

RECORDED IN CLACKAMAS COUNTY  
JOHN KAUFFMAN, COUNTY CLERK

2001-103929



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DEPT OF ENVIRONMENTAL QUALITY  
NORTHWEST REGION

# CLACKAMAS COUNTY RECORDING DEPT. CERTIFICATE PAGE



**This page must be included  
if document is re-recorded.**

**Do Not remove from original document.**

In accordance with ORS 93.808, the Oregon Department of Environmental Quality approves the conveyance set forth in this instrument.

*Andrew Z. Schaedel*

*10/9/01*

(Name)

(Date)

**EASEMENT AND EQUITABLE SERVITUDE**

This Easement and Equitable Servitude is made \_\_\_\_\_, 2001, between Union Pacific Railroad ("UPRR" or "Grantor"), and the Oregon Department of Environmental Quality ("DEQ" or "Grantee")<sup>1</sup>.

**RECITALS**

A. Grantor is the owner of certain real property ("Property") located in Clackamas County, Oregon, the location of which is more particularly described in Exhibit 1 to this Easement and Equitable Servitude.

B. On March 14, 2001, the Director of DEQ selected the remedial action for the Property set forth in the Record of Decision for the Property ("ROD"). The remedial action selected in the ROD requires, among other things:

- The excavation of all accessible UPRR soil with CPAH concentrations greater than the protective concentrations (0.36 mg/kg) and placing the soil without treatment on Parcel 2 of the adjoining L. D. McFarland Company, Ltd.'s ("LDM") property.

C. On August 14, 2001, LDM entered into a Stipulation and Consent Decree, Clackamas County Circuit Court No. CCV0108179, which requires the implementation of the institutional controls on the Property as required by the ROD.

D. The provisions of this Easement and Equitable Servitude are intended to protect human health and the environment.

**1. GENERAL DECLARATION**

Grantor declares that all real property located in Clackamas County, state of Oregon, and described in Exhibit 1 to this Easement and Equitable Servitude is and shall be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to the Easement and Equitable Servitude. Each condition and restriction set forth in this Easement and Equitable Servitude touches and concerns the Property and the easement granted herein, shall run with the land for all purposes, shall be binding upon all Owners as set forth in this Easement and Equitable Servitude, and shall inure to the benefit of the State of Oregon until such time as same shall be removed by written certification from the DEQ that the Easement and Equitable Servitude are not longer required.

<sup>1</sup> After recording, return certified copies to:

Matt McClincy  
Northwest Regional Office  
Oregon Department of Environmental Quality  
2020 SW Fourth Avenue, Suite 400  
Portland, OR 97201-4987

David Young  
Union Pacific Railroad  
1416 Dodge Street  
Room 930  
Omaha, NE 68179-0930

## 2. DEFINITIONS

2.1 "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.

2.2 "Owner" means any person or entity, including Grantor, who is the record owner of fee simple title or a vendee's interest of record to any portion of the Property, including any successor 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.

## 3. EQUITABLE SERVITUDE (RESTRICTIONS ON USE)

3.1 No use shall be made of groundwater contained in any aquifer at the Property, by extraction through wells or by other means, which use involves consumption or other beneficial use of the groundwater. This prohibition shall not apply to extraction of groundwater associated with remedial activities at the site and/or temporary dewatering activities related to construction, development, or the installation of sewer or utilities at the Property.

3.2 No operations or uses shall be made on or of the Property that will or likely will jeopardize the cover's functional integrity. The Owner of the Property shall maintain the surface cover and any other permanent feature of the remedy described in the ROD in accordance with an Operations and Maintenance Plan ("Plan") approved in writing by DEQ.

3.3 The Property shall remain zoned for industrial/commercial use.

3.4 Grantor shall perform the Plan. Grantor shall provide notice to site operators and employees of the presence of contamination at and under the Property and of the Plan.

## 4. EASEMENT (RIGHT OF ENTRY)

During reasonable hours and subject to reasonable security requirements, DEQ shall have the right to enter upon and inspect any portion of the Property to determine whether the requirements of this Easement and Equitable Servitude have been or are being complied with. Violation of any condition or restriction contained in this Easement and Equitable Servitude shall give to DEQ the right, privilege, and license to enter upon the Property where such violation exists and to abate, mitigate, or cure such violation at the expense of the Owner, provided written notice of the violation is given to the Owner describing what is necessary to correct the violation and the Owner fails to cure the violation within a reasonable amount of time, as specified in such notice. Any such entry by DEQ shall not be deemed a trespass, and DEQ shall not be subject to liability to the Owner of the Property for such entry and any action taken to abate, mitigate, or cure a violation excepting that DEQ shall be responsible for the safety of their workers and DEQ shall comply with Grantor's safety requirements.

5. GENERAL PROVISIONS

5.1 All conditions and restrictions contained in the Easement and Equitable Servitude shall run with the land, until such time as any condition or restriction is removed by written certification from DEQ that the condition or restriction is no longer required in order to protect human health or the environment.

5.2 Any person who at any time owns, occupies, or acquires any right, title, or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every condition and restriction contained in this Easement and Equitable Servitude, whether or not any reference to this Easement and Equitable Servitude is contained in the instrument by which such person or entity acquired an interest in the Property.

5.3 The Owner of any portion of the Property shall notify DEQ at least 10 days before the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of the Owner's interest in the Property. This provision shall not apply to any entity or person who holds such interest solely for the security for the payment of an obligation.

5.4 The Owner of the Property shall notify DEQ within 30 days following 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 Clackamas County zoning code or any successor code.

5.5 Upon any violation of any condition or restriction contained in this Easement and Equitable Servitude, DEQ, in addition to the remedies described in paragraph 4, may seek any other available legal or equitable remedy to enforce this Easement and Equitable Servitude.

IN WITNESS WHEREOF Grantor has executed this Easement and Equitable Servitude as of the date and year first set forth above.

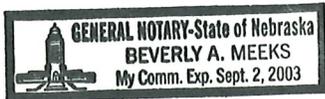
GRANTOR/UPRR:

UNION PACIFIC RAILROAD

By: Lawrence E. Wzorek  
(Name): Lawrence E. Wzorek

NEBRASKA  
STATE OF OREGON )  
County of Douglas ) ss.  
Clackamas )

The foregoing instrument is acknowledged before me this 5<sup>th</sup> day of December, 2001, by Lawrence E. Wzorek of Union Pacific Railroad, on its behalf.



Beverly A. MEEKS  
NOTARY PUBLIC FOR OREGON NEBRASKA  
My commission expires: \_\_\_\_\_

GRANTEE:

STATE OF OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY



Exhibit 1

***UPRR Parcel Legal Description***

That parcel of land situated in Section 36, Township 1 South, Range 1 East, of the Willamette Meridian, in the City of Milwaukie, Clackamas County, Oregon, being that portion of those parcels of land as described in deeds dated,

February 16, 1869, Between E. Ross et al, grantor and the Oregon Central Rail Road Company, Grantee, recorded March 8, 1869, in Book "G" Of Deeds, At page 9, and

May 12, 1868, Between J. R. W. Sellwood and Wife, grantor and the Oregon Central Rail Road, Grantee, recorded November 16, 1868 in Book "F" Of Deeds, At page 355, records of said county,

bounded on the northwest by the northeasterly prolongation of the most westerly line of Oak Street and on the southeast by the northeasterly prolongation of the most easterly line of 37<sup>th</sup> Street, as said Streets now exist in said City.