Management Plan (“SMP”). A Certification of Completion for the Upland OU remedial action was filed with the Columbia County Court in February 2020. The Lowland/In-water OU remedial action is being performed by DEQ using settlement funds and is anticipated to take 10 years or longer to implement. Remedial action includes any investigations, studies, sampling, monitoring, assessments, surveying, testing, analyzing, planning, inspecting, training, engineering, design, construction, operation, maintenance or any other activities necessary to conduct, a removal or remedial action as authorized by DEQ under the provisions of ORS 465.200 to 465.545. The measures provided in this SOW are intended to implement the measures stipulated in the DEQ-AWI Consent Judgment No. 19-CV-26021 and EES for the Upland OU, to the extent the DEQ-AWI Consent Judgment provides for additional obligations on the part of the Defendant those obligations remain in effect.

Institutional Controls for Upland OU – The Defendant shall comply with the recorded EES (Columbia County 2019-09635) for the Upland OU and the DEQ-approved SMP as required in Consent Judgment No. 19-CV-26021. The SMP specifies: (i) requirements for earthwork; (ii) soil management procedures; (iii) discovery of unanticipated gross contamination; (iv) site controls; (v) upland cap long-term monitoring and maintenance; (vi) site security controls; (vii) recordkeeping; and (viii) reporting requirements. The SMP is intended to be revised, as needed, to address any changes to use that may alter requirements in the Upland OU. Defendant shall notify DEQ at least 30 days prior to any substantive changes in operations or conditions that are inconsistent with the existing SMP assumptions on Upland OU use, including low use areas referred to as “limited access areas” that do not require a cap under current uses. Defendant shall retain a qualified environmental consultant responsible for updating or amending the SMP and obtaining DEQ approval of such updates and amendments as needed to reflect such changes in use.

Institutional Controls for Lowland/In-water OU – Defendant shall record and comply with the DEQ-approved EES for the Lowland/In-water OU that ensures DEQ’s ability to implement and maintain the long-term protectiveness of the remedial action for the Lowland/In-water OU. The Defendant shall agree to future revisions to the Lowland/In-water EES that DEQ reasonably determines to be necessary to ensure DEQ’s ability to implement and maintain the long-term protectiveness of the remedial action for the Lowland/In-water OU. The EES may include conservation easements and other use restrictions,

requested by federal, state, and local permitting agencies in order for DEQ to obtain necessary remedial action construction permits, meet permitting requirements and provide for cost-effective options for habitat mitigation and natural resource restoration in the Lowland/In-water OU. Defendant shall also comply with the DEQ-approved SMP that has been revised for activities conducted in the Lowland/In-water OU.

Stormwater Monitoring – Defendant shall conduct stormwater monitoring according to the requirements of the applicable stormwater permit for the Property to evaluate the continued effectiveness of the surface cap in preventing migration of contaminants of concern in stormwater from the Upland OU to the Lowland/In-water OU. Defendant shall share the results of each stormwater monitoring event with the DEQ Cleanup project manager for the Property. If stormwater monitoring shows concentrations of Contaminants of Concern above benchmarks or other standards specified in the stormwater permit, the Defendant shall take response actions according to the stormwater permit requirements to reduce contaminant concentrations in the stormwater. The Defendant shall also maintain all necessary stormwater best management practices and treatment technologies as required in the Stormwater Pollution Control Plan, including but not limited to annual change out of storm filters in the storm filter vaults and catch basin cleanout. If for any reason, the Defendant no longer holds a stormwater permit, stormwater monitoring and reporting shall be conducted pursuant to a stormwater management plan approved by DEQ.

Onsite Storage and Utilities –For the duration of the Lowland/In-Water OU remedial actions, Defendant shall provide DEQ with a dedicated and secure onsite storage area and access to available utilities (power, potable water, sewer, internet, natural gas, etc.) suitable to implement the remedial actions. Storage facilities will be used to house equipment, kayaks, tools, and materials as needed to conduct the remedial actions. The size, location, security, and configuration of the onsite storage facility will be identified through mutual agreement between DEQ and the Defendant and may include use of an existing room, structure, or other enclosed storage space or identification of a portion of the property suitable for construction or placement of a new storage facility at the expense of DEQ, as appropriate. All costs associated with the use of Defendant's utilities by DEQ for implementation of Lowland/In-water OU remedial actions will be reimbursable to Defendant.

Construction Staging – During implementation of remedial actions in the Lowland/In-water OU, Defendant shall provide DEQ with access to dedicated onsite staging areas that are suitable for the temporary storage of construction equipment and materials, sediment dewatering and rehandling and water management, and other supporting activities as needed to facilitate implementation of remedial actions. The exact size, location, security, and configuration of onsite staging areas will be identified through mutual agreement between DEQ and the Defendant. If necessary for implementation of the Lowland/In-water OU remedial actions, Defendant shall allow construction of temporary access roads in the Upland and Lowland/In-water OUs or upgrades to existing roads in the Upland and Lowland/In-water OUs to accommodate construction equipment and materials. Defendant shall allow DEQ use and unencumbered access to the main facility entrance road or suitable alternative by mutual agreement during construction of the Lowland/In-water OU remedial actions. The areas currently agreed upon for use during implementation of remedial actions are depicted in Exhibit F and may be further refined as needed through mutual agreement between DEQ and the Defendant.

Note: Upland Use Areas shown are representative of DEQ's anticipated needs to implement remedial actions and are subject to change. Upland Use Areas will be determined through mutual agreement between DEQ and Site Owner for each remedial action phase.

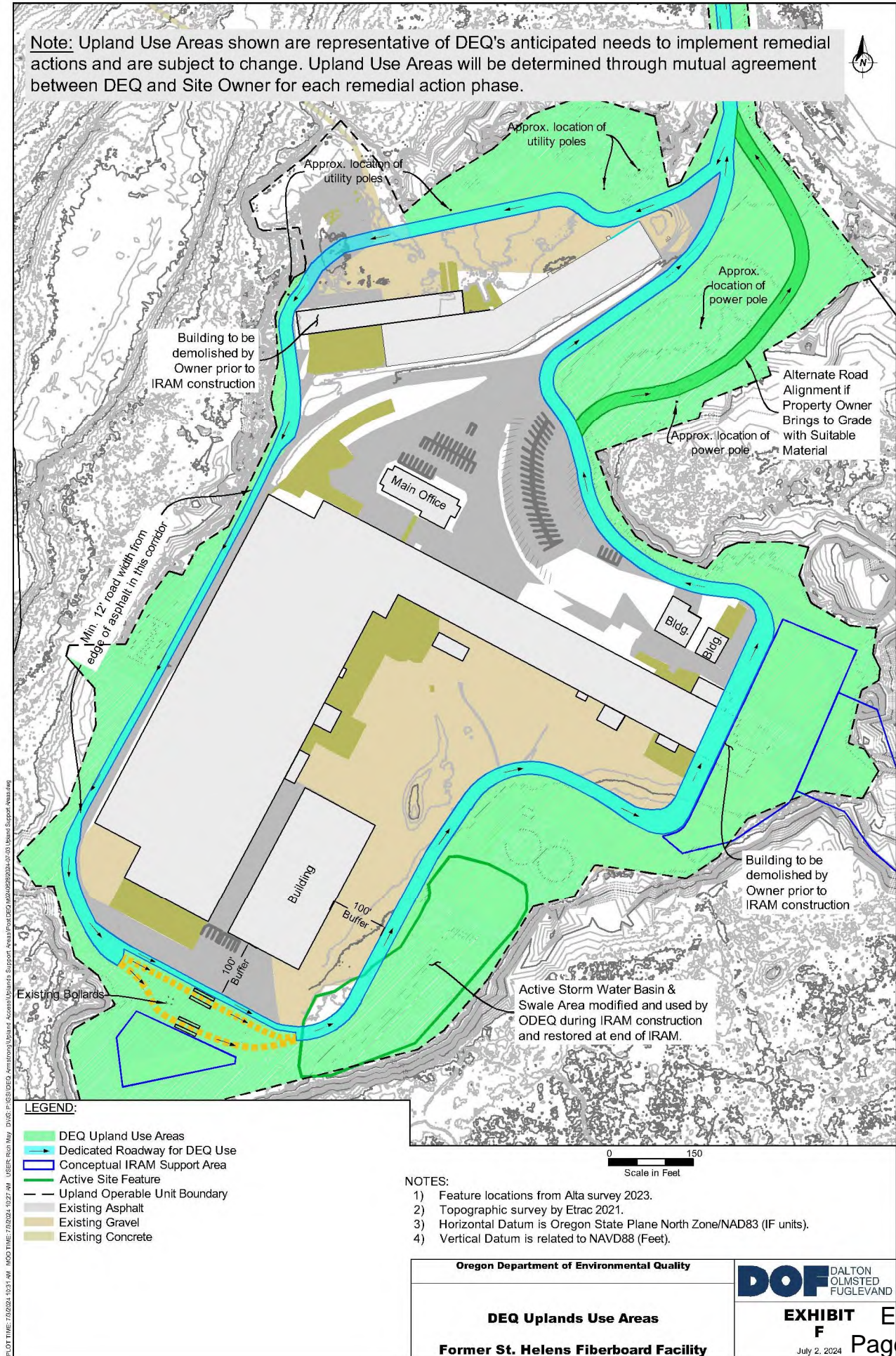


Exhibit G

After recording, return to:

Oregon DEQ
Northwest Region
700 NE Multnomah Avenue
Portland, OR 97232
Attn: _____

Space above this line for Recorder's use.

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes is made effective [DATE] between Upland Data Center, LLC (“**Entity**” or “**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 1645 Railroad Avenue, in St. Helens, in Columbia County, Oregon, as more particularly described in Exhibit A (the “**Property**”) to this Easement and Equitable Servitudes and which is illustrated in Exhibit B. The Property is part of a site referenced under the name Armstrong World Industries, ECSI #91 (the “**Site**”) in the files of DEQ’s Environmental Cleanup Program at the Northwest Region Office located at 700 NE Multnomah Avenue in Portland. Interested parties may contact the Northwest Region Office to review a detailed description of the residual risks remaining at the Site.

B. DEQ is performing a remedial investigation and feasibility study and will implement a remedial action on a portion of the Property referred to as the “Lowland/In-water Operable Unit”, whose legal description appears in Exhibit C. The remedial action will be documented in a Record of Decision “ROD” and is anticipated to address contaminated soil, sediment and groundwater through: excavation, dredging, capping, off-Site disposal, on-Site consolidation, in situ treatment, enhanced natural recovery, monitored natural recovery, long-term monitoring and maintenance, and institutional controls. Institutional controls will, at a minimum, include implementation of a site management plan and restrictions on land use.

C. On [DATE], 2024, DEQ and Grantor entered into a *Consent Judgment* in Columbia County Circuit Court Case No. [Insert case No.] in which Grantor agreed to enter into with DEQ this *Easement and Equitable Servitudes Related to Lowland* (“Lowland EES”). Such Consent Judgment shall be referred to hereafter as the “Upland Consent Judgment.”

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

E. Nothing in this Lowland EES constitutes an admission by Grantor of any liability for the contamination described in this Lowland 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 “**Engineering control**” has the meaning set forth in OAR 340-122-0115.

1.3 “**Hazardous substance**” has the meaning set forth in ORS 465.200

1.4 “**Owner**” means any person or entity, including Grantor, who at any time owns fee simple title 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 fee simple 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.

1.5 “**Remedial action**” has the meaning set forth in ORS 465.200 and OAR 340-122-0115.

2. GENERAL DECLARATION

2.1 Grantor 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 Lowland EES.

2.2 Each condition and restriction set forth in this Lowland EES touches and concerns the Property; and the equitable servitudes granted in Section 3 and easement granted in Section 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 Lowland EES, 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 Lowland EES.

3. EQUITABLE SERVITUDES (RESTRICTIONS ON USE)

3.1 **Land Use Restriction.** The Lowland/In-water Operable Unit of the Property shall not be developed, modified or regularly occupied by Owner’s employees, contractors, tenants or others unless otherwise approved in writing by DEQ until DEQ issues the ROD

specifying the remedial action for the Lowland/In-water Operable Unit and DEQ has determined that use of this Operable Unit will not impact the protectiveness and efficacy of remedial action.

3.2 **Site Management.** Owner shall identify and properly manage contaminated soil and sediment that may be encountered during excavation or other earthwork activities performed by Owner and approved by DEQ in the Lowland/In-water Operable Unit of the Property and comply with all conditions and restrictions set forth in the Site Management Plan (“*SMP*”). DEQ approved the SMP prepared by Groundwater Solutions, Inc. dated September 23, 2021. Owner may further update or amend the SMP and obtain DEQ approval of such update and amendments from time to time.

3.3 **Use of the Property.** Owner may not occupy or allow other parties to occupy or use the Lowland OU for any purpose except in full compliance with all conditions and restrictions in Section 3.1 of this Easement and Equitable Servitudes.

4. EASEMENT (RIGHT OF ENTRY)

During reasonable hours and subject to Grantor’s reasonable privacy and security requirements, DEQ may 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. During reasonable hours and subject to Grantor’s reasonable privacy and security requirements, and without unreasonably interfering with Owner’s use and enjoyment of the Property, DEQ may enter the Property to gain access to lowland and in-water areas adjacent to the Property for purposes of implementing remedial actions in those areas as determined necessary by DEQ. Except when necessary to address an imminent threat to human health or the environment, DEQ will use its best efforts to notify the Owner not less than 72 hours before DEQ entry onto 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 Lowland 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 cure period specified in such notice. Any such entry by DEQ pursuant to this paragraph shall 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 Lowland 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 Lowland 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 Lowland 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 fee interest in the Property. Such notice must include the full name and address of the Party to whom Owner has transferred an 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 Columbia County zoning code or any successor code. As of the date of this Lowland EES, the base zone of the Property is industrial.

6.3 **Reference in Deed.** A reference to this Lowland 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 Lowland 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

6.4 **Effect of Recording.** Upon the recording of this Lowland EES, all future Owners are conclusively deemed to have consented and agreed to every condition and restriction contained in this Lowland EES, whether or not any reference to this Lowland EES is contained in an instrument by which such person or entity occupies or acquires an interest in the Property.

6.6 **Enforcement and Remedies.** Upon any violation of any condition or restriction contained in this Lowland EES, the State of Oregon, in addition to the remedies described in Section 4, may enforce this Lowland EES as provided in the Upland Consent Judgment or seek available legal or equitable remedies to enforce this Lowland EES, including civil penalties as set forth in ORS 465.900.

[Signature page follows.]

IN WITNESS WHEREOF Grantor and Grantee have executed this *Easement and Equitable Servitudes Related to Lowland* 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: Upland Data Center LLC a limited liability corporation

By: _____ Date: _____

Name, Title

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument is acknowledged before me this ____ day of _____, 2021, by _____ Upland Data Center LLC on its behalf.

NOTARY PUBLIC FOR OREGON
My commission expires: _____

GRANTEE: State of Oregon, Department of Environmental Quality

By: _____ Date: _____

Name, Title

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument is acknowledged before me this ____ day of _____, 2024, by _____ of the Oregon Department of Environmental Quality, on its behalf.

NOTARY PUBLIC FOR OREGON

My commission expires: _____

EXHIBIT A

Legal Description of the Property

[insert legal description of the property]

EXHIBIT B

ILLUSTRATION OF LOCATION OF PROPERTY

[INSERT FIGURE 1 SITE MAP FROM SMP]

EXHIBIT C

Legal Description of the Lowland/In-water Operable Unit

[insert legal description of the lowland]

Exhibit H

Service List

For Plaintiff:

Gary Vrooman, OSB No. 075832
Assistant Attorney General
Oregon Department of Justice
100 SW Market St.
Portland, OR 97201-5702

For Defendant:

Brien Flanagan, OSB No. 023044
Schwabe, Willianson & Wyatt, P.C.
1211 SW Fifth Ave, Suite 1900
Portland, OR 97212

Signature: *Christine SVETKOVICH*

Email: christine.svetkovich@deq.oregon.gov

1 CERTIFICATE OF SERVICE

2 I certify that on August 16, 2024, I served a true copy of the foregoing of COMPLAINT
3 and CONSENT JUDGMENT in UPLAND DATA CENTER, LLC, upon the party hereto by the
4 method indicated below, and addressed to the following:

5
6 Brien Flanagan
7 Schwabe, Williamson & Wyatt, P.C.
8 1211 SW Fifth Ave, Suite 1900
9 Portland, OR 97212

___ Hand Delivery
x Mail Delivery
___ Overnight Mail
___ E-Mail

10
11 *Gary Vrooman*

12 _____
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: 971-707-8227
20 Fax: 971-673-1884
21 Gary.L.Vrooman@doj.oregon.gov

22
23
24
25
26
CERTIFICATE OF SERVICE (*In the Matter of UPLAND DATA CENTER, LLC*)