

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 14-09-24-03

IN THE MATTER OF AUTHORIZING THE BOARD CHAIR TO EXECUTE AN EASEMENT AND EQUITABLE SERVITUDES DOCUMENT WITH THE DEPT. OF ENVIRONMENTAL QUALITY AS GRANTEE FOR COUNTY PROPERTY IDENTIFIED AS MAP NO. 17-06-25-14-01100

WHEREAS Lane County acquired the property through property tax foreclosure and

WHEREAS portions of the property have been contaminated with petroleum due to migration from an adjoining property and

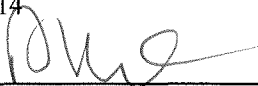
WHEREAS the State Dept. of Environmental Quality is requesting the County to execute an Easement and Equitable Servitudes document imposing use and notification provisions on the property and

WHEREAS execution of the document will allow any future owner of the property to acquire it without liability for existing contamination and to develop it within the guidelines set forth in the document

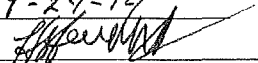
NOW, THEREFORE, the Board of County Commissioners of Lane County **ORDERS** as follows:

1. That pursuant to ORS Chapter 275.090 the Board Chair is authorized to executed the attached Easement and Equitable Servitudes document with Lane County as Grantor and the Dept. of Environmental Quality as Grantee

ADOPTED THIS 24th day of Sept, 2014



Pat Farr, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM
Date 9-24-14


LANE COUNTY OFFICE OF LEGAL COUNSEL

Space above this line for Recorder's use.

After recording, return to:

Grantee

Oregon DEQ, Salem Office
750 Front Street, Suite 120
Salem, Oregon 97301
Attn: Jim Glass

Grantor

Lane County
Lane County Board of Commissioners
125 E. 8th Street
Eugene, Oregon 97401

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes is made January 23, 2014, between Lane County, the (“**Grantor**”) and the Oregon Department of Environmental Quality (“**DEQ**” or “**Grantee**”).

RECITALS

A. The Grantor is the owner of certain real property located at 88771 Territorial Hwy, Elmira, OR 97437, Lane County Tax Map #17062514 Lot #01100 (the “**Property**”). The legal description of the Property is set out in Exhibit A and the location is shown on Exhibit B to this Easement and Equitable Servitudes. This site is referenced under the file name Elmira Family Store, USTC #20-98-7017 in the files of DEQ’s Environmental Cleanup Program at DEQ’s Western Region office located at 750 Front Street NE, Suite 120, Salem, Oregon, and telephone (503) 378-8240. Interested parties may contact the Western Region office to review a detailed description of the residual risks present at the Property.

B. On January 23, 2014, Conceptual Site Model, the Director of the Oregon Department of Environmental Quality or delegate selected the remedial action for the Property set forth in this Easement and Equitable Servitudes for the Property. The remedial action selected requires institutional controls: Groundwater Use Restriction, Use of Property Restriction, Notice of Property Transfer, and Notice of filing for initiating of rezoning designation.

C. On January 23, 2014, Conceptual Site Model, the Grantor entered into an agreement (**Agreement**) with DEQ, under which Grantor agreed to implement the selected remedial action, including the required institutional controls.

D. This Easement and Equitable Servitudes is intended to further the implementation of the selected remedial action and protect human health and the environment.

E. Nothing in this Easement and Equitable Servitudes constitutes an admission by Grantor of any liability for the contamination described in the Easement and Equitable Servitudes.

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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 "Hazardous substance" has the meaning set forth in ORS 465.200.

1.3 "Owner" means any person or entity, including Grantor, who at any time owns, occupies, or acquires any right, title, or interest in or to any portion of the Property or a vendee's interest of record to any portion of the Property, including any successor, heir, assign or holder of title or a vendee's interest of record to any portion of the Property, 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.

1.4 "Remedial Action" has the meaning set forth in ORS 465.200 and OAR 340-122-0115.

2. GENERAL DECLARATION

Grantor, in consideration of Grantee's issuance of a risk-based corrective action remedy, grants to DEQ an Easement for access and accepts the Equitable Servitudes described in this instrument and, in so doing, declares that the Property described in Exhibit A to this Easement and Equitable Servitudes, is now subject to and shall in future be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this Easement and Equitable Servitudes.

Each condition and restriction set forth in this Easement and Equitable Servitudes touches and concerns the Property and the equitable servitudes granted in Paragraph 3 and easement granted in Paragraph 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 Easement and Equitable Servitudes, 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 Easement and Equitable Servitudes.

3. EQUITABLE SERVITUDES (RESTRICTIONS ON USE)

3.1 **Groundwater Use Restrictions.** Excluding the existing water well, property owners shall not extract groundwater through wells or by other means for any purpose in the area of known groundwater contamination or within 100 feet of area of known groundwater

contamination from the former Elmira Family Store & Gas Station as shown and outlined in Exhibit C, **unless the following conditions are met:**

- Prior to any modification of an existing water supply well or installation of any new supply water wells within the areas identified above, the Owner must obtain approval from both DEQ and the Oregon Water Resources Department for well design and location. This includes the total well depth, casing depth, screening interval, and ground to surface seal depth and construction methods. An example of a well design that may be approved (the Bradley property replacement Water Supply Well Report) is attached as Exhibit E). In this example the well seal depth exceeds the minimum requirements of the Oregon Water Resources Department well construction regulations, however this seal design is recommended to help protect any new wells from shallow groundwater contamination.

This prohibition shall not apply to extraction of groundwater associated with temporary dewatering activities related to construction or development of the Property, or to the installation of sewer or utilities at the Property. Owner shall conduct a waste determination on any groundwater that is extracted during such monitoring, treatment, or dewatering activities and handle, store and manage waste water according to applicable laws.

3.2 **Use of the Property.** Owner shall not occupy or allow other parties to occupy any structure which is greater than 3 feet below-ground level for residential/urban residential or commercial purposes in the area identified in Exhibit C, **unless the following conditions are met:**

- Prior to any additional development or re-development of the Property that might encounter contaminated soil or groundwater, Owner must submit professionally prepared plans for the proposed (re-)development to DEQ for review (UST/WREC¹ or its successor). In addition, to the (re-)development plan, a Health and Safety Plan should also be written and submitted. Any (re-)development plans must consider: The preliminary Conceptual Site Model in the October 31, 2012, Ash Creek and Associates Site Investigation Report; the June 18, 2013, DEQ - Risk Based Conclusion Table as outlined in Exhibit D; and, the site-specific Contaminated Media Management 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 Servitudes have been or are being complied with. DEQ shall have the right, privilege, and license to enter upon the Property at any time to abate,

¹ UST/WREC: Underground Storage Tank/Western Region Environmental Cleanup Programs

mitigate, or cure at the expense of the Owner the violation of any condition or restriction contained in this Easement and Equitable Servitudes, provided DEQ first gives written notice of the violation to Owner describing what is necessary to correct the violation and Owner fails to cure the violation within the time specified in such notice. Any such entry by DEQ shall not be deemed a trespass, and DEQ shall not be subject to liability to Owner for such entry and any action taken to abate, mitigate, or cure a violation.

5. RELEASE OF RESTRICTIONS

5.1 Owner may request release of any or all of the conditions or restrictions contained in this Easement and Equitable Servitudes 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 Easement and Equitable Servitudes 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 Easement and Equitable Servitudes in its entirety.

6. GENERAL PROVISIONS

6.1 **Notice of Transfer/Change of Use.** Owner must notify DEQ within 10 days after the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of Owner's interest in or occupancy of the Property. Such notice must include the full name and address of the Party to whom Owner has transferred an interest or right of occupancy. In addition, Owner must notify DEQ a minimum of 10 days before the effective date of any change in use of the Property that might expose human or ecological receptors to hazardous substances. Such notice must include complete details of any planned development activities or change in use. Notwithstanding the foregoing, Owner may not commence any development inconsistent with the conditions or restrictions in Section 3 without prior written approval from DEQ as provided in Subsection 3 of this Easement and Equitable Servitudes or removal of the condition or restriction as provided in Subsection 5.1. This subsection does not apply to the grant or conveyance of a security interest in the Property.

6.2 **Zoning Changes.** Owner shall notify DEQ no less than thirty (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 City of Elmira, Lane County zoning code or any successor code. As of the date of this Easement and Equitable Servitudes, the base zone of the property is Rural Residential (2 Acre Minimum (RR2)).

6.3 **Reference in Deed.** A reference to this Easement and Equitable Servitudes, 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 Easement and Equitable Servitudes 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 Easement and Equitable Servitudes, all future Owners are conclusively deemed to have consented and agreed to every condition and restriction contained in this Easement and Equitable Servitudes, whether or not any reference to this Easement and Equitable Servitudes is contained in an instrument by which such person or entity occupies or acquires an interest in the Property.

6.5 **Enforcement and Remedies.** Upon any violation of any condition or restriction contained in this Easement and Equitable Servitudes, the State of Oregon, in addition to the remedies described in Section 4, may enforce this Easement and Equitable Servitudes as provided in the Agreement or seek available legal or equitable remedies to enforce this Easement and Equitable Servitudes, including civil penalties as set forth in ORS 465.900.

EXHIBIT A

Address: 88771 Territorial Hwy, Elmira, OR 97437

Parcel Number: Lane County Tax Map #17062514 Lot #1100

Public Land Survey: SE ¼ of the NE ¼ Section 25, Township 17 South, Range 6 West, Lane County Tax Lot 01100

Legal Property Description:

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES					
OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON					
75108		514 503			
OLD NUMBER		ACCOUNT NUMBER			
TAX LOT			DEED RECORD		
MAP NO. 17 06 25 1 4	PARCEL NO. 1100	SECTION _____	TOWNSHIP _____ S.	RANGE _____ W.M	
INDENT EACH NEW COURSE TO THIS POINT	LEGAL DESCRIPTION	DATE OF ENTRY	DEED NUMBER	ACRES REMAINING	
	Beginning at a point in the East line of County Rd # 155, 67.5 ft S12°31'W of a point 61.5 ft East of the intersection of the North line of Taylor St with the West line of Main St; also known as Territorial Rd, in Elmira; run thence	1974	R683/11554		
	East 645.20 ft to an iron pin; thence	1976	R791/19140		
	South 121.19 ft to an iron pin; thence	1976	R794/23214		
	N89°37'40"W 569.07 ft to an iron pin; thence	1983	R1228/83-01430		
	N81°00'30"W 100.0 fto a point on the East	1983	R1228/83-01431		
	line of said Territorial Rd; thence along said East line	1984	R1250/83-21043		
	N12°31'30"E 104.34 ft to the POB, all in Lane County, Oregon.	1986	R1323/84-44090*		
	EXCEPT: 0.68 ac to parcel 1103 by R1134/8503505	1986	R1347/8515536*		1.79
	& R1335/853705 for 1985.	1986	R1347/8515537*		
	Cont m/1	1992 de	R1347/8515538*		
			R1770/9234022		1.11

EXHIBIT B

PROPERTY TAX LOT MAP

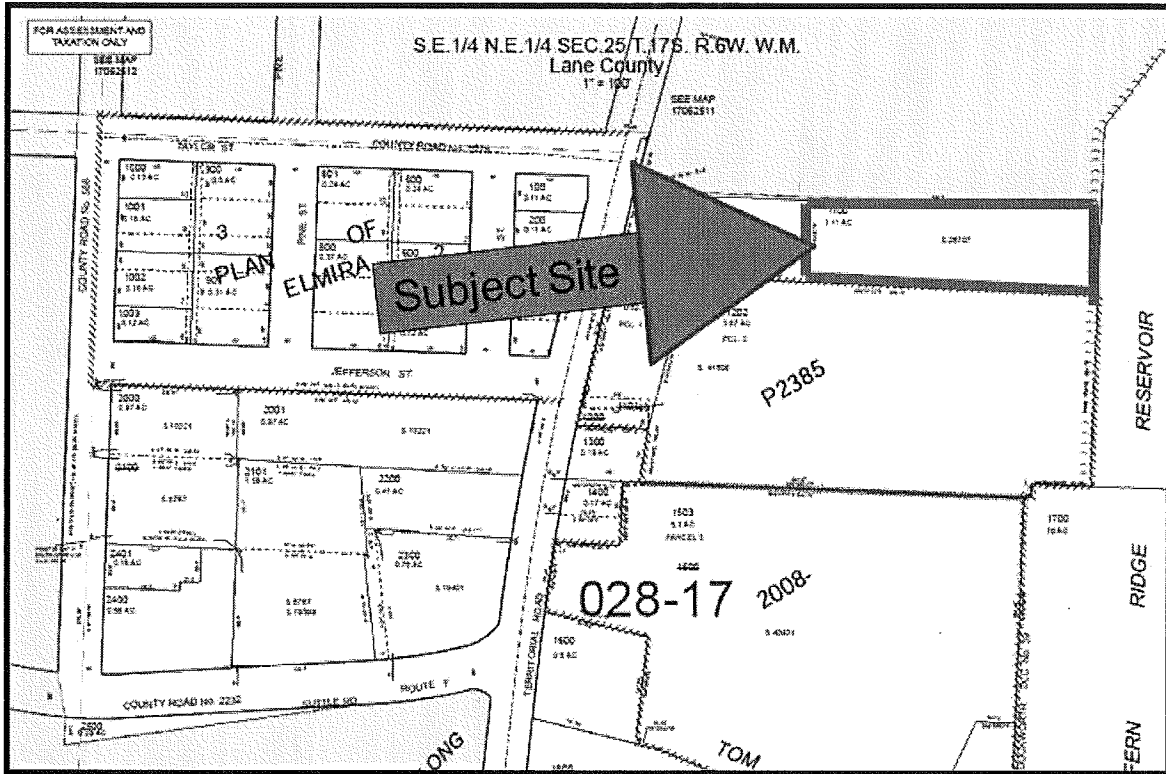
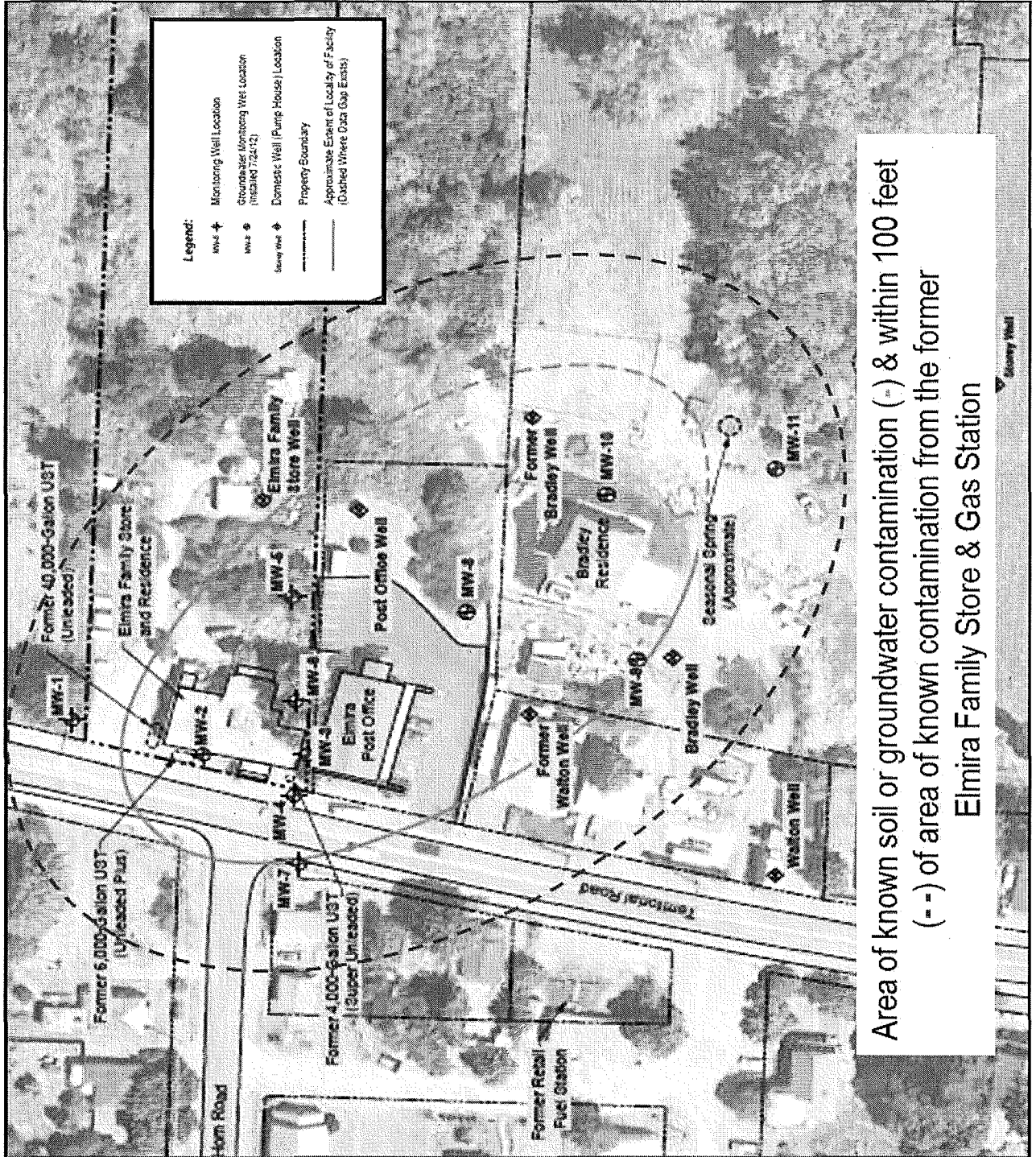


EXHIBIT C

ESTIMATED EXTENT OF GROUNDWATER CONTAMINATION



Area of known soil or groundwater contamination (-) & within 100 feet (- -) of area of known contamination from the former Elmira Family Store & Gas Station

EXHIBIT D

RISK BASED CONCLUSIONS - TAX MAP 17062514 Lot #1100
 LANE COUNTY PROPERTY - RISK-BASED CONCLUSIONS
 Elmira, OREGON

Date 6/29/2013	Pathway	Receptor	Table #1		
			Is Pathway Complete?	Is GRBC Exceeded?	Comments
Soil	Ingestion, Dermal Contact and Inhalation	Residential and/or Urban Residential	No	No	No soil contamination within three feet of ground surface was detected above DEQ GRBCs. DEQ recommends Future Construction and Excavation worker exposures follow and HaSP guidelines
		Occupational	No	No	
		Construction Work	Future	No	
		Excavation Worker	Future	No	
	Volatilization to Outdoor Air	Residential and/or Urban Residential	Yes	No	Below DEQ - GRBCs for Occupational use. - Future Residential exposures have been mitigated through institutional controls (see E&ES), and HaSP
		Occupational	No	No	
	Vapor Intrusion Into Buildings	Residential and/or Urban Residential	Yes	Restricted	Below DEQ - GRBCs for Occupational use. - Future Residential exposures have been mitigated through institutional controls (see E&ES), CMMP and HaSP
		Occupational	No	Restricted	
	Leaching to Groundwater	Residential and/or Urban Residential	Restricted	Yes	Soil contamination exceeds DEQ GRBCs. However shallow groundwater is not currently used and future exposures have been mitigated through groundwater use limitations (see E&ES)
		Occupational	No	Yes	
Groundwater	Ingestion & Inhalation From Tap Water	Residential and/or Urban Residential	Yes	Restricted	Shallow groundwater is not currently used. Future drinking water exposures have been mitigated through use limitations and well location/design (see E&ES)
		Occupational	Restricted	Yes	
	Volatilization to Outdoor Air	Residential and/or Urban Residential	Yes	Restricted	Future exposures have been mitigated through institutional controls (see E&ES), CMMP and HaSP
		Occupational	No	Restricted	
	Vapor Intrusion Into Buildings	Residential and/or Urban Residential	Future	Yes	Only TPH and one CoPC were found to exceed residential GRBCs in the crawlspace, indoor air sampling did not exceed GRBCs. Future Residential exposures have been mitigated through institutional controls (see E&ES), CMMP and HaSP
		Occupational	No	No	
	Groundwater in Excavation	Occupational	Future	No	Below DEQ - GRBCs and future exposures have been mitigated through the E&ES, the CMMP, and the HaSP
Ecological		Terrestrial & Surface Water	No	No	Ecologically-valuable habitat exists on the property. However soil and groundwater sample results collected on the property and near the seasonal spring were below all respective SLVs. As such, this pathway was not considered to be complete.
Notes: GRBC - Generic Risk Based Concentration CMMP - Contaminated Media Management Plan SLV - Screening Level Values for Ecological Receptors E&ES - Easement and Equitable Servitudes (Institutional Control recorded with Marion Co. limiting or restricting property usage)					

EXHIBIT E

REPLACEMENT WELL CONSTRUCTION LOG

LANE 71981

STATE OF OREGON
WATER SUPPLY WELL REPORT
(as required by ORS 537.765 & OAR 690-205-0210)

WELL LABEL # L 107775
START CARD # 1017654

(1) LAND OWNER Owner Well I.D. 5286
First Name Brian Last Name Bmdley
Company Elmira Family Store
Address 88741 Territorial Hwy.
City Elmira State OR Zip 97437

(2) TYPE OF WORK New Well Deepening Conversion
 Alteration (repair/recondition) Abandonment

(3) DRILL METHOD
 Rotary Air Rotary Mud Cable Auger Cable Mud
 Reverse Rotary Other

(4) PROPOSED USE Domestic Irrigation Community
 Industrial/ Commercial Livestock Dewatering
 Thermal Injection Other

(5) BORE HOLE CONSTRUCTION Special Standard Attach copy
Depth of Completed Well 100 ft.

BORE HOLE		SEAL		sncks/	
Dia	From To	Material	From To	Amt	lbs
10	0 79	Cement	1 79	96	S
6	79 100	Bentonite	0 1	2	S

How was seal placed: Method A B C D R
 Other Paused
Backfill placed from _____ ft. to _____ ft. Material _____
Filter pack from _____ ft. to _____ ft. Material _____ Size _____
Explosives used: Yes Type _____ Amount _____

(6) CASING/LINER

Casing Liner	Dia	From	To	Gauge	Stl	Plste	Wld	Thrd
<input checked="" type="checkbox"/>	6	1	94	250	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Shoe Inside Outside Other Location of shoe(s) _____
Temp casing Yes Dia 10 From 1 To 79

(7) PERFORATIONS/SCREENS

Per/S	Casing/Screen	From	To	Scr/slot	Slot	# of	Tele/
green	liner	Dia		width	length	slots	pipe size

(8) WELL TESTS: Minimum testing time is 1 hour
 Pump Bailor Air Flowing Artesian
Yield gal/min Drawdown Drill stem/Pump depth Duration (hr)
10 100 1

Temperature 53 °F Lab analysis Yes By _____
Water quality concerns? Yes (describe below)

From	To	Description	Amount	Units

(9) LOCATION OF WELL (legal description)
County LANE Twp 17 S Rng 6 W E/W WM
Sec 25 SE 1/4 of the NE 1/4 Tax Lot 1202
Tax Map Number _____ Lot _____
Lat _____ or _____ DMS or DD
Long _____ or _____ DMS or DD
 Street address of well Nearest address
88741 Territorial Hwy, Elmira, OR 97437

(10) STATIC WATER LEVEL

Existing Well / Predeepening	Date	SWL (psi)	+ SWL (ft)
Completed Well	09-17-2012		21

Flowing Artesian? Dry Hole?
WATER BEARING ZONES Depth water was first found 79

SWL Date	From	To	Est Flow	SWL (psi)	+ SWL (ft)
09-14-2012	79	94	10		21

(11) WELL LOG

Material	From	To	Ground Elevation
Gravel fill	0	4	
Brown clay	4	15	
Cemented gravel	15	30	
Gravel & sand	30	35	
Cemented gravel	35	94	
Blue gray sandstone	94	100	

RECEIVED BY OWRD
JONES DRILLING CO., INC.
29400 SANTIAM HWY. SEP 28 2012
LEBANON, OR 97355
541-367-2560 541-451-2686 SALEM, OR
1-800-915-8388

Date Started 09-11-2012 Completed 09-17-2012

(unbonded) Water Well Constructor Certification
I certify that the work I performed on the construction, deepening, alteration, or abandonment of this well is in compliance with Oregon water supply well construction standards. Materials used and information reported above are true to the best of my knowledge and belief.
License Number 1888 Date 09-21-2012
Password: (if filing electronically)
Signed _____

(bonded) Water Well Constructor Certification
I accept responsibility for the construction, deepening, alteration, or abandonment work performed on this well during the construction dates reported above. All work performed during this time is in compliance with Oregon water supply well construction standards. This report is true to the best of my knowledge and belief.
License Number 1684 Date 09-21-2012
Password: (if filing electronically)
Signed _____
Contact Info (optional) jonesdrilling@gmail.com

ORIGINAL - WATER RESOURCES DEPARTMENT
THIS REPORT MUST BE SUBMITTED TO THE WATER RESOURCES DEPARTMENT WITHIN 30 DAYS OF COMPLETION OF WORK Form Version: 0.95

IN WITNESS WHEREOF Grantor and Grantee have executed this Easement and Equitable Servitudes 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: Lane County Board of Commissioners

By: [Signature] Date: 09.24.14

for and on behalf of Grantor

STATE OF OREGON)
County of Lane) ss

The foregoing instrument is acknowledged before me this 24th day of Sept., 2014, by Diana L. Jones for and on behalf of Grantor.
(type or print)

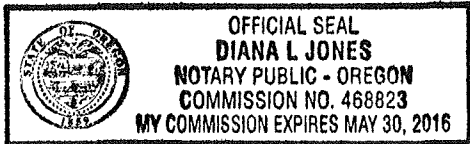
[Signature]
NOTARY PUBLIC FOR OREGON
My commission expires: 5/3/16

GRANTEE: State of Oregon, Department of Environmental Quality

By: _____ Date: _____
Paul S. Rosenberg, Manager, Regional Environmental Cleanup Program

STATE OF OREGON)
County of _____)

The foregoing instrument is acknowledged before me this ____ day of _____, 2014, by Paul S. Rosenberg, of Oregon DEQ, for and on its behalf.



NOTARY PUBLIC FOR OREGON
My commission expires: _____