



\$146.00

03/07/2024 12:54:00 PM

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\$50.00 \$5.00 \$20.00 \$11.00 \$60.00

Space above this line for Recorder's use.

After recording, return to:

**Grantee**

Oregon DEQ  
165 East 7<sup>th</sup> Avenue, Ste 100  
Eugene, OR 97401-3049  
Attention: Tina Elayer

**Grantor**

Yamhill County Public Works Department  
2060 NE Lafayette Avenue  
McMinnville, OR 97218  
Attention: Mark Lago

**EASEMENT AND EQUITABLE SERVITUDES**

This grant of Easement and acceptance of Equitable Servitudes ("EES") is made on January 25, 2024 between Yamhill County ("**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 2060 NE Lafayette Avenue, McMinnville, Yamhill County, Oregon, 97128. Map Tax Lot R441501600, (the "**Property**") the location of which is more particularly described as situated in Section 15, Township 4 South, Range 4 West of the Willamette Meridian, City of McMinnville, County of Yamhill, known as being part of that tract conveyed to Yamhill County by deeds recorded in Film Volume 56 Page 377, dated November 1, 1996, and Volume 117 Page 630, dated April 7, 1941, and Volume 182 Page 18, dated September 6, 1956, all recorded in the Yamhill County Clerk's Office, as described in Attachment A.

B. The Property is referenced under the name Yamhill Co. Public Works, LUST # 36-90-4326 in the files of DEQ's Cleanup program at Western Region office located at 4026 Fairview Industrial Dr SE Salem Oregon, and telephone (503) 378-8240. Interested parties may contact the Western Region office to review a detailed description of the risks from contamination remaining at the Property and described in the Revised Environmental Summary and Closure Report; Yamhill County Public Works Department, 2060 NE Lafayette Avenue McMinnville, Oregon, LUST File no. 36-90-4326.

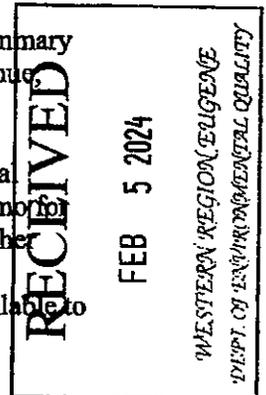
C. On June 20, 2023, the Director of the Oregon Department of Environmental Quality or delegate selected the remedial action for the Property set forth in the Staff Memo for the Property Equity Easement Servitude. The remedial action selected requires, among other things: no new water supply wells to be drilled on the property; a Contaminated Media Management Plan (CMMP) prepared by NV5 Engineering Consultants will be made available to

Easement and Equitable Servitudes  
Yamhill County Public Works

**RECEIVED**

FEB 20 2024

DEQ  
Eastern Region Board



B.O. 24-15

contractors for any future site development within the footprint of the existing property in the event contaminated soil or groundwater is encountered.

D. On January 25, 2024, via Yamhill County Board Order No. 24- 15, the Grantor agreed to enter into this Equitable Easement Servitude (EES) with DEQ, under which Grantor agreed to implement the selected remedial action, including the required institutional controls.

E. This EES is intended to further the implementation of the selected remedial action and protect human health and the environment.

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

## 1. DEFINITIONS

- 1.1 "Acceptable risk level" has the meaning set forth in Oregon Revised Statute (ORS) 465.315 and Oregon Administrative Rule (OAR) 340-122-0115.
- 1.2 "Beneficial use" has the meaning set forth in OAR 340-122-0115.
- 1.3 "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.
- 1.4 "Hazardous substance" has the meaning set forth in ORS 465.200
- 1.5 "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, but 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.
- 1.6 "Remedial Action" has the meaning set forth in ORS 465.200 and OAR 340-122-0115.

## 2. GENERAL DECLARATION

2.1 Grantor, in consideration of Grantee's issuance of a No Further Action letter with conditions 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 EES.

2.2 Each condition and restriction set forth in this EES touches and concerns the Property, and the equitable servitudes granted in Section 3 and easement granted in Section 4 below, runs with the land for all purposes, is binding upon all current and future owners of the Property as set forth in this EES, and inures 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 EES.

### **3. EQUITABLE SERVITUDES (REQUIRED ACTIONS AND RESTRICTIONS ON USE)**

3.1. **Groundwater Use Restrictions.** Owner may not extract through wells or by other means or use the groundwater at the Property for consumption or other beneficial use. This prohibition does not apply to extraction of groundwater associated with groundwater treatment or monitoring activities approved by DEQ or to temporary dewatering activities related to construction, development, or the installation of sewer or utilities at the Property. Owner must conduct a waste determination on any groundwater that is extracted during such monitoring, treatment, or dewatering activities and handle, store and manage wastewater according to applicable laws.

3.2 **Contaminated Media Management Plan.** Implement the Contaminated Media Management Plan dated 9/15/2023 (located in Oregon Records Management System (ORMS) under LUST # 36-90-4326: <https://ormswd2.synergydcs.com/> ) as may be amended from time to time with DEQ's written approval.

3.3 **Use of the Property.** Owner may not occupy or allow other parties to occupy the Property unless the controls listed in this Section 3 are maintained.

### **4. EASEMENT (RIGHT OF ENTRY)**

During reasonable hours and subject to reasonable security requirements, DEQ may enter upon and inspect any portion of the Property to determine whether the requirements of this EES have been or are being complied with. Except when necessary to address an imminent threat to human health or the environment, DEQ will use its best efforts to notify the Owner 72 hours before DEQ entry to 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 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 time specified in such notice. Any such entry by DEQ to evaluate compliance or to abate, mitigate, or cure a violation may 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 EES, including all grants of access contained herein, 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 the conditions or restrictions in this 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 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 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 EES 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 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 Yamhill County zoning code or any successor code. As of the date of this EES, the base zone of the Property is M-1, Light Industrial.

6.3. **Cost Recovery.** Owner will pay DEQ's costs for review and oversight of implementation of and compliance with the provisions in this EES as required under ORS 465, including but not limited to periodic review and tracking of actions required by this EES. This EES constitutes the binding agreement by the Owner to reimburse DEQ for all such eligible review and oversight costs. DEQ will establish a cost recovery account for tracking and invoicing DEQ project costs. DEQ will provide the Owner with a monthly statement and direct labor summary. DEQ costs will include direct and indirect costs. Direct costs include site-specific expenses and legal costs. Indirect costs are those general management and support costs of the State of Oregon and DEQ allocable to DEQ oversight of this EES and not charged as direct site-specific costs. Indirect charges are based on actual costs and are applied as a percentage of direct personal services costs.

6.4. **Inspection and Reporting.** Owner will immediately notify DEQ of any condition or occurrence at the Property that does not conform with provisions of this EES.

6.5. **Reference Deed.** A reference to this 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 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.

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

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

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

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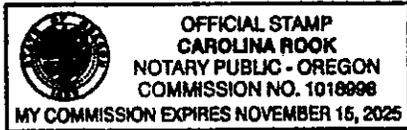
BY SIGNATURE BELOW, THE STATE OF OREGON APPROVES AND ACCEPTS THIS CONVEYANCE PURSUANT TO ORS 93.808.

**GRANTOR:**

By: *Lindsay Berschauer* Date: 1/30/2024  
Lindsay Berschauer, Yamhill County Commissioner (Chair)

STATE OF OREGON )  
County of Yamhill ) ss.

The foregoing instrument is acknowledged before me this 30<sup>th</sup> day of January 2024, by Lindsay Berschauer, Yamhill County Commissioner (Chair), on its behalf.



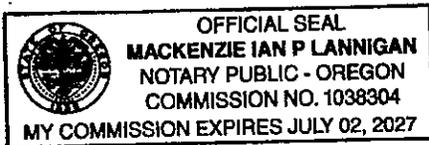
*Carolina Rook*  
NOTARY PUBLIC FOR OREGON  
My commission expires: November 15, 2025

**GRANTEE:** State of Oregon, Department of Environmental Quality

By: *Brad Shultz* Date: 2-22-24  
Brad Shultz, Western Region Cleanup Manager

STATE OF OREGON )  
County of Deschutes ) ss.

The foregoing instrument is acknowledged before me this 22<sup>nd</sup> day of February, 2024, by Brad Shultz, as Western Region Cleanup Manager for the Oregon Department of Environmental Quality, on its behalf.



*Mackenzie Lannigan*  
NOTARY PUBLIC FOR OREGON  
My commission expires: July 02, 2027

**ATTACHMENT A**  
**LEGAL DESCRIPTION**

EXHIBIT \_\_\_\_

Yamhill County Public Works

Parking Lot Easement and Equitable Servitudes (EES) Area

Situated in Section 15, Township 4 South, Range 4 West of the Willamette Meridian, City of McMinnville, County of Yamhill, known as being part of that tract conveyed to Yamhill County by deeds recorded in Film Volume 56 Page 377, dated November 1, 1966, and Volume 117 Page 630, dated April 7, 1941, and Volume 182 Page 18, dated September 6, 1956, all recorded in the Yamhill County Clerk's Office being more particularly described as follows:

Beginning at a monument box containing National Geodetic Survey Monument "DEL", PID "DE5647", a.k.a. Yamhill County Geodetic Control Point No. 200;

Thence North a distance of 185 feet to the north edge of the parking lot;

Thence easterly along the north edge of the parking lot, a distance of 257 feet to the northeast corner of the parking lot at the cell tower site;

Thence southerly along the edge of the cell tower site and along the face of the Sheriff's building, a distance of 320 feet;

Thence westerly a distance of 210 feet to the southeasterly corner of the Public Works building;

Thence northerly along the east face of the building, a distance of 91 feet to the northeasterly building corner;

Thence westerly along the northerly face of the building, a distance of 42' the entrance to Bay 10 of the Public Works building;

Thence North a distance of 40 feet to the point of beginning and containing 1.86 acres more or less.

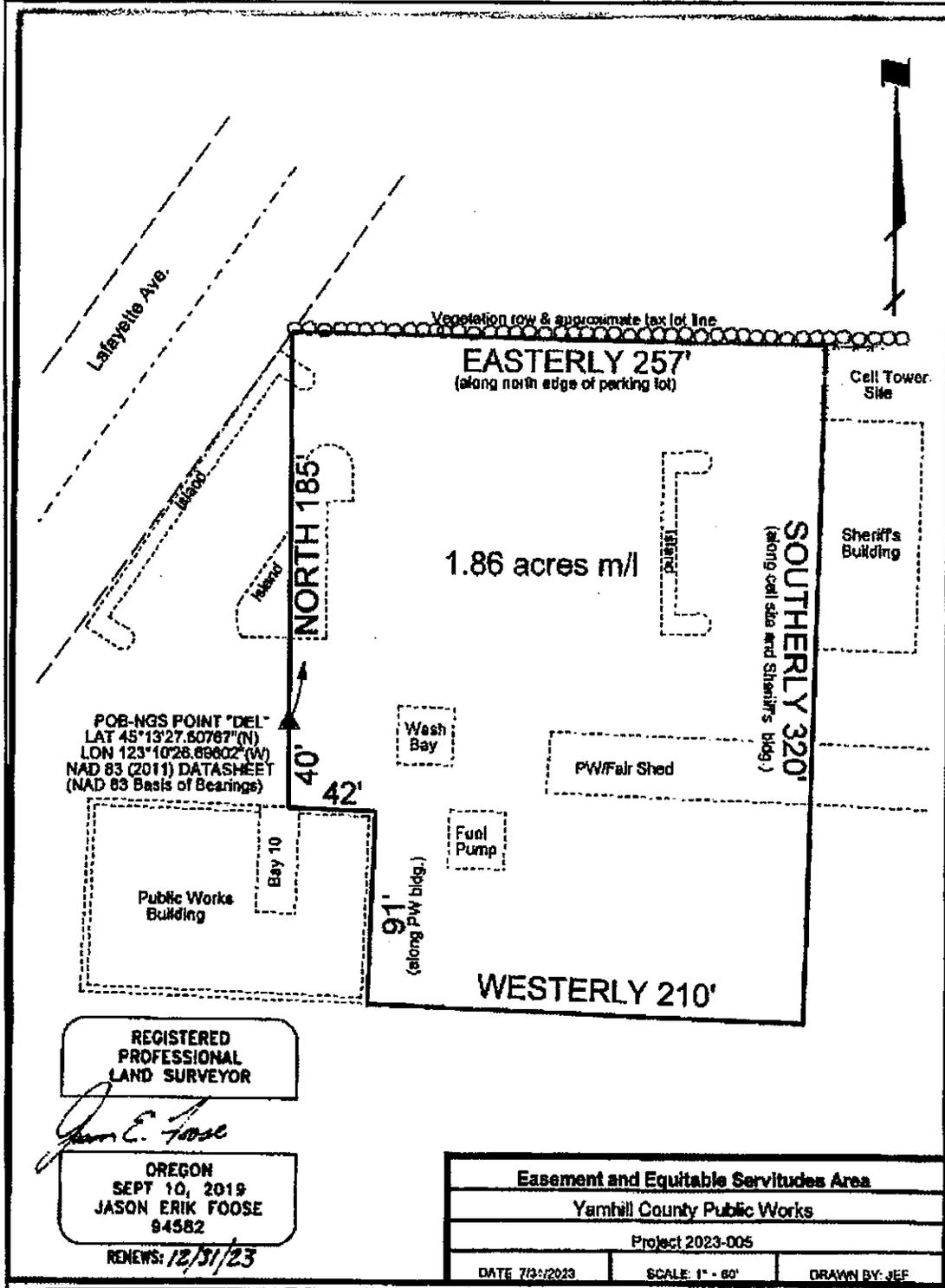
This description does not create a legal unit of land for conveyance purposes and was prepared by Jason E. Foose, County Surveyor, for and on behalf of Yamhill County by scaling record information and aerial photos. Bearings are assumed NAD 83 (2011) per NGS Data Sheet for PID DE5647.

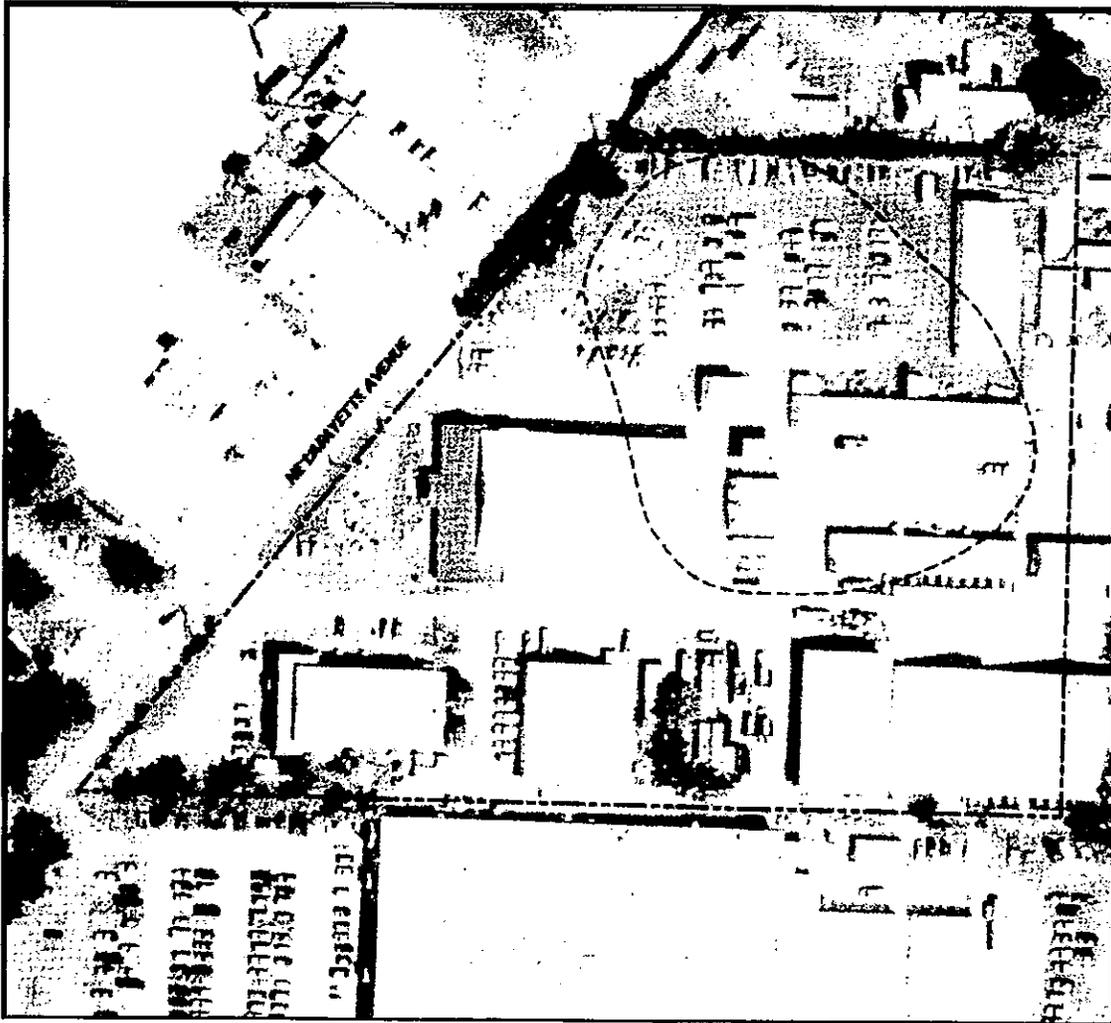
REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Jason E. Foose*

OREGON  
SEPT 10, 2019  
JASON ERIK FOOSE  
94582

RENEWS: 12/31/23





Locality of Facility Map. Site Map Plan retrieved from NV5 Revised Environmental Summary and Closure Report, Date 6/7/2023.