



## **April 3, 2024 BOC Regular Session**

Wasco County

Apr 3, 2024 9:00 AM - 12:00 PM PDT

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If necessary, an Executive Session may be held in accordance with: ORS 192.660(2)(a) – Employment of Public Officers, Employees & Agents, ORS 192.660(2)(b) – Discipline of Public Officers & Employees, ORS 192.660(2)(d) – Labor Negotiator Consultations, ORS 192.660(2)(e) – Real Property Transactions, ORS 192.660(2)(f) To consider information or records that are exempt by law from public inspection, ORS 192.660(2)(g) – Trade Negotiations, ORS 192.660(2)(h) - Conferring with Legal Counsel regarding litigation, ORS 192.660(2)(i) – Performance Evaluations of Public Officers & Employees, ORS 192.660(2)(j) – Public Investments, ORS 192.660(2)(n) –Security Programs, ORS 192.660(2)(n) – Labor Relations



WASCO COUNTY BOARD OF COMMISSIONERS  
REGULAR SESSION  
APRIL 3, 2024

This meeting was held in person and on Zoom

<https://wascocounty-org.zoom.us/j/3957734524>

Or call in to [1-253-215-8782](tel:1-253-215-8782) Meeting ID: 3957734524#

PRESENT: Steve Kramer, Chair  
Scott Hege, Vice-Chair (Virtual)  
Phil Brady, County Commissioner  
STAFF: Kathy Clark, Executive Assistant  
Tyler Stone, Administrative Officer

Chair Kramer opened the session at 9:00 a.m. with the Pledge of Allegiance.

**Discussion Item – Youth Services Diversion Funding**

Youth Services Director Molly Rogers reviewed the memo in the Board Packet saying she would like to start a conversation with Oregon Youth Authority (OYA) to plan for the diversion funding allocated to Wasco County for the next biennium. Historically, we have pooled our funding with Central and Eastern Oregon Juvenile Justice Consortium (CEOJCC). She said we will still contribute funding to CEOJCC but would work directly with OYA for the application of diversion funding.

Vice-Chair Hege asked if there will be any impact on the other CEOJCC counties or NORCOR if other counties follow suit. Ms. Rogers said that is one of the reasons she wants to approach this slowly. She said we will be like Deschutes County who applies their individual services funding through CEOJCC and their diversion funding locally. Like Wasco County, they have a detention facility. In some ways, this will free up space at NORCOR for other counties.

Vice-Chair Hege pointed out that NORCOR is negotiating new rates with CEOJCC. He asked if that will mean more funds will be used through CEOJCC. Ms. Rogers responded affirmatively. Vice-Chair Hege said he just does not want to see a snowball effect. Ms. Rogers said CEOJCC will need to redefine themselves; things are not the same as when it was established in the 1990s.

Vice-Chair Hege asked if CEOJCC has staff. Ms. Rogers replied that they have a business manager. Vice-Chair Hege asked for some history on CEOJCC. Ms.

Rogers said in the 1990s there was a court ruling that shut down juvenile detention in all of the eastern Oregon Counties because there were no separate juvenile facilities. Funding was identified to keep kids from having to be housed in local adult facilities but the smaller counties did not receive enough to have a significant impact. CEOJCC was established to allow counties to pool their funding in order to keep kids local rather than sending them to State facilities. COEJCC supports professional development and keeping kids local. The state has become more engaged with counties and other changes in the law have had an impact.

Vice-Chair Hege asked if there is a continued purpose and plan for change. Ms. Rogers replied that Jeff Milligan has been the consultant for COEJCC for many years and will be leading that process.

Chair Kramer said that he has attended CEOJCC meetings and there is a real passion for the kids within that group.

**{{Vice-Chair Hege moved to adopt the Juvenile Services Director's recommendation and authorize her to pursue any modifications needed to the original Chapter 190 Intergovernmental Agreement creating the Central and Eastern Oregon Juvenile Justice Consortium in order to work directly with Oregon Youth Authority to develop the 2025-2027 Diversion Plan for Wasco County. Commissioner Brady seconded the motion which passed unanimously.}}**

<b>Discussion Item – Summit Ridge Letter</b>
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Planning Director Kelly Howsley-Glover reviewed the memo and letter included in the Board Packet. She noted that the company is reapplying; that will come to the Board at a future session. One of the ways they began the project was to construct a road. Because they are shuttering that site, the State wanted to know if leaving the road was acceptable to Wasco County. She said she consulted with the Public Works Director and he agrees that it is acceptable for them to leave the road.

Commissioner Brady pointed out that in Dufur tonight there will be an introductory meeting to the next phase of this project.

**\*\*\*The Board was in consensus to send a letter regarding the Summit Ridge Wind Farm Site Certificate Termination to the Oregon Department of Energy.\*\*\***

**Discussion Item – 15-Mile Watershed Council Appointment**

Chair Kramer explained that the 15-Mile Watershed Council is requesting that the Board of County Commissioners appoint Kendal Johnson to their Watershed Council.

**{{Vice-Chair Hege moved to approve Order 24-008 appointing Kendal Johnson to the 15-Mile Watershed Council. Commissioner Brady seconded the motion which passed unanimously.}}**

**Discussion Item – Purchase and Sale Agreement**

Mr. Stone explained that through the SIP process, Wasco County negotiated for 35 acres to be transferred to the County as part of the agreement. Legal has gone through many iterations of the Purchase and Sale agreement; the final version is in the Board Packet. This represents the last piece of the process.

Commissioner Brady said that this is good for the community.

Chair Kramer pointed out language on page 16 that stated the property may not be in a fire protection district. County Counsel Kristen Campbell said that is language required by statute. Mr. Stone explained that “may” is saying that it is possible that the property is not in a fire district; it is cautioning the buyer to be aware of whether or not the property is within a fire district.

Vice-Chair Hege noted that Exhibit E talks about the property being subject to and required to have a PPA. Ms. Campbell stated that we engaged an environmental law expert to walk us through this issue. These documents exist and it was his opinion that most of the restrictions have been lifted with the exception of ground water extractions. We may need to do work if we want to put wells on the property. Vice-Chair Hege said there is not a plan for that so it will not inhibit development.

Chair Kramer thanked staff for the many years of work that was put into this.

**{{Vice-Chair Hege moved to approve the Purchase and Sale Agreement between Wasco County and Moraine Industries for a portion of Parcel Tax Lot 2N 13E 33 200. I further move to authorize the Administrative Officer to sign any necessary documents, pending legal review, to complete the sales transaction. Commissioner Brady seconded the motion which passed unanimously.}}**

**Consent Agenda – 3.20.2024 Regular Session Minutes**

**{{{Vice-Chair Hege moved to approve the Consent Agenda. Commissioner Brady seconded the motion which passed unanimously.}}}**

**Agenda Item – Emergency Management Grants**

Emergency Manager Sheridan McClellan reviewed the memo regarding the close out of Homeland Security Grant 23-216.

Vice-Chair Hege asked if the equipment is here. Mr. McClellan responded affirmatively, saying that the next phase is to switch out equipment and donate the old equipment to districts in the county.

Commissioner Brady asked if the districts are aware that they will be getting the equipment. Mr. McClellan said that he has been working with them and hopes to transfer the equipment in the next 6 months.

Mr. McClellan went on to review the information included in the packet regarding an application for the Resilience Hubs and Networks Grant.

Commissioner Brady has asked what the interest has been from the other cities. Mr. McClellan said that he has some letters of support and is still working with Mosier and Dufur. All the cities will have their own annex of information.

Commissioner Brady asked how long it will take. Mr. McClellan replied that if successful, the project would be funded in June and take about a year to complete.

**\*\*\*The Board was in consensus for the Emergency Manager to move forward with the Resilience Hubs and Networks Grant application.\*\*\***

**Agenda Item – Brownfields Coalition Memorandum of Agreement**

Mid-Columbia Economic Development District Energy and Project Manager Lindsay McClure referred to the memo included in the Board Packet and said she would be happy to answer any questions.

Commissioner Brady commented that it is pretty standard and straightforward. Chair Kramer commented that MCEDD is doing a great job of keeping us all moving in the right direction.

**{{{Commissioner Brady moved to approve the Brownfield Assessment**

**Collation Memorandum of Agreement for EPA Cooperative Agreement 4B-02J51801-0 between Mid-Columbia Economic Development District, Columbia Cascade Housing Corporation, Sherman, Wasco, and Klickitat Counties. I further move to authorize Wasco County's Administrative Officer to sign future agreements related to the Brownfield Assessment Coalition pending legal review. Vice Chair Hege seconded the motion which passed unanimously.}}**

#### Commission Call

Commissioner Brady said that the Director for the Discovery Center is moving out of the area; they are searching for a replacement. They have received the title and deed from Bill Dick – that is moving forward.

Commissioner Brady reported that the Executive Director for North Central Public Health District is retiring; he is trying to move the work session process forward before that time. He said he would work with the NCPHD Board Chair and come back with a prospective date.

Chair Kramer said things have gone a little south regarding OHA funding for the Resolution Center. He has a meeting with the Strategic Program Director for the Mental Health Investment Team to try to get more funding. It is a new leadership team and they need time to get up to speed.

Mr. Stone said that the Little League opening ceremonies are this Saturday at 9 a.m. The Little League would like for the Board to attend.

Services for Chris McNeel are at Covenant Christian Church at 3 p.m. on Saturday.

Chair Kramer adjourned the meeting at 9:41 a.m.

#### Summary of Actions

#### **MOTIONS**

- **To adopt the Juvenile Services Director's recommendation and authorize her to pursue any modifications needed to the original Chapter 190 Intergovernmental Agreement creating the Central and Eastern Oregon Juvenile Justice Consortium in order to work directly with Oregon Youth Authority to develop the 2025-2027 Diversion Plan for Wasco County.**
- **To approve Order 24-008 appointing Kendal Johnson to the 15-Mile Watershed Council.**


- **To approve the Purchase and Sale Agreement between Wasco County and Moraine Industries for a portion of Parcel Tax Lot 2N 13E 33 200. I further move to authorize the Administrative Officer to sign any necessary documents, pending legal review, to complete the sales transaction.**
- **To approve the Consent Agenda: 3.20.2024 Regular Session Minutes.**
- **To approve the Brownfield Assessment Collation Memorandum of Agreement for EPA Cooperative Agreement 4B-02J51801-0 between Mid-Columbia Economic Development District, Columbia Cascade Housing Corporation, Sherman, Wasco, and Klickitat Counties. I further move to authorize Wasco County's Administrative Officer to sign future agreements related to the Brownfield Assessment Coalition pending legal review..**

**CONSENSUS**

- **To send a letter regarding the Summit Ridge Wind Farm Site Certificate Termination to the Oregon Department of Energy.**
- **For the Emergency Manager to move forward with the Resilience Hubs and Networks Grant application**

Wasco County  
Board of Commissioners

  
\_\_\_\_\_  
Steven D. Kramer, Commission Chair

  
\_\_\_\_\_  
Vice-Chair Hege C. Hege, Vice-Chair

  
\_\_\_\_\_  
Philip L. Brady, County Commissioner



## YOUTH SERVICES

202 East Fifth Street • The Dalles, OR 97058  
p: [541] 506-2660 • f: [541] 506-2661 • [www.co.wasco.or.us](http://www.co.wasco.or.us)

***Pioneering pathways to prosperity.***

Date: March 14, 2024

To: Wasco County Board of Commissioners

From: Molly Rogers, Director  
Wasco County Department of Youth Services

Re: Diversion Funding

The Wasco County Department of Youth Services and the Oregon Youth Authority have a long history of working directly together to ensure youth have the services and programming needed to reduce the risk of escalation to further involvement in the juvenile justice system. Wasco County is seeking the approval to directly work with the Oregon Youth Authority to develop the 2025-2027 Diversion plan for Wasco County.

Since 1995, the Oregon Youth Authority has provided funding to counties to develop community alternatives to stabilize adjudicated youth on county probation to avoid the need to commit them to the Oregon Youth Authority. Every two years, counties submit plans to the Oregon Youth Authority for their diversion funding allocation. Since the creation of the Oregon Youth Authority in 1995, Wasco County has participated with other Central and Eastern Oregon counties to pool their diversion funding allocations to create a regional diversion funding allocation managed by the Central and Eastern Oregon Juvenile Justice Consortium (CEOJJC).

One of the primary programs that CEOJJC purchases with pooled county diversion funding has been individual placements in the NORCOR Youth Care Center and NORCOR 30-day extended detention programs. Wasco County currently funds NORCOR Juvenile Detention at 50% of the overall operational costs. Because of this, Wasco County has the ability to directly place youth into each of those programs if needed and doesn't need to purchase placements in either program.

Over the past seven years, Wasco County has continued to have a reduced need for the regional services provided through CEOJJC's pooled regional division funds. Several early intervention initiatives have reduced the number of youth needing formal supervision. The amount of funding needed to stabilize youth on probation is about half of the individual diversion allocation if Wasco County contracted directly with the Oregon Youth Authority.

Wasco County would continue to be a member of the Central and Eastern Oregon Juvenile Justice Consortium (CEOJJC). They will continue to pool funding of OYA individualized services within CEOJJC and support CEOJJC with the annual administrative payment. This membership status mirrors the current status of Deschutes County. Deschutes County utilizes their diversion allocation locally rather than being part of a managed resource pool.

I have spoken with Wasco County Counsel and with approval of the Board of County Commissioners, Wasco County can notify and engage in any modifications needed to the original Chapter 190 Intergovernmental Agreement creating the Consortium.



## MOTION

**SUBJECT: CEOJCC IGA**

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I move to adopt the Juvenile Services Director's recommendation and authorize her to pursue any modifications needed to the original Chapter 190 Intergovernmental Agreement creating the Central and Eastern Oregon Juvenile Justice Consortium in order to work directly with Oregon Youth Authority to develop the 2025-2027 Diversion Plan for Wasco County.



## MEMORANDUM

**SUBJECT: Summit Ridge Wind Site Certification Cancellation**

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TO: WASCO COUNTY BOARD OF COMMISSIONERS, TYLER STONE

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FROM: KELLY HOWSLEY-GLOVER, PLANNING DIRECTOR

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DATE: 3/27/2024

The Planning Department received notice from the Oregon Department of Energy that Summit Ridge Wind is proposing to cancel its existing site certification. They have requested comments about the existing road built to support development. The Public Works Director, Arthur Smith, and I have reviewed the project and concur that removal or decommission would create more impact or disturbance, and that the existing road is consistent with the zone.

The Board and Planning Department have also received a notice of intent for a new project, Summit Ridge Renewable Energy Facility, in a similar location where we believe the existing road may be used for the development. We anticipate completing our review with recommendations for the Board by the next April meeting.



**BOARD OF COUNTY COMMISSIONERS**

511 Washington St, Ste. 101 • The Dalles, OR 97058  
p: [541] 506-2520 • f: [541] 506-2551 • [www.co.wasco.or.us](http://www.co.wasco.or.us)

*Pioneering pathways to prosperity.*

April 3, 2024

Oregon Department of Energy  
ATTN: Sarah Esterston  
550 Capitol Street NE  
Salem, OR 97301  
(Sent by email to [Sarah.esterston@energy.oregon.gov](mailto:Sarah.esterston@energy.oregon.gov))

April 3, 2024

Subject: Summit Ridge Wind Farm Site Certificate Termination and Developed Road

Dear Ms. Esterston;

We received Oregon Department of Energy's notice of termination for the Summit Ridge Wind Farm Site Certificate and the request for comments related to the roads constructed for the project.

The Planning and Public Works Directors have reviewed your request. The Public Works Director has determined from a brief analysis that the road was built to a fair standard, with good rock and width and feels it would have a greater impact and disturbance to remove or decommission the road at this time.

The Planning Director concurs that the road is consistent with road standard requirements and does not have concerns about its existence separate from development. The project is within Exclusive Farm Use zones, which allow for private access roads within properties and would've been constructed with consideration to any sensitive resources. Neither long term permits nor maintenance are required for private access roads within a property within this portion of Wasco County.

We appreciate the Oregon Department of Energy's continued coordination and look forward to reviewing the notice of intent for the Summit Ridge Renewable Energy Facility.

Respectfully,  
Wasco County Board of Commissioners

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Steven D. Kramer, Board Chair

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Scott C. Hege, Vice-Chair

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Philip L. Brady, County Commissioner



## INFORMATION AND QUALIFICATION FORM

### Watershed Councils VOLUNTEER POSITIONS WASCO COUNTY, OREGON

#### BACKGROUND

The Wasco County Soil and Water Conservation District created watershed councils as a means of identifying and addressing the resource concerns of those living within the area. The watershed councils are a way to focus manpower and resources on natural resource issues within the watershed as a whole.

#### APPLICATION

Provide personal qualifications for this specific volunteer position.  
Supplementary information may be attached. Do not provide confidential information.

*For which Council are you applying?*

☒ 15-Mile    ☐ The Dalles    ☐ White River    ☐ Mosier

Name: Kendal Johnson

Address: [REDACTED] The Dalles, OR, 97058

Phone (home) [REDACTED] Phone (work) same

E-mail address: [REDACTED]

Signature: \_\_\_\_\_

Date: 3/14/2024 Number of years as a Wasco County resident: 2+ / past longer

Your objectives/goals? Desired contributions and accomplishments? Participate in mangement  
of a watershead that I have a long term vested interest in being sucessful. Help provide  
feedback on issues that affect farmers along the watershed. Improve long term  
stream health so that we are less limited with irrigation in the area.

Approximate hours/week available for this commitment? as needed

Comments: Farm and work a town job, available whenever needed. but use the rest of the time

Education (school, college, training, apprenticeships, degrees, etc.)

Cal Poly BioResource and Ag engineering Date(s): [REDACTED]

OSU Ag Engineering Date(s): [REDACTED]

Date(s): \_\_\_\_\_

Date(s): \_\_\_\_\_

Experience (work, volunteering, leadership roles, achievements etc.)

USDA-ARS-HCRL Date(s): 2014-2016

OSU Farm manager Date(s): 2016-2022

OSU Wasco county Ext Date(s): 2022-2024

Date(s): \_\_\_\_\_

General Comments/Additional Relevant Information

Long term area family, grew up here on and off, worked summers/harvest through college.

We moved away for another job, back long term at this point. Farm hay and grain on Fifteenmile Rd.

Send completed form to:

Wasco County  
511 Washington Street, Suite 101  
The Dalles OR 97058  
(541) 506-2520  
(541) 506-2551 (fax)



# Fifteenmile Watershed Council

*Fifteenmile Creek and Tributaries Eightmile, Fivemile & Ramsey Creek*

Wasco County SWCD 2325 River Road Suite 3, The Dalles OR, 97058

Phone: 541-296-6178 x102 Fax: 541-296-7868

## Minutes

Wednesday September 20<sup>th</sup>, 2023, at 5:30pm

Hybrid Meeting

Dufur Ranger Station (780 Court St, Dufur, OR 97021)

### Attendees:

Bill Hammel, Co-Chair  
Bill Markman, Member  
Mike Kelly, Member  
Samantha Filbin, SWCD

Walt Burt, GSI  
Drake Gilbert, SWCD  
Smita Mehta, DEQ  
Jim Olson, Member

Laura Cowger, USFS  
Kendal Johnson, Resident  
Hilary Doulos, NRCS  
Phil Kaser, Co-Chair

### Call to Order -

Phil called the meeting to order at 5:30 pm and led with a round of introductions. No additions to the agenda were made.  
*Bill M. motioned to approve the March 2023 meeting minutes; Bill H. seconded; Motion passed.*

### 2023 FAST Season – Drake Gilbert, SWCD

Temperatures for the 2023 season were of mild concern, especially compared to previous years. There were 22 days of alerts in 2021, 12 days of alerts in 2022, and zero alert days this season (2023). Drake provided a handout that helped summarize some of the significant weather statistics from this season, along with previous seasons. One statistic that Drake wanted to highlight was the total number of days where the temperature reached over 100 degrees. Although this season's stats showed an increase in days above 105 degrees, stats showed a significant decrease in days above 100 degrees. The average temperature for July of this year was 70 degrees. Drake noted that during specific periods throughout the season, he wondered whether everything was working as it should be because there were periods with high temps where he anticipated potential alerts. Drake expressed his apprehensions to Derrek; fortunately, everything was working correctly. Overall, temperatures in 2023 were favorable, and a good water year.

### Fifteenmile Instream Leasing Discussion – Drake Gilbert, SWCD

In the past, The Freshwater Trust (TFT) offered an instream leasing program, but unfortunately, the program ended about five years ago. Drake discussed the history of instream leasing in the Fifteenmile Basin, including the loss of funding for TFT, the potential for Trout Unlimited to take over, and the experiences with leases in the past. TFT reached out to Drake about 4-5 months ago, saying they do not have funds to host the program again. However, they offered some of their staff time and resources to the district if the district is interested in creating their own instream leasing program. Drake reviewed the different aspects, options (e.g., seeking funding through the Columbia Water Transactions Program), and potential liabilities (e.g., legal liabilities to the district) the SWCD should consider if the district is interested. That said, Drake solicited feedback from the Council to gauge the level of interest before looking into it further. Discussion ensued.

Key highlights of the discussion included how water rights play into the CREP program and whether that would create any conflict with an instream leasing program, potential challenges and potential issues with temperature and fishing restrictions, the current process regarding water rights and instream leasing, and whether the SWCD could make that process more accessible if they were to create their own program.

Upon discussion, the board asked that Drake collect any essential information from TFT and that it remain on the agenda for further consideration.

### Fifteenmile MUS Update – Drake Gilbert, SWCD

Drake provided a brief update on the Fifteenmile Underground Storage Project and some of the district's setbacks. At the council meeting (March 2023), Drake reported on a few issues that had occurred with the native sediment and filtration

aspects, causing the project not to work correctly. Unfortunately, their attempts to correct the problems were unsuccessful, and the project's status has yet to improve. On a more positive note, the water quality of the source water was surprisingly good. Drake added that the district recently applied for additional grant funds to continue pilot testing, consult with other specialists to address the issues, and ensure the same problems don't reoccur. The district successfully secured additional grant funding, as requested.

Walt discussed the following steps and expressed that their first focus will be identifying what it will take to make the project work properly, at what cost point, and, depending on the cost, whether it is worth it to continue moving forward with the project. Drake explained how the first funding round was divided between the stakeholder engagement and technical assistance pieces.

One setback they previously encountered with the project was the disconnect between the funding cycles and waiting until the funds became available to get contractors to the project site to fix some of the issues. Walt explained that because that caused some setbacks, he wants to wait to move forward with the project until all the funding is in hand, so they don't run into those same issues again. It is not easy to provide an estimated timeline at this point, and partly for that reason.

Drake discussed information on the water sampling process, specific examples taken, and the sample results. Laura expressed interest in reading over the data collected and requesting a copy if possible.

### **Watershed Assessments – Drake Gilbert, SWCD**

The watershed assessments were last updated for the five main watersheds over 20 years ago. The district, at times, heavily relies on those documents, especially for project planning and applying for grant funding. The district recently applied for funding through OWEB to update the assessments for the five main watersheds in Wasco County. The district secured funding and contracted with Watershed Professionals Network (WPN) to update those assessments. Drake stressed that although it's been 20 years since the assessments were updated last, they still contain relevant information.

Before the meeting, Drake provided council members with a copy of the draft watershed assessments for review. Drake noted that, unlike the previous documents, the updated draft assessments contain information regarding water use, climate change, and wildfires. WPN also created an online searchable database that the district can access anytime.

Council members noted sections throughout the documents that may need corrections upon review. Bill M. disagreed with the total number of stream miles listed for Eightmile and the number of miles containing pollutants (page 31). According to their map, the assessment states a total of 50 miles, but it should be 28. Drake responded that he assumes they pulled the number of miles with the listed pollutants off DEQ's website, as it's 303D listed. Drake felt that it's likely that they included several tributaries or all the combined creek miles and combined them all, which may explain the total number they came up with.

Regarding stream pollution miles, as shown on their map in the assessments, the council had concerns and confusion with certain portions of the streams that were highlighted and portions that were not highlighted, and the council felt they should be. For example, certain sections of Fifteenmile Creek are listed as having no pollutants, although there's a known stream temperature issue, especially in the lower portions. Another uncertainty the council would like clarity on is what should be counted (e.g., does the total number only reflect the primary standards?).

All members of the council agreed. Drake said he would check the DEQ database and contact WPN for clarification and the requested information. Drake will present the Draft Watershed Assessments to the SWCD board for further discussion if he cannot gather the necessary information.

*Bill Markman motioned that staff review the Draft Watershed Assessments and refer the assessments to the SWCD Board if staff deems it necessary; Mike seconded; Motion passed.*

### **Fifteenmile Fish Screen CIS -**

Hilary provided a brief background on the history of the fish screens within the Fifteenmile Watershed Basin and the mutual agreement that water users had developed with ODFW. Hilary summarized some of the work that ODFW has been assisting with, including maintaining and repairing the fish screens and ensuring they are in good working order. However, most screens were installed in the 1990s and need updating. ODFW staff recently approached Hilary regarding potential funding opportunities through NRCS and helped propose replacing all the outdated fish screens within the Fifteenmile watershed Basin. NRCS accepted the proposal and will provide the funding over the next five years. The goal is to replace

around 15 screens each year.

Next year, NRCS will fund water users through the cost share program (EQIP). ODFW will assist with installing the new fish screens, long-term maintenance, and repairs. The application deadline for the first year of funding is November 17th, 2023. Hilary expressed that the application process through NRCS is super simple but recommends that landowners apply as soon as possible.

Hilary noted that the funding would be considered taxable income. However, there is a rebate. NRCS hopes this program will help with the outreach aspect, including future proposals regarding potential upgrades in the future that may be beneficial.

## **Updates & Announcements**

### **Fifteenmile Culvert Replacement – USFS Update**

The Forest Service's Engineering Team, who have expertise in Geotechnical Examination Surveys, culvert replacements, bridge designs, etc., are currently looking at two locations for culvert replacements. The team is looking to replace the culvert at Fifteenmile Campground and Ramsey Creek, along the 4450 Road, downstream from Camp Baldwin. The Forest Service hopes to get the funding for that project next year and implement it in 2025. Laura explained that the engineers will take some time to create and evaluate their designs to decide which would be the better route, between a culvert or a bridge.

Laura briefly talked about the types and conditions of the culverts currently in place, past and current infrastructure designs, and existing rules and regulations (e.g., size, durability, etc.) pertaining to the project that they must follow. Another project piece is to remove the old concrete dam up Ramsey Creek. Although not certain, Laura speculated that the original intent of installing the concrete dam was for horses, swimming, or water usage.

The Forest Service will provide more information and updates throughout the project.

### **Fifteenmile Council Updates –**

Phil introduced Kendal Johnson, a resident who lives along Fifteenmile, to the board. Kendal expressed his interest in joining the Fifteenmile Watershed Council.

*Bill M. motioned to appoint Kendal Johnson to the Fifteenmile Watershed Council for the three-year term, dependent on approval from the County Clerk's Office; Jim seconded; Motion passed.*

### **Schedule Next Meeting**

The next meeting is scheduled for December 13<sup>th</sup>, at 5:30 pm.

The meeting adjourned at 6:50 pm.

Minutes prepared by Samantha Filbin



IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

IN AND FOR THE COUNTY OF WASCO

IN THE MATTER OF THE APPOINTMENT OF KENDAL JOHNSON TO THE 15-MILE WATERSHED COUNCIL

**ORDER #24-008**

NOW ON THIS DAY, the above-entitled matter having come on regularly for consideration, said day being one duly set in term for the transaction of public business and a majority of the Board of Commissioners being present; and

IT APPEARING TO THE BOARD: That the Wasco County Soil & Water Conservation District has requested that the Wasco County Board of Commissioners appoint individuals to the 15-Mile Watershed Council; and

IT FURTHER APPEARING TO THE BOARD: That Kendal Johnson has been recommended for appointment by the 15-Mile Watershed Council; and

IT FURTHER APPEARING TO THE BOARD: That Kendal Johnson is willing and is qualified to be appointed to the 15-Mile Watershed Council.

NOW, THEREFORE, IT IS HEREBY ORDERED: That Kendal Johnson be and is hereby appointed to the 15-Mile Watershed Council for a term to expire on June 30, 2027.

DATED this 3<sup>rd</sup> day of April, 2024.

WASCO COUNTY BOARD  
OF COMMISSIONERS

\_\_\_\_\_  
Steven D. Kramer, Board Chair

\_\_\_\_\_  
Scott C. Hege, Vice-Chair

\_\_\_\_\_  
Phil Brady, County Commissioner

APPROVED AS TO FORM:

\_\_\_\_\_  
Kristen Campbell, County Counsel



## MOTION

**SUBJECT: 15-Mile Watershed Council Appointment**

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I move to approve Order 24-008 appointing Kendal Johnson to the 15-Mile Watershed Council.

**PURCHASE AND SALE AGREEMENT**  
**(Portion - Parcel Tax Lot 2N 13E 33 200)**

**THIS PURCHASE AND SALE AGREEMENT** (this “**Agreement**”) is entered into this 3rd day of April, 2024 (the “**Effective Date**”), between MORaine INDUSTRIES LLC, a Delaware limited liability company (“**Seller**”) and WASCO COUNTY, a political subdivision of the State of Oregon (“**Purchaser**”).

**RECITALS**

A. Seller is the sole owner of certain real property located in The Dalles, Wasco County, Oregon.

B. Seller desires to transfer its interest in a portion of such real property to Purchaser, and Purchaser desires to purchase Seller’s interest in such real property, on the terms and conditions set forth in this Agreement and in order to satisfy the terms and covenants of that certain Oregon Strategic Investment Program Agreement executed as of November 9, 2021 by and among Purchaser, Seller, the City of The Dalles, Google LLC, a Delaware limited liability company, and Design LLC, a Delaware limited liability company (the “**SIP**”).

NOW THEREFORE, in consideration of the mutual covenants contained herein, Seller and Purchaser agree as follows:

**AGREEMENT**

1. **PURCHASE AND TRANSFER OF THE PROPERTY.**

1.1 **Purchase Property.** Seller agrees to transfer the Property to Purchaser, and Purchaser agrees to purchase the Property from Seller, on the terms and conditions set forth in this Agreement. The “**Property**” consists of:

(a) the real property consisting of approximately 35 acres of the land as more particularly described and depicted on Exhibit A and depicted as Parcel 3 on the Partition Plat attached hereto as Exhibit A-1 (the “**Partition Plat**”) together with any and all easements, privileges, rights and interests appurtenant thereto, including without limitation all mineral interests and any governmental entitlements (collectively, the “**Real Property**”);

(b) all of the improvements and fixtures, if any, owned by Seller or Seller’s subsidiaries, and currently situated on the Real Property (the “**Improvements**”); and

(c) all licenses, permits, approvals, development rights or approvals, relating to the Real Property, if any.

Notwithstanding the foregoing, the Property shall not include (a) water rights or permits or certificates evidencing water rights; or (b) any internally-prepared reports, analyses, summaries,

plans, valuations or assessments, or any proprietary data. All property depicted on the Partition Plat other than the Real Property is referred to herein as the “**Retained Property**.”

## 2. **PURCHASE PRICE.**

2.1 **Purchase Consideration.** The conveyance of the Property is in consideration of the covenants and obligations set forth in the SIP, together with a purchase price of Ten and 00/100 Dollars (\$10.00) (the “**Purchase Price**”).

## 3. **INSPECTION AND ACCESS.**

3.1 **Purchaser’s Right to Enter and Inspect.** Prior to the Closing Date (as defined below), Purchaser, its employees, agents, consultants, and contractors may determine the location of utilities and perform tests, legal and permitting review, engineering studies and building assessments, wetlands studies, surveys, soil and groundwater tests on the Real Property, and other inspections, studies and tests on the Real Property as Purchaser may deem necessary (collectively, the “**Inspections**”), at Purchaser’s expense. Purchaser shall be responsible, at Purchaser’s sole expense, to repair any damage to the Real Property to the extent caused by the Inspections or any such entry on the Real Property and cause to be removed any waste, materials, equipment, lien, encumbrance or charge thereon attributable to any such entry. Purchaser shall not perform any invasive Inspections of the Real Property unless approved by Seller and then, only if accompanied by a representative of Seller.

Seller has provided Purchase with a Phase I Environmental Site Assessment of the Real Property, the form of which is attached hereto as Exhibit B (the “**Phase I**”). Prior to Closing, Purchaser will not conduct any environmental testing beyond the Phase I that would require soils analysis, groundwater testing, invasive testing or other studies commonly associated with a Phase II environmental site assessment without the prior written notice to, and consent by, Seller in each instance, which consent shall not be unreasonably withheld if Purchaser’s assessment proposal is permitted under and undertaken in accordance with the PPA and EES (as defined in Section 10.1(h) below) and by a duly licensed third-party environmental engineer. Purchaser will schedule and coordinate all inspections on the Real Property, including, without limitation, any environmental tests, with Seller and will give Seller at least two (2) business days’ prior written notice thereof. Seller will be entitled to have a representative present at all times during each such inspection.

Purchaser shall provide Seller with accurate and complete copies of any raw data, laboratory reports, reports or recommendations of Purchaser’s consultants related to Inspections completed at the Real Property. Purchaser will provide this information to Seller promptly after Seller’s written request. Purchaser shall defend, indemnify and hold Seller harmless for, from and against any claim, loss or liability or any claim of lien or damage (including, without limitation, any attorney’s fees and costs of suit in connection with any order of any governmental authority, administrative proceeding, trial or appeal) to the extent asserted against the Real Property by reason of (a) any failure of Purchaser to pay any sums due to its agents or contractors, (b) any claims, damages or penalties arising from any violations by Purchaser or its agents or contractors of existing encumbrances on the Real Property or (c) any claims for any damage to property or

personal injury to the extent such are caused solely by any act or omission of Purchaser or any agent or employee of Purchaser during the course of Purchaser's inspections, but excluding any pre-existing conditions except to the extent exacerbated by Purchaser or its agents or contractors in the course of such inspections. The foregoing indemnity will survive the Closing or the termination of this Agreement.

#### 4. **SELLER'S TITLE TO THE PROPERTY.**

4.1. **Title Report.** Attached hereto as Exhibit C is a preliminary title report issued by the Title Company with respect to the Real Property as well as an existing ALTA Survey of the Real Property (collectively, the "**Title Report**"). Purchaser shall accept title to the Real Property subject to the special exceptions identified in the Title Report, other than real property taxes which are due and owing. In the event of additional encumbrances or other changes to title following the issuance of the Title Report (other than the recordation of the Partition Plat, the Sidewalk and Shoulder Expansion and the other notes and provisions of the Partition Plat), the Purchaser shall have thirty (30) business days following receipt of a supplemental title report accompanied by copies of any new encumbrances or changes to review and notify Seller of its acceptance or disapproval of the encumbrance or change. If Purchaser disapproves any additional encumbrance or change to title arising following the Effective Date, Seller shall use commercially reasonable efforts to address Purchaser's objection.

Purchaser understands and acknowledges that the Property is currently burdened by one or more delayed improvement agreements with the City of The Dalles in connection with prior partitions of the Property (the "**DIA**"). Any assessments or improvement construction obligations arising under the DIA or any replacements or amendments thereto with respect to the Property shall be the Purchaser's obligations following the Closing Date and Seller shall have no liability therefor.

Seller agrees that, other than the lien for any nondelinquent taxes and the lien for any nondelinquent special assessments accepted by Purchaser, it shall cause all monetary liens against the Real Property to be released of record by the Closing Date and none of such exceptions shall be Permitted Exceptions. All exceptions to title set forth in the Title Report (except to the extent Seller agrees to modify or remove them), the Partition Plat, the DIA and the Use Covenant (defined in Section 4.2 below) shall be referred to as the "**Permitted Exceptions**."

4.2 **Seller Reserved Encumbrances.** Seller shall be entitled to encumber the Property at or prior to the Closing with a use covenant (the "**Use Covenant**") that precludes the use of the Property for a Data Center (as such term is defined in the SIP) which competes with any Data Center, use conducted or to be conducted on property situated within a ten (10) mile radius of the Property for a period of fifty (50) years following the Closing Date. During the Review Period, Seller shall provide to Purchaser a draft of the Use Covenant for review and approval by Purchaser during the Review Period, which approval shall not be unreasonably withheld.

Purchaser acknowledges that Seller is not responsible for any improvements required to be installed on the Property under conditions to the Partition Plat or any other Permitted Exceptions.

5. **SELLER'S DELIVERY OF DOCUMENTS.** Seller has provided Purchaser with access to an electronic database containing copies of all of the following materials, to the extent they are

in Seller's possession and not otherwise reflected on the Title Report or publicly available, and to the extent they are applicable to the Real Property (the "**Evaluation Material**"):

(a) All current leases, licenses, agreements or other possessory rights affecting the Real Property.

(b) Any and all environmental reports and assessments performed by environmental engineers engaged by Seller with respect to the Real Property only (as opposed to the larger site of which the Real Property was originally a part), consisting of the Phase I Environmental Site Assessment dated February 26, 2016 prepared by Maul Foster & Alongi, Inc. (covering property in addition to the Property), as updated by the Phase I Environmental Report prepared by Maul Foster & Alongi, Inc., with respect to the Real Property's environmental condition, including historical investigations and reports. These reports reference the historical records related to the larger site of which the Real Property was originally a part and include a link to the Oregon Department of Environmental Quality website where related publicly available information may be found (<https://www.deq.state.or.us/Webdocs/Forms/Output/FPCController.ashx?SourceId=5955&SourceIdType=11>).

(c) The ALTA Survey prepared by Tenneson Engineering Corporation dated March 24, 2016, which is the most recent ALTA survey of the Property prepared at the direction of or available to Seller.

(d) Any current wetlands reports or analysis performed on the Real Property on behalf of Seller or in Seller's possession, specifically (i) that certain Wetland Survey prepared by Turnstone Environmental Consultants dated December 16, 2021, together with the concurrence letter provided by the Oregon Department of State Lands dated September 28, 2022; and (ii) a draft of a Wetland Delineation for the Property and additional property dated July 11, 2014 prepared by Pacific Habitat Services, Inc.

(e) The current soils or geotechnical reports performed on the Real Property on behalf of Seller or in Seller's possession, more specifically that certain Focused Soil Investigation prepared by Maul Foster & Alongi dated September 7, 2018 and the Preliminary Report of Geotechnical Services prepared by Hart Crowser, Inc. dated July 18, 2014.

(f) A summary of any and all pending or threatened litigation and administrative action regarding the Property to the extent known by Seller, if any.

(g) Any notices of violations, administrative orders or other evidence of enforcement actions by any governmental agency received by Seller with respect to the Real Property, if any.

(h) All permits, licenses and approvals relating to the ownership or use of the Real Property including, without limitation, land use designation and/or zoning permits and approvals, and septic permits, if any.

(i) Any third-party warranties and guaranties affecting the Real Property, if any.

(j) Real Property tax assessment information not otherwise available in the public records, if any.

(k) Ground water monitoring reports prepared by Maul Foster & Alongi for the monitoring well owned and operated by Lockheed Martin Corporation, referred to as “MW-5” under the terms of the Access Agreement dated March 17, 2016, and recorded in the Wasco County Official Records as Instrument no. 2016-000939.

(l) The No Effect Memorandum dated July 16, 2014 prepared by Pacific Habitat Services, Inc. addressing federal endangered species act and critical habitat requirements.

(m) Such other documents and materials reasonably requested by Purchaser and in Seller’s possession, subject to the exclusion set forth in Section 1.1 above and in this Section 5 below.

The Evaluation Material also includes: (i) the Easement and Equitable Servitude dated March 17, 2016 granted for the benefit of the Oregon Department of Environmental Quality and recorded in the public records, as amended by the First and Second Amendments thereto (this is recorded and reflected in the Title Report; (ii) Consent Judgment entered August 28, 2015, between the State of Oregon Department of Environmental Quality and Seller, as amended by the Certificate of Completion recorded January 3, 2019 (this is recorded and reflected in the Title Report); (iii) Contaminated Media Management Plan dated September 7, 2018; and (iii) a draft of a Cultural Resources Report prepared by Willamette Cultural Resources dated May 22, 2014.

Except as otherwise specifically provided in this Agreement, Seller is under no obligation to create or engage third parties to create any additional data or documentation for Purchaser or provide to Purchaser internally prepared valuations, development plans, analyses or assessments or any data or information of proprietary or financial nature. The Evaluation Material will be used solely for Purchaser’s evaluation of the Property and not for any other purpose. The Evaluation Material will be kept confidential by Purchaser, except that Purchaser may disclose the Evaluation Material or portions thereof to those of Purchaser’s employees, attorneys and consultants who need to know such information for the purpose of assisting Purchaser in evaluating the Property (it being understood that its employees and advisors will be informed of the confidential nature of the Evaluation Material and shall agree to be bound by this Agreement and not to disclose the information to any other person). In addition, Purchaser may disclose the Evaluation Material to future purchaser of the Property if such party acknowledges in writing the limitation contained in the next two succeeding sentences. The Evaluation Material is being provided to Purchaser only to facilitate its independent due diligence review. Seller makes no representation or warranty as to the accuracy, completeness or sufficiency of the Evaluation Material, and nothing contained in the Evaluation Material shall be deemed a representation or warranty as to the information or analysis therein, omitted therefrom or otherwise. Purchaser shall conduct its own independent analysis of the Evaluation Material.

6. **CLOSING.**

6.1 **Closing Date.** Subject to satisfaction or waiver of the conditions to the parties' obligations set forth in this Agreement, this transaction shall be closed (herein the "**Closing**") on a date to be selected by Purchaser and reasonably acceptable to Seller, on or before thirty (30) days after recordation of the Partition Plat (the "**Closing Date**"), or at such other time as the parties may mutually select in writing but no sooner than the completion and recording of the Partition Plat. Each party may extend the Closing Date one time by up to five (5) days if such extension is required by illness, transportation delays, the unavailability of the Escrow Officer or other causes beyond such party's reasonable control.

6.2 **Manner and Place of Closing.** This transaction shall be closed by an escrow officer of AmeriTitle (the "**Escrow Officer**") at its office at 100 West Second, The Dalles, Oregon, or at such other place as the parties may mutually select. Closing shall take place in the manner and in accordance with the provisions set forth in this Agreement.

6.3 **Prorations, Adjustments.**

- (a) All ad valorem real property taxes and assessments shall be prorated and adjusted between the parties as of the Closing Date.
- (b) Purchaser shall pay the recording or filing fees for the Deed (described below).
- (c) Seller shall pay the escrow and closing fees charged by the Escrow Officer.
- (d) Purchaser shall pay all costs and expenses related to any financing obtained by Purchaser.
- (e) Seller shall pay the cost of premium for a standard owner's policy of title insurance. Purchaser shall pay any additional premium for extended coverages if requested by Purchaser.
- (f) Each party will pay its own attorney's fees.

6.4. **Payment of the Purchase Price.** Purchaser shall pay the total Purchase Price in cash at closing.

6.5. **Events of Closing.** Provided the Escrow Officer has received the sums and is in a position to cause the Title Insurance Policy to be issued as described below, this transaction shall be closed on the Closing Date as follows:

- (a) The Escrow Officer shall perform the prorations and adjustments described in Section 6.3, and the parties shall be charged and credited accordingly.
- (b) Purchaser shall pay the entire Purchase Price to Seller in cash and its share of any closing costs.

(c) Seller shall cause, at Seller's expense, all monetary liens and encumbrances (other than monetary liens or encumbrances created by Purchaser) to be removed from the Property and satisfied of record.

(d) Seller shall convey the Real Property to Purchaser by special warranty deed in the form attached hereto as Exhibit D, subject only to the Permitted Exceptions (the "**Deed**"), and the Use Covenant.

(e) Seller and Purchaser shall execute and deliver the Use Covenant and any bills of sale, assignments and governmental filings (if any) as may be necessary to convey to Purchaser title to any component of the Property not constituting real property and reserve Seller's easements for its benefit.

(f) Title Company shall have committed to issue the Title Insurance Policy described in Section 6.6, upon recordation of the Deed.

(g) Seller will execute and deliver to Purchaser and Escrow Officer, respectively, at closing (1) a certificate of nonforeign status, setting forth Seller's address and United States taxpayer identification number and certifying that Seller is not a "foreign person" as defined in FIRPTA, and (2) a certificate and other documentary evidence complying with ORS 314.258 and OAR 150-314.258 sufficient to reasonably assure Escrow Officer and Purchaser that no withholding is required under ORS 314.258 and OAR 150-314.258.

(h) The Escrow Officer shall record the Deed in the Official Records of Wasco County.

(i) Seller and Purchaser shall execute with the Oregon Department of Environmental Quality ("**DEQ**"), and then record in the Official Records of Wasco County, a written notice of the sale of the Property to Purchaser, pursuant to which Seller assigns to Purchaser and Purchaser assumes the benefits and remaining obligations under the PPA as to the Property in the form attached hereto as Exhibit E (the "**Notice of Transfer**")

(j) Seller and Purchaser shall enter into an assignment and assumption of that certain Access Agreement dated March 17, 2016 executed among Seller, Northwest Aluminum Company and Martin Marietta Corporation, a Maryland corporation (the "**MMC Access Agreement**").

**6.6 Title Insurance.** As soon as possible after the Closing Date and not later than fifteen (15) business days following Closing, Seller shall furnish a standard, or at Purchaser's option extended, coverage owner's policy of title insurance to Purchaser issued by Title Company (the "**Title Insurance Policy**") insuring fee simple title to the Real Property vested in Purchaser in the amount of the Purchase Price, subject only to the Permitted Exceptions accepted by Purchaser pursuant to Section 4. At Title Company's request, Seller will execute and deliver at closing an affidavit certifying that there are no unrecorded leases or agreements upon the Real Property or parties in possession on the Real Property, except as otherwise provided and/or allowed by this Agreement, that there are no construction, construction or statutory liens against the Real

Property, and as to such other matters as may be reasonably requested by Title Company in order to issue extended owner's coverage. Seller shall pay the costs of the Title Insurance Policy to the extent attributable to standard coverage. The cost of any extended coverage requested by Purchaser in excess of the cost of standard coverage shall be paid by Purchaser.

6.7. **Possession**. Seller shall deliver exclusive possession of the Real Property to Purchaser on the Closing Date, subject to the Permitted Exceptions. The Real Property contains certain security fencing installed by Seller. Purchaser agrees that Seller shall have up to ninety (90) days following the Closing date to remove the fencing if requested by Purchaser.

## 7. **CONDUCT OF BUSINESS**.

7.1. **Maintenance and Contracts**. Seller shall continue to maintain and operate the Real Property in compliance with all laws, ordinances, regulations and covenants and in accordance with customary and prudent management and operating standards and practices and will take no steps or actions which it knows would be detrimental to the value or future development potential of the Real Property. Seller will not enter into any mortgage, security agreement, purchase contract obligation which will not be paid in full prior to the Closing Date or any lease, service, maintenance or other contract that cannot be canceled upon thirty (30) days' notice at no cost to Purchaser unless Seller first obtains the written approval of Purchaser. Seller shall not grant or create any rights, easements, licenses or other rights in or encumbering the Real Property absent Purchaser's prior written consent or as agreed by Purchaser under Section 4.1 above. Unless expressly provided for herein and/or agreed in writing by Purchaser to survive the Closing Date, Seller shall cause all such contracts, leases and all rights of third parties thereunder relating to the Real Property to be lawfully terminated and extinguished in their entirety by not later than the Closing Date.

7.2. **Insurance**. Seller shall continue to maintain its current casualty and liability insurance policies on the Real Property until the Closing Date but shall have no responsibility to maintain any such insurance following the Closing Date or to assign any policy to Purchaser.

## 8. **CONDITIONS TO CLOSING**.

8.1. **Purchaser's Conditions**. Purchaser's obligation to close this transaction is subject to the satisfaction or Purchaser's written waiver of all of the following conditions prior to the Closing Date:

(a) **Seller's Compliance**. Seller's fulfillment of each of its obligations under this Agreement.

(b) **Status of Title**. Each of the following conditions regarding the status of title shall be satisfied: (i) the absence of any monetary lien or other material defect in title to the Real Property which was not permitted by this Agreement or approved by Purchaser, (ii) the commitment of the Title Company to issue the Purchaser's Title Insurance Policy as described in Section 6.6 above subject only to the Permitted Encumbrances, and (iii) the Property Partition shall be complete and recorded.

(c) Permitted Uses. The absence of any material violation of any applicable statute, law or regulation regarding the physical condition of the Real Property or Seller's use thereof for its intended purpose or of any material change in any laws or statutes which materially affect the Purchaser's ability to use the Real Property for its intended purposes.

8.2. **Seller's Conditions**. Seller's obligation to close this transaction is subject to the satisfaction or Seller's written waiver of all of the following conditions prior to the Closing Date:

(a) Purchaser's Compliance. Purchaser's fulfillment of each of its obligations under this Agreement, and the continuing accuracy of all Purchaser's warranties and representations in this Agreement in all material respects.

(b) Seller's Encumbrances. Purchaser shall have executed and delivered the Use Covenant in recordable form.

(c) Management Approval. The final approval and authorization of the transaction by Seller's managers.

(d) Notice of Transfer. The execution, delivery and acceptance by DEQ of the Notice of Transfer, including without limitation DEQ's written agreement that Seller will have no further obligations under the PPA (defined in Section 10.1(h) below) with respect to the Real Property following the Closing Date and the recording of the Notice of Transfer in the Official Records of Wasco County.

8.3. **Failure of Closing Conditions**. In the event any one or more of the above conditions is not satisfied as of the Closing Date, or if the party whom such condition is intended to benefit reasonably determines that the same are not capable of being so satisfied by the Closing Date, such party may:

(a) waive such condition by so advising the other party in writing, whereupon this sale shall close in accordance with the terms hereof and the purchase price shall be adjusted if and to the extent the condition relates to a misrepresentation by the other party to this Agreement and the waiving party incurs or reasonably expects to incur any expense to remedy or satisfy any of such conditions;

(b) extend the Closing Date for up to five (5) days and, to the extent constituting a misrepresentation or default of the other party, require the other party to satisfy the condition to the extent feasible or if capable of being satisfied by monetary payment; or

(c) elect to terminate this Agreement, in which event, and except to the extent the parties' remedies are otherwise limited by this Agreement, the nonperforming party, if any, shall continue to be liable to the other party hereto for its damages and expenses caused by such failure or inability to close this transaction with all conditions satisfied.

9. **FAILURE TO CLOSE.**

9.1. **Seller's Remedies.** In the event that this transaction fails to close on account of Purchaser's fault or inability to close through no default of Seller under this Agreement, Seller shall be entitled to such remedies for breach of contract as may be available under applicable law, including without limitation the remedy of specific performance and collection of damages and costs. Furthermore, Seller shall be deemed to have satisfied all requirements under Section 3.1 of the SIP to convey real property to Purchaser.

9.2. **Purchaser's Remedies.** In the event that the transaction fails to close on account of Seller's fault or Seller's inability to close, Purchaser shall be entitled to such remedies for breach of contract as may be available under applicable law, including without limitation the remedy of specific performance and collection of damages and costs.

9.3. **Defaults.** Except for the parties' wrongful failure to close or satisfy a condition to closing by the required Closing Date, neither party shall be deemed in default under this Agreement unless such party is given written notice of its failure to comply with this Agreement and such failure continues for a period of ten (10) days following the date such notice is given.

10. **REPRESENTATIONS; CONDITION OF PROPERTY.**

10.1. **Seller's Representations and Warranties.** Seller represents and warrants to Purchaser as follows:

(a) **Accuracy of Records.** To Seller's knowledge, the Evaluation Material is true and accurate in all material respects as of the date of its compilation; provided that Seller makes no representation or warranty regarding the accuracy of reports or records prepared by any third party.

(b) **No Violation of Zoning and Other Laws.** Seller has not received any written notice from any governmental authority alleging any violations of any laws or rules and regulations respecting the Real Property.

(c) **No Litigation.** To Seller's knowledge, there is no pending or threatened, in writing, litigation or administrative action with respect to the Property and to Seller's knowledge there are no outstanding orders, judgments or decrees under any law or rule or regulation which specifically apply to the Property other than as reflected in the Title Report.

(d) **Eminent Domain.** To Seller's knowledge there is no pending or contemplated eminent domain, condemnation or other governmental taking of the Real Property or any portion thereof.

(e) **Assessments.** To Seller's knowledge, there are no special or general assessments which are in addition to those that will be disclosed in the Title Report which have been levied against or are proposed for the Real Property, as distinct from ordinary ad valorem property taxes.

(f) Nonforeign Status. Seller warrants that it is not a “foreign person” as defined in Section 1445 of the Internal Revenue Code of 1954, as amended. Seller shall deliver to Purchaser at closing a Certificate of Nonforeign Status setting forth Seller’s address and United States taxpayer identification number and certifying that it is not a foreign person as so defined.

(g) Executory Agreement. There are no service, construction, development or maintenance contracts affecting the Real Property nor any leases, licenses or other possessory interests affecting the Real Property granted or created by Seller, or to Seller’s knowledge, any other party other than as set forth in the Title Report and the Partition Plat. In addition, there are no rights of first refusal, options or other agreements for the sale or encumbrance of any portion of the Real Property by Seller except as set forth in the Title Report.

(h) Environmental Matters. Purchaser acknowledges that: (i) the Real Property was previously identified by the United States Environmental Protection Agency (“EPA”) as part of the former Martin-Marietta Aluminum Reduction Facility site (the “MMRF Site”) that was previously listed on the National Priorities List under the federal Comprehensive, Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9601 *et seq.*; and (ii) a portion of the MMRF Site, not located on the Real Property, was used previously for aluminum production operations, which caused hazardous substances to be released to the environment. To Seller’s knowledge, however, the Property was not used for any of the operations associated with aluminum production at the MMRF Site, and to Seller’s knowledge, no CERCLA remediation or removal actions related to the MMRF Site are or were previously required at the Real Property. Purchaser further acknowledges that the Real Property is the subject of and is subject to: (iii) that certain Consent Judgment prospective purchaser agreement entered by the Wasco County Circuit Court on September 1, 2015 in Case No. 1500212CC and recorded in the Official Records of Wasco County on March 17, 2017 as document 2016-006938 (the “PPA”); (iv) that certain Easement and Equitable Servitudes made and recorded in the Official Records of Wasco County on March 17, 2016 as document 2016-00937 and that certain Amendment to Easement and Equitable Servitudes made and recorded in the Official Records of Wasco County on May 2, 2019 (the “EES”); and (v) the MMC Access Agreement, a copy of which may be obtained under the Title Report.

INITIALS OF PURCHASER: \_\_\_\_\_

(i) Compliance. To Seller’s knowledge, with regard to the Property, Seller has complied in all material respects with all applicable environmental laws. Except as disclosed in Paragraph (h) above or the Title Report, Seller has not been and is not subject to any pending or, to its knowledge, threatened proceeding alleging (i) any violation of any environmental law, (ii) any Proceeding, injunction or demand seeking remediation by it, or (iii) any claim or damages arising from the release or threatened release of hazardous material by it to the environment. To Seller’s knowledge, Seller has not used, stored, generated, manufactured, transported, treated, recycled, disposed of, released, discharged, dumped, allowed to be dumped, or otherwise handled hazardous materials on the Property or any other location, except in compliance with environmental laws during the period Seller has owned the Property. Seller has not installed or operated any underground storage tank for the storage of hazardous materials under or upon the

Property, and, to Seller's knowledge, there is no underground storage tank used for the storage of hazardous materials under or on the Property.

(j) Documents Provided. To Seller's knowledge, Seller has made available to Purchaser or identified as publicly available, for Purchaser's own use, copies of all environmental audits, studies, reports and assessments, and environmental permits between Seller and environmental agencies, that are in the possession of Seller or its parent or affiliates that relate to the Property and not otherwise in the public domain.

(k) Seller's Authority. Seller's execution of, delivery of, and performance under this Agreement are undertaken according to authority validly and duly conferred on Seller and the signatories hereto and require no additional consent or authorization by any party.

(l) Wells. To Seller's knowledge, there are no groundwater production wells located on the Property.

(m) On-Site Facilities. To Seller's knowledge, the only fixtures, equipment or improvements located on the Real Property are owned by Seller, free of interests or claims by other parties, except to the extent located within easements encumbering the Real Property or reflected on the Title Report.

10.2. Purchaser's Representations and Warranties. Purchaser represents, warrants, and covenants to Seller as follows:

(a) Purchaser's Existence and Authority. Purchaser is a validly existing and duly organized political subdivision under the laws of the State of Oregon and has the full right and authority to conduct its business under the laws of the State of Oregon, to enter into this Agreement and to perform its obligations under this Agreement.

10.3 Acceptance of Property. Purchaser acknowledges that Purchaser has ascertained, or will ascertain, the size, configuration, utility service, environmentally sensitive areas, means of access, development potential, permitted uses, status of title, value and condition of the Property and, except as specifically stated herein, Purchaser is not relying on, nor has Purchaser been influenced by, any representation of Seller or any agent or representative of Seller regarding any of such items. Except for any actionable breaches of Seller's representations and warranties contained herein, Purchaser's acceptance of the Property and the satisfaction or waiver of all of Purchaser's conditions to closing shall be evidenced solely by the closing of this transaction and without any other act or confirmation by Purchaser. Seller makes no representation or warranty regarding the fitness of the Real Property for Purchaser's intended use. Purchaser shall not have the option to close this transaction without accepting the Property in its then current condition, and Purchaser acknowledges that except for any Seller's breach of an express representation and warranty of Seller stated in this Agreement, Purchaser is acquiring the Property in its condition existing as of the Closing Date without warranty. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT FOR THE REPRESENTATIONS OR WARRANTIES SPECIFICALLY SET FORTH HEREIN, THIS SALE IS MADE AND WILL BE MADE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND (WHETHER EXPRESS OR IMPLIED)

BY SELLER OR ITS REPRESENTATIVES AS TO THE PHYSICAL AND ENVIRONMENTAL CONDITION OF THE REAL PROPERTY. AS A MATERIAL PART OF THE CONSIDERATION FOR THIS AGREEMENT, PURCHASER AGREES TO ACCEPT THE PHYSICAL AND ENVIRONMENTAL CONDITION OF THE REAL PROPERTY ON AN “AS IS” AND “WHERE IS” BASIS, WITH ALL FAULTS AND ANY AND ALL LATENT AND PATENT DEFECTS, WHETHER KNOWN OR UNKNOWN. WITHOUT LIMITING THE FOREGOING, NO WARRANTY OR REPRESENTATION IS MADE BY SELLER OR ITS REPRESENTATIVES AS TO (A) THE FITNESS OF THE REAL PROPERTY FOR ANY PARTICULAR PURPOSE OR USE, (B) THE MERCHANTABILITY OF THE REAL PROPERTY, (C) REAL PROPERTY SOILS, GROUNDWATER, GEOLOGIC, HYDROGEOLOGIC, ORE GEOTECHNICAL CONDITIONS, OR (D) THE PRESENCE OR ABSENCE OF ANY HAZARDOUS OR TOXIC SUBSTANCE, WASTE, OR MATERIAL IN, ON, UNDER OR FROM THE REAL PROPERTY.

10.4 Purchaser Waiver and Release. As a material part of the consideration for this Agreement, Purchaser agrees that, except for any breach by Seller of an express representation and warranty of Seller stated in this Agreement, Seller shall have no liability, and Purchaser hereby waives, covenants not to sue, releases and forever discharges Seller from and against any and all claims, actions, causes of action, demands, rights to contribution, damages, costs, expenses and liability, whether direct or indirect, absolute or contingent, foreseen or unforeseen, known or unknown, which Purchaser now has or which may arise in the future on account of or in any way growing out of or connected with the PPA, the EES, the Property’s status as part of the MMRF Site, the Property’s title or physical condition, or any other aspect of the Property including, without limitation: (i) the Property’s fitness for any particular purpose or use, (ii) zoning or federal, state and local land use laws, regulations and ordinances, (iii) the Americans with Disabilities Act and comparable federal, state and local laws, regulations and ordinances, (iv) obligations arising under the DIA, PPA, EES or the MMC Access Agreement with respect to the Property following the Closing Date; and (v) the presence in, on, under or from the Property, or any building or other improvement thereon, of asbestos-containing materials, transformers or other equipment containing polychlorinated biphenyls, petroleum or petroleum-derived materials, or any hazardous or toxic waste, substance or material as defined in any federal, state or local law, regulation and ordinance which may now or hereafter be applicable. Such waiver and release shall extend to Seller and Seller’s affiliates, successors, partners, shareholders, directors, officers, employees and agents, and their respective heirs, successors and assigns. Notwithstanding the foregoing, Purchaser’s waiver and release shall not apply to, and Seller may be held liable for, any claims, actions, causes of action, demands, rights to contribution, damages, costs, expenses and liability to the extent arising out of work completed by Seller under the PPA or the EES, such as a defect in the surface area cap over “Restricted Area 1.”

11. CONFIDENTIALITY. Except as provided otherwise in the Mutual Non-disclosure Agreement executed between Seller and Purchaser, the terms of which are incorporated by this reference, and except as provided below in this Section 11, Purchaser and Seller, for the benefit of each other hereby agree that they shall keep the terms and conditions of this Agreement confidential and shall not disclose any information regarding the same, whether prior to or after Closing, without first obtaining the consent of the other party hereto, or unless otherwise required by law. Purchaser acknowledges that Seller is a public agency and as such is required to comply

with the Public Meetings Law and Public Records laws enacted in the State of Oregon, and agrees that any public disclosure necessary to comply with such law is not a breach of this Section. Subject to the constraints of that Act, Seller shall: (1) keep this Agreement and all information provided by Purchaser confidential and ensure it is not shared in any way; and (2) release no information provided by Purchaser or this Agreement to any other person or entity. In addition, subject to the constraints of the Act, Purchaser agrees to disclose the results of its Inspections of the Real Property only to its employees, agents or representatives to the extent necessary for the purposes of Purchaser's evaluation of the proposed transaction. Seller agrees to engage in all discussions and exchange of information relating to this Agreement in Executive Session, if permitted under the applicable law. Purchaser acknowledges that recordation of the deed containing Purchaser's name will not violate this Section.

Should Purchaser receive a public records request for a copy of this Agreement or any other information regarding the Seller or this transaction, Purchaser shall provide timely notice to Seller prior to responding to any such request and to the extent permitted under applicable law reasonably cooperate with Seller in preserving confidentiality and protecting Seller's wish to protect Seller's trade secrets and other confidential information, at no additional cost or expense whatsoever to Purchaser. Seller is exclusively responsible for defending Seller's position concerning the confidentiality of the requested information.

12. **INDEMNIFICATION.** Each party hereby agrees to indemnify the other party and hold it harmless from and against any and all claims, demands, liabilities, costs, expenses, penalties, damages and losses, including, without limitation, reasonable attorneys' fees, resulting from any misrepresentations or breach of warranty or breach of covenant made by such party in this Agreement or in any document, certificate or exhibit given or delivered to the other pursuant to the express terms of this Agreement. The indemnification provisions of this Section 12 shall survive beyond the delivery of the Deed and transfer of title, or, if title is not transferred pursuant to this Agreement, beyond any termination of this Agreement.

13. **GENERAL PROVISIONS.**

13.1. **Time of Essence.** Except as otherwise specifically provided in this Agreement, time is of the essence of each and every provision of this Agreement.

13.2. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, personal representatives, successors, and assigns, but Purchaser shall not assign or otherwise transfer any interest without the prior written consent of Seller.

13.3. **Assignments and Successors.** Purchaser shall have the right to assign this Agreement to any entity owned or controlled by, or under common control with Purchaser (the fact of which will be established by written representation of Purchaser), and Purchaser shall give Seller written notice in such event. Any other assignments shall require Seller's written consent.

13.4. **Notices.**

(a) All notices given pursuant to this Agreement shall be in writing and shall either be (i) mailed by first class mail, postage prepaid, certified or registered with return receipt requested, or (ii) delivered in person or by nationally recognized overnight courier.

(b) Any notice (i) sent by mail in the manner specified in paragraph (a) of this section shall be deemed served or given two (2) business days after deposit in the United States Postal Service, (ii) delivered by nationally recognized overnight courier shall be deemed served or given one (1) Business Day after delivery to the courier, charges prepaid. Notice given to a party in any manner not specified above shall be effective only if and when received by the addressee as demonstrated by objective evidence in the possession of the sender.

(c) The address of each party to this Agreement for purposes of notice shall be as follows:

SELLER: Moraine Industries, LLC  
1600 Amphitheatre Parkway  
Mountain View, CA 94043

With a copy to: Stoel Rives LLP  
600 University Street, Suite 3600  
Seattle, WA 98101  
Attention: Virginia Pedreira

PURCHASER: Wasco County  
511 Washington Street, Suite 201  
The Dalles, OR 97508  
Attention: Administrative Officer

Each party may change its address for notice by giving not less than fifteen (15) days' prior notice of such change to the other party in the manner set forth above.

13.5. **Waiver.** Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

13.6. **Integration.** This Agreement supersedes and replaces all written and oral agreements previously made or existing between the parties and states the entire agreement of the parties.

13.7. **Brokers.** Seller and Purchaser each represent and warrant that it has had no dealings with any broker in connection with negotiation or execution of this Agreement. Each party shall defend, indemnify, and hold the other party harmless from any claim, loss, or liability made or imposed by any other party claiming a commission or fee in connection with this transaction and arising out of its own conduct.

13.8. **Changes in Writing.** This Agreement and any of its terms may only be changed, waived, discharged or terminated by a written instrument signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

13.9. **Electronic Signatures.** Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission, shall be the same as delivery of an original. At the request of either party, or the Escrow Officer, the parties shall confirm facsimile or electronic transmitted signatures by signing an original document.

13.10. **Counterparts.** This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

13.11. **Invalidity of Provisions.** In the event any provision of this Agreement, or any instrument to be delivered by Purchaser at closing pursuant to this Agreement, is declared invalid or is unenforceable for any reason, such provision shall be deleted from such document and shall not invalidate any other provision contained in the document.

13.12. **Saturday, Sunday and Legal Holidays.** If the time for performance of any of the terms, conditions and provisions of this Agreement shall fall on a Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.

13.13. **Further Assurances.** The parties each agree to do, execute, acknowledge and deliver any and all other documents and instruments and to take all such further action before or after the Closing as shall be necessary or desirable to fully consummate their agreements and the transaction set forth in this Agreement.

13.14. **Survival of Covenants.** Any covenants and agreements which this Agreement does not require to be fully performed prior to the Closing Date shall survive the Closing Date, shall not merge into the Deed and shall be fully enforceable thereafter in accordance with their terms, including without limitation the confidentiality provisions of Section 11 and the indemnity provisions of Sections 3.4 and 12.

**THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009 AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS**

**INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009 AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.**

13.15 **Exhibits**. The following Exhibits are attached hereto and incorporated herein by this reference:

Exhibit A – Description of Real Property

Exhibit A-1 – Partition Plat and Depiction of Real Property

Exhibit B – Phase I

Exhibit C - Title Report and ALTA Survey

Exhibit D - Form of Deed

Exhibit E – Notice of Transfer

*[Signatures appear on following page]*

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as of the day and year first above written.

SELLER:

MORaine INDUSTRIES, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

PURCHASER:

WASCO COUNTY,  
a political subdivision of the State of Oregon

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature Page

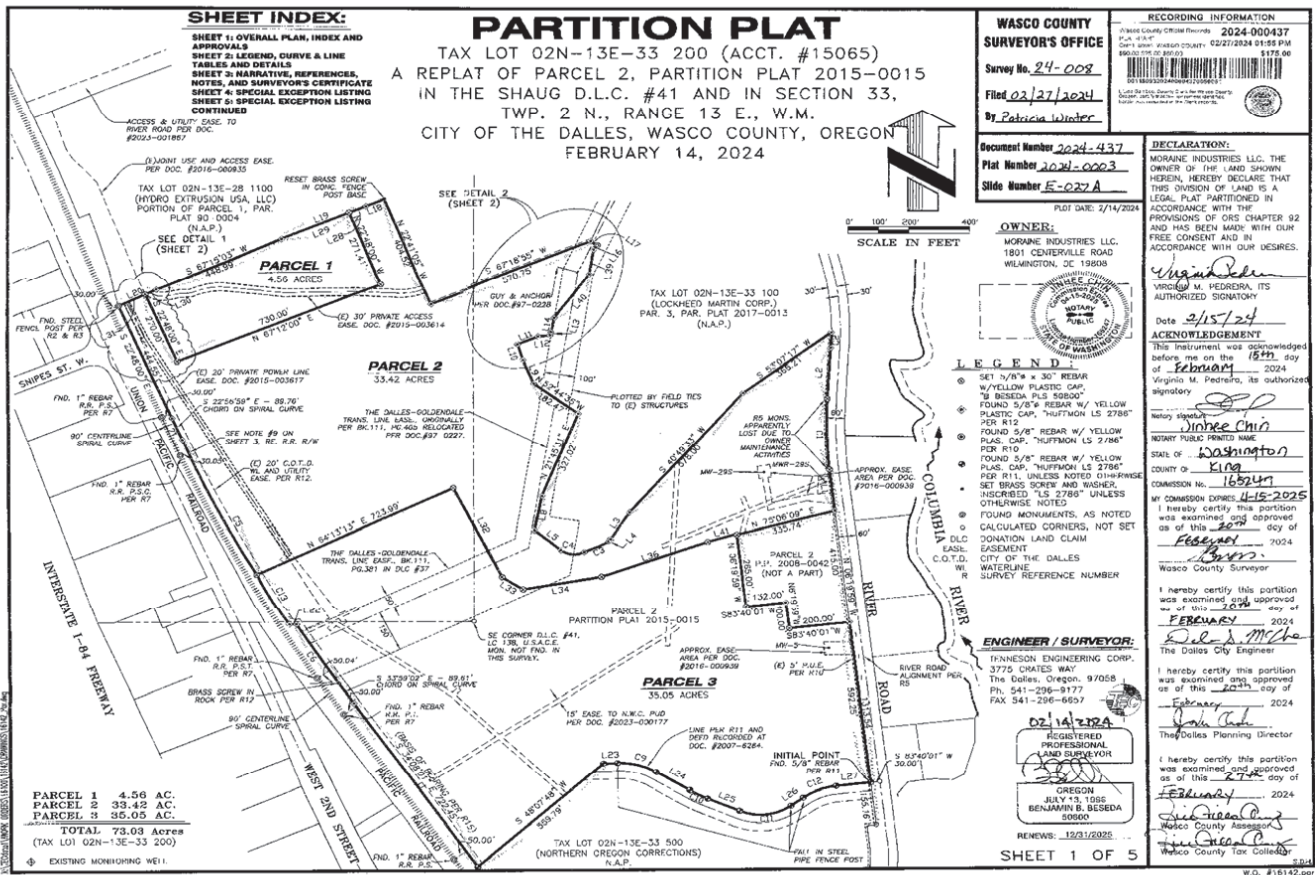
## **EXHIBIT A**

### **Legal Description of the Property**

Parcel 3 of Partition Plat recorded February 27, 2024 under Microfilm No. 2024-000437, Plat No. 2024-0003, Slide No. E-027A, Wasco County Records, as depicted on the attached Exhibit A-1.

EXHIBIT A

# EXHIBIT A-1 Partition Plat



# **PARTITION PLAT** TAX LOT 02N-13E-33 200 (ACCT. #15065) A REPLAT OF PARCEL 2, PARTITION PLAT 2015-0015 IN THE SHAUG D.L.C. #41 AND IN SECTION 33, TWP. 2 N., RANGE 13 E., W.M. CITY OF THE DALLES, WASCO COUNTY, OREGON FEBRUARY 14, 2024

**WASCO COUNTY  
SURVEYOR'S OFFICE**  
Survey No. 24-008  
Filed 02/27/2024  
By Patricia Winter

RECORDING INFORMATION	
Wasco County Office Record	2024-000437
PLAT NAME	0227/2024 01:46 PM
WASCO COUNTY RECORDS	0227/2024 01:46 PM
FILED	02/27/2024
Document Number	2024-437
Plat Number	2024-0003
Slide Number	E-027A

CURVE	DELTA ANGLE	RADIUS	ARC LENGTH	TANGENT	CHORD BEARING	CHORD LENGTH
C1	1017.00°	1482.40'	282.47'	131.59'	N 01°11'20" W	282.12'
C2	0330.32°	324.83'	38.64'	28.33'	N 07°11'45" E	56.64'
C3	7143.38°	236.45'	89.80'	45.45'	S 64°58'14" W	89.26'
C4	4747.33°	93.74'	19.86'	42.42'	N 84°23'11" W	77.56'
C5	0533.17°	5699.58'	552.57'	276.50'	N 28°01'58" W	552.35'
C6	0235.11°	5679.58'	256.39'	128.22'	S 32°23'25" E	256.37'
C9	3334.14°	223.00'	134.18'	69.06'	S 75°06'49" E	132.26'
C10	0806.03°	471.30'	66.39'	33.35'	S 62°22'42" E	66.54'
C11	5831.28°	171.30'	177.65'	87.78'	N 63°48'53" E	169.77'
C12	2837.12°	229.00'	118.39'	60.55'	N 68°51'25" E	117.07'
C13	0210.12°	5689.58'	215.85'	107.94'	N 29°53'23" W	215.84'

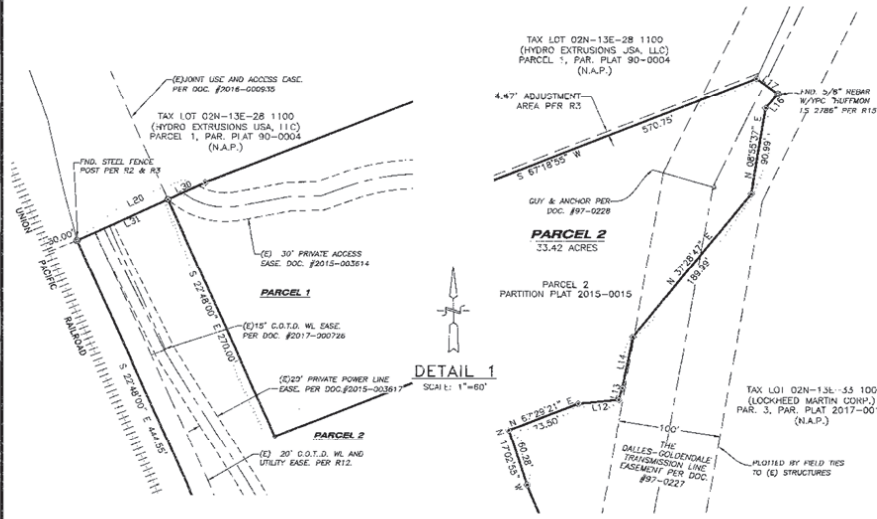
PARCEL 1 4.56 AC.  
PARCEL 2 33.42 AC.  
PARCEL 3 35.05 AC.  
TOTAL 73.03 Acres  
(TAX LOT 02N-13E-33 200)

## **LEGEND:**

- ① SET 5/8" x 30" REBAR
- ② W/YELLOW PLASTIC CAP, "B" BRSEDA PLS 50800"
- ③ FOUND 5/8" REBAR W/ YELLOW PLASTIC CAP, "HUFFMAN LS 2786" PER R12
- ④ FOUND 5/8" REBAR W/ YELLOW PLASTIC CAP, "HUFFMAN LS 2786" PER R10
- ⑤ FOUND 5/8" REBAR W/ YELLOW PLASTIC CAP, "HUFFMAN LS 2786" PER R11, UNLESS NOTED OTHERWISE
- ⑥ SET BRASS SCREW AND WASHER, INSCRIBED "S 2786" UNLESS OTHERWISE NOTED
- ⑦ FOUND MONUMENTS, AS NOTED
- ⑧ CALCULATED CORNERS, NOT SET
- ⑨ SURVEY RETIREMENT NUMBER
- ⑩ FOUND
- ⑪ CALC. CALCULATED
- ⑫ MUN. MONUMENT
- ⑬ C.S.# COUNTY SURVEY NUMBER
- ⑭ R/W RIGHT OF WAY
- ⑮ DOC. DOCUMENT
- ⑯ ALUM. ALUMINUM
- ⑰ APPROX. APPROXIMATE
- ⑱ P.P. PARTITION PLAT
- ⑲ L.C. LAND CORNER
- ⑳ BK/PD BOOK/PAGE
- ㉑ P.U.C. PUBLIC UTILITY EASEMENT
- ㉒ EASE. EASEMENT
- ㉓ N.A.P. NOT A PART
- ㉔ ONE OVERHEAD ELECTRICAL
- ㉕ RR RAILROAD
- ㉖ F.B.G. FOR THE BENEFIT OF
- ㉗ J.W.M. TRANSMISSION
- ㉘ B.P.A. BONNEVILLE POWER ADMINISTRATION
- ㉙ C.B.T.D. CITY OF THE DALLES

LINE	BEARING	DISTANCE
L1	N 06°19'59" W	151.13'
L2	N 03°27'01" E	186.26'
L3	S 33°08'42" W	116.06'
L4	S 41°36'55" W	10.27'
L5	N 49°51'39" W	112.50'
L6	N 11°19'47" E	126.30'
L7	N 22°02'49" W	92.53'
L8	N 17°02'55" W	60.28'
L9	N 67°08'21" E	73.50'
L10	N 83°54'23" E	59.60'
L11	N 16°17'41" E	12.79'
L12	N 10°37'04" E	54.22'
L13	N 37°53'43" E	19.33'
L14	N 52°06'15" W	28.41'
L15	S 67°11'15" W	62.18'
L16	S 67°18'46" W	300.45'
L17	S 63°56'49" W	138.93'
L18	S 22°56'59" E	89.76'
L19	S 89°42'37" E	23.41'
L20	N 89°06'05" E	46.33'
L21	S 58°19'41" E	126.81'
L22	S 66°25'43" E	114.83'
L23	N 54°02'49" E	49.61'
L24	N 83°40'01" E	115.49'
L25	S 67°18'46" W	59.63'
L26	S 67°18'46" W	240.83'
L27	S 63°56'49" W	40.24'
L28	S 63°56'49" W	98.69'
L29	N 25°46'47" W	362.74'
L30	N 57°07'46" W	61.07'
L31	S 80°13'32" W	261.77'
L32	S 70°22'16" W	372.67'
L33	N 08°55'37" E	90.99'
L34	N 37°28'47" E	189.99'
L35	N 75°06'09" E	103.00'

**OWNER:**  
MORRIS INDUSTRIES LLC  
1801 CENTERVILLE ROAD  
WILMINGTON, DE 19808



**DETAIL 1**  
SCALE: 1"=60'

**DETAIL 2**  
SCALE: 1"=80'

**ENGINEER / SURVEYOR:**  
TENNESON ENGINEERING CORP.  
3775 CRATES WAY  
THE DALLES, OREGON 97058  
PH. 541-296-9177  
FAX 541-296-6657

**02/14/2024**  
REGISTERED  
PROFESSIONAL  
SURVEYOR  
OREGON  
JULY 12, 1999  
BENJAMIN B. BESEDA  
50800

RENEWED: 12/31/2026

**SHEET 2 OF 5**  
W.O. #16142.por

TAX LOT 02N-13E-33 200 (ACCT. #15065)  
A REPLAT OF PARCEL 2, PARTITION PLAT 2015-0015  
IN THE SHAG D.L.C. #41 AND IN SECTION 33,  
TWP. 2 N., RANGE 13 E., W.M.  
CITY OF THE DALLES, WASCO COUNTY, OREGON  
FEBRUARY 14, 2024

PARCEL 1	4.56 AC.
PARCEL 2	33.42 AC.
PARCEL 3	35.05 AC.
<hr/>	
TOTAL	73.03 Acre
(TAX LOT 02N-13E-33 20C)	

#### REFERENCES:

- 1) PARTITION PLAT 91-0016 FOR MARTIN MARETTA CORP. BY TENNISON ENGR. CORP. #7628 RECORDED AUGUST 30, 1991 C.S. #7-134
- 2) PROPERTY LINE ADJUSTMENT PLAT #88-0001 FOR NORTHWEST ALUMINUM CO. BY TENNISON ENGR. CORP. #08558 RECORDED JANUARY 1, 1990 DOC. #06-0077, SLIDE C-174 C.S. #9-160
- 3) PROPERTY LINE ADJUSTMENT PLAT FOR NORTHWEST ALUMINUM CO. BY TENNISON ENGR. CORP. #012406 RECORDED JUNE 11, 2002 DOC. #01-0024, SLIDE C-1738 C.S. #12-096
- 4) SURVEY FOR W.D.R.C.O.P. BY TENNISON ENGR. CORP. #0102 NOVEMBER 1997 C.S. #10-145
- 5) RIVER ROAD ALIGNMENT MAP BY WASCOS COUNTY ROAD DEPT. JANUARY, 1971 C.S. #18-1-2
- 6) INTENTIONALLY DELETED
- 7) RIGHT-OF-WAY AND TRACK MAP ORIENTED TO THE RAILROAD & NAVIGATION CO. MAP LINE 1 - DARTLAND TO THE DALLIES SUBDIVISION #1916 (REVISED DECEMBER 30, 1921)
- 8) PLAT OF THE DALLIES INDUSTRIAL CENTER, SUBDIVISION NO. 1, FOR PLAT OF THE DALLIES BY TENNISON ENGR. CORP. #06834-8 SLIDE A-93
- 9) PARTITION PLAT 90-0004 FOR MARTIN MARETTA TENNISON ENGINEERING CORP. C.S. #7-059
- 10) PARTITION PLAT 2006-0048 FOR NORTHWEST ALUMINUM CO. BY TENNISON ENGR. CORP. #01652, RECORDED SEPTEMBER 20, 2006 DOC. #01-0488 (SLIDE C-1304) C.S. #14-119

SURVEYOR'S CERTIFICATE:

3. BENJAMIN D. BESEDA, REGISTERED AND SURVEYOR NO. 50800 IN THE STATE OF OREGON, BEING FIRST DULY SWORN, DEPOSE AND SAY THAT I HAVE CORRECTLY SURVEYED AND MARKED WITH LEGAL MONUMENTS, ACCORDING TO ORS CHAPTER 92 AND THE CITY OF THE DALLES MUNICIPAL CODE, A PARTITION OF PARCEL 7 OF PARTITION PLAT 2015-0015 LYING THE SHAUG D.L.C. NO. 41 AND IN SECTION 33, TOWNSHIP 2 NORTH, RANGE 13 WEST, WILLAMETTE MERIDIAN, CLATSOP COUNTY, OREGON. THE PARTIAL CORNER OF SAID PARCEL 7 IS THE 5/8" X 1/2" REBAR WITH YELLOW PLASTIC CAP INSCRIBED "HARTMAN PLS 2788" FOUND AT THE SOUTHWEST CORNER OF SAID PARCEL 2, AS SL1 IN COUNTY SURVEY 015-089. THE PLATTED PROPERTY IS DESCRIBED AS FOLLOWS:

PARCEL 2 OF PARTITION PLAT 2015-0015, RECORDED NOVEMBER 19, 2015, AT DOCUMENT NO. 2015-004543 (SLIDE D-135B), DEED RECORDS OF WASCO COUNTY.

CONTAINS 73.03 ACRES.

N O T E S:

- 1) BEARINGS ARE BASED ON PARTITION PLAT 2015-0015 (REF.#15) BETWEEN THE FOUR MONUMENTS ON THE SOUTHWESTERLY LINE OF THE PROPERTY.
- 2) THE PROPERTY DOES NOT LIE IN A CITY OF THE DALLAS GEOLOGIC HAZARD ZONE.
- 3) CITY OF THE DALLAS SANITARY SEWER AND POTABLE WATER SYSTEMS AVAILABLE. THE PROPERTY CAN BE SERVED FROM EXISTING CITY LINES IN RIVER ROAD AND ON THE PROPERTY.
- 4) ZONING IS INDUSTRIAL (I).
- 5) THERE ARE NO PHYSICAL OR ENVIRONMENTAL CONSTRAINTS SUCH AS EROSION CONTROL, GROUND SLOPE, FLOOD WAYS, FLOOD PLAINS OR GEOLOGIC HAZARD AREAS AFFECTING THE PROPERTY.
- 6) THE SITE CONTAINS NATURAL FEATURES SUCH AS STRAINS, PONDS, WILDLANDS, SOIL ROCK OUTCROPPINGS AND MATURE (GREATER THAN 14) NATIVE AND NON-NATIVE TREES. IT WAS BEYOND THE SCOPE OF THIS PARTITION 10 ATTEMPT TO MAP ALL OF THE TREES.
- 7) THIS LAND USE ACTION WAS REVIEWED AND GRANTED APPROVAL BY THE CITY OF THE DALLAS AS MAP 410-22.
- 8) EXISTING MONITORING WELLS ON BOTH PARCELS SUBJECT TO ACCESS EASEMENT PER REFERENCE NO. 10. NOT ALL WELLS SHOWN ON MAP.
- 9) U+J-R-1 R/W CONSTRUCTED FROM REF. #7 USING RECORD CURVE DATA, FOUND MONUMENTS 50, 60 AND 70. MONUMENTS 50 AND 60 ARE THE MONUMENTS. THE MONUMENTS APPARENTLY ARE FOR A NEW ALIGNMENT POSSIBLY TO ALLOW GREATER SPEEDS. THIS WOULD NOT MOVE THE R/W, THEREFORE THE TANGENTS WERE HELD. MONUMENTS 50 AND 60 WERE NOT ON THE MAP IN THE TRACKS.
- 10) VOLUMENETRATION FOR THIS PARTITION WAS COMPLETED ON NOVEMBER 28, 2023.
- 11) OWNERSHIP, EASEMENTS AND OTHER ENCUMBRANCES TO RECORD VERIFIED BY REFERENCE TO AMERISTATE STATUS OF RECORD TITLE REPORT COMPLETED UNDER ORDER NO. 80064064 DATED OCTOBER 3, 2023.
- 12) DIMENSIONS NOT SHOWN FOR EXISTING EASEMENTS TO REDUCE CLUTTER ON THE MAP. DIMENSIONS ARE SHOWN ON RECORDED DOCUMENTS EXCEPT FOR DOCUMENT 2016-00039. NO DIMENSIONS ARE IN THE RECORD DOCUMENT IT WAS ISSUED BEFORE THE MAP IN THE LINES.
- 13) PARCELS 2 AND 3 HAVE NO CURRENT OR FUTURE RIGHT OF ACCESS CROSSING THE LINE PACIFIC RAILROAD RIGHT-OF-WAY.

NARRATIVE:

THE PURPOSE OF THIS SURVEY WAS TO COMPLETE A THREE PARCEL PARTITION PLAT OF TAX LOT 02N-13E-33-200, BEING PARCEL 2 OF PARTITION PLAT 2015-0015. THE SUBJECT PROPERTY LIES THE SHAUG D.L.C. AND IN SECTION 33, TOWNSHIP 2 NORTH, RANGE 13 EAST, W.M. PRIOR TO COMPLETING THE FIELD WORK AND MAPPING NECESSARY FOR THIS PARTITION, RESEARCH WAS MADE TO OBTAIN COPIES OF PRIOR SURVEYS OR PLATS CONDUCTED ON OR IN THE VICINITY OF THE SUBJECT PROPERTY AND TO OBTAIN A COPY OF A CURRENT TITLE REPORT. PRIOR SURVEYS THAT WERE UTILIZED AS A PART OF THE RESOLUTION SHOWN HEREON ARE LISTED AS REFERENCES.

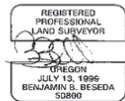
THE SUBJECT PROPERTY IS PARCEL 2 OF PARTITION PLAT 2015 0015. THIS PARTITION PLAT ESTABLISHED AND FULLY MONUMENTED THE EXTERIOR BOUNDARY OF THE SUBJECT PROPERTY. THE EXTERIOR BOUNDARY MONUMENTATION WAS COMPLETED IN A NUMBER OF PRIOR SURVEYS, ALL LISTED AS REFERENCES. RECOVERY OF THE EXTERIOR BOUNDARY MONUMENTS WAS NOT POSSIBLE DUE TO THE DESTRUCTION OF THE EXTERIOR BOUNDARY OF PARCEL 2 IDENTICALLY MATCHES THE CREATING PARTITION PLAT. MONUMENTS NOT RECOVERED ON THE EXTERIOR BOUNDARY WERE REPLACED AT RECORD LOCATION, WITH RESOLUTION OF THE BOUNDARY OF THE SUBJECT PROPERTY. THE EXTERIOR BOUNDARY MONUMENTATION WAS COMPLETED ON THE PARCEL LINES AND WHERE NOT LOCATED ON THE EXTERIOR BOUNDARY, THE MAP ALSO SHOWS ALL EASEMENTS AND AGREEMENT DOCUMENTS OF RECORD AS DISCLOSED BY THE SUBJECT PROPERTY. THE MONUMENTS WERE EITHER ON THE FACE OF THE MAP OR BY NOTES THAT COMPLETED THE WORK FOR THIS PARTITION PLAT.

SET MONUMENTS ARE 5/8" X 30" REBAR WITH YELLOW PLASTIC CAP INSCRIBED "B BESEDA 50800" UNLESS NOTED OTHERWISE.

<b>WASCO COUNTY</b> <b>SURVEYOR'S OFFICE</b>	<b>RECORDING INFORMATION</b> Wasco County Official Records <b>2024-000437</b> <b>PLAT DATE</b> Date Recd: <b>WASCO County</b> <b>03/27/2024 01:55 PM</b> <b>SF: 00 US (20 MPBL)</b> <b>\$175.00</b>	
	Survey No. <b>24-008</b> Filed <b>03/27/2024</b> By <b>Patricia Winder</b>	
1. I hereby certify that the foregoing is a true and correct copy of the original as the same appears in the County's Office and is a true and correct copy of the original as the same appears in the County's Office.		
		
Document Number <b>2024-437</b> Plat Number <b>2024-0003</b> Slide Number <b>F-027A</b>		

**OWNER:**  
MORaine INDUSTRIES LLC.  
1601 CENTERVILLE ROAD  
WILMINGTON, DE 19808

**ENGINEER / SURVEYOR:**  
TENNESON ENGINEERING CORP.  
3775 CRATES WAY  
The Dalles, Oregon, 97058  
Ph. 541-296-9177  
FAX 541-296-8657

RENEWS: 12/31/2025

SHEET 3 OF 5

PARCEL 1 4.56 AC.  
PARCEL 2 33.42 AC.  
PARCEL 3 35.05 AC.  
TOTAL 73.03 Acres  
(TAX LOT 02N-13E-33 200)

# **PARTITION PLAT** TAX LOT 02N-13E-33 200 (ACCT. #15065) A REPLAT OF PARCEL 2, PARTITION PLAT 2015-0015 IN THE SHAUG D.L.C. #41 AND IN SECTION 33, TWP. 2 N., RANGE 13 E., W.M. CITY OF THE DALLES, WASCO COUNTY, OREGON FEBRUARY 14, 2024

## **OWNER:**

MORANE INDUSTRIES LLC  
1801 CENTERVILLE ROAD  
WILMINGTON, DE 19805

**WASCO COUNTY  
SURVEYOR'S OFFICE**  
Survey No. 24-008  
Filed 02/27/2024  
By Patricia Winters

RECORDING INFORMATION	
Wasco County Official Records	2024-000437
PLAT NAME	02/27/2024 01:55 PM
City/County/State	Wasco County, Oregon
BOOK/SECTION	8176-00
1. For Recording, County Clerk or Surveyor must provide recording fee and recording fee receipt for all other recording fees to be paid to the county.	

Document Number 2024-0137  
Plot Number 2024-0003  
Slide Number E-027A

## **EXCEPTION LISTING:**

1. THE 2023-2024 TAXES: A LIEN NOT YET DUE OR PAYABLE. NOT A SURVEY MATTER. NOT FURTHER SHOWN OR NOTED ON THE MAP.
2. CITY LIENS, IF ANY, OF THE CITY OF THE DALLES. NOT A SURVEY MATTER. NOT FURTHER SHOWN OR NOTED ON THE MAP.
3. UNRECORDED EASEMENTS, IF ANY, AND THE RIGHTS OF VENDORS AND HOLDERS OF SECURITY INTEREST IN PERSONAL PROPERTY OF TENANTS TO REMOVE SAID PERSONAL PROPERTY AT THE EXPIRATION OF THE TERM. NOT A SURVEY MATTER. NOT FURTHER SHOWN OR NOTED ON THE MAP.
4. THE RIGHTS OF THE PUBLIC IN AND TO THAT PORTION OF THE HEREIN DESCRIBED PROPERTY LYING WITHIN THE LIMITS OF PUBLIC ROADS, STREETS OR HIGHWAYS. EXISTING PUBLIC RIGHTS-OF-WAY ADJOINING THE SUBJECT PROPERTY ARE SHOWN ON THE MAP.
5. AN EASEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, AFFECTING THE PORTION OF SAID PREMISES AND FOR THE PURPOSES STATED THEREIN AS SET FORTH IN INSTRUMENT GRANTED TO THE UNITED STATES OF AMERICA, AS RECORDED JUNE 8, 1929, AT BOOK 90, PAGE 427. THIS EASEMENT IS FOR FLOWAGE PURPOSES FOR THE BONNEVILLE PROJECT. THE EASEMENT IMPACTS LANDS LYING BELOW ELEVATION 99.7 FOOT NOV 1929. NO PART OF THE SUBJECT PROPERTY ADJOINS THE COLUMBIA RIVER OR BONNEVILLE POOL AND NO PART OF THE SUBJECT PROPERTY LIES BELOW THIS ELEVATION. NOT FURTHER SHOWN OR NOTED ON THE MAP.
6. AN EASEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, AFFECTING THE PORTION OF SAID PREMISES AND FOR THE PURPOSES STATED THEREIN AS SET FORTH IN INSTRUMENT GRANTED TO PACIFIC POWER & LIGHT COMPANY, A CORPORATION, ITS SUCCESSORS AND/OR ASSIGNS, AS RECORDED JULY 25, 1945, AT BOOK 101, PAGE 325. THIS EASEMENT IS FOR ELECTRIC TRANSMISSION AND DISTRIBUTION LINES. THIS EASEMENT ENCUMBERS THAT PORTION OF THE SUBJECT PROPERTY LYING IN LOT 4 OF SECTION 33. PACIFIC POWER & LIGHT COMPANY IS NOW NORTHERN WASCO COUNTY PUD. NO WIDTH IS STATED FOR THIS EASEMENT. EXISTING LINES WITHIN THIS PORTION OF THE SUBJECT PROPERTY ARE SHOWN. IT MAY BE SUPERSEDED BY MORE RECENT EASEMENT DOCUMENT. NOT FURTHER SHOWN OR NOTED ON THE MAP.
7. AN EASEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, AFFECTING THE PORTION OF SAID PREMISES AND FOR THE PURPOSES STATED THEREIN AS SET FORTH IN INSTRUMENT GRANTED TO THE UNITED STATES OF AMERICA, AS RECORDED SEPTEMBER 18, 1947, AT BOOK 111, PAGE 281. THIS EASEMENT IS 200 FEET IN WIDTH AND IS FOR THE DALLES-GOLDENDALE TRANSMISSION LINE. THIS EASEMENT COVERS THAT PORTION OF THIS TRANSMISSION LINE LYING WITHIN D.L.C. NO. 41 AND IS SHOWN AND NOTED ON THE MAP.
8. AN EASEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, AFFECTING THE PORTION OF SAID PREMISES AND FOR THE PURPOSES STATED THEREIN AS SET FORTH IN INSTRUMENT GRANTED TO PACIFIC POWER & LIGHT COMPANY, A CORPORATION ITS SUCCESSORS AND ASSIGNS, AS RECORDED JANUARY 24, 1964, AT INSTRUMENT NO. 64-0190. THIS EASEMENT IS FOR ELECTRIC TRANSMISSION AND DISTRIBUTION LINE. PACIFIC POWER & LIGHT IS NOW NORTHERN WASCO COUNTY PUD. NO WIDTH IS STATED FOR THE EASEMENT. THIS EASEMENT MAY BE SUPERSEDED BY MORE RECENT EASEMENT DOCUMENT. NOT FURTHER SHOWN OR NOTED ON THE MAP.
9. AN EASEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, AFFECTING THE PORTION OF SAID PREMISES AND FOR THE PURPOSES STATED THEREIN AS SET FORTH IN INSTRUMENT GRANTED TO THE UNITED STATES OF AMERICA, AS RECORDED SEPTEMBER 28, 1974, AT INSTRUMENT NO. 74-2220. THIS EASEMENT IS FOR FLOWAGE PURPOSES CONNECTED TO THE BONNEVILLE PROJECT. IT ENCUMBERS VARIOUS PORTIONS OF SECTION 33 LYING BETWEEN ELEVATION 72 AND ELEVATION 86, NOV 1929. NO PORTION OF THE SUBJECT PROPERTY LIES BELOW ELEVATION 86 NOR DOES ANY OF THE SUBJECT PROPERTY ADJOIN THE COLUMBIA RIVER. NOT FURTHER SHOWN OR NOTED ON THE MAP.
10. COVENANT(S) AND EASEMENT AGREEMENT(S), INCLUDING THE TERMS AND PROVISIONS THEREOF, AS CONTAINED IN EASEMENT AND RELEASE TRANSMISSION LINE, BY AND BETWEEN MARTIN MARRETTA CORPORATION, A MARYLAND CORPORATION, GRANTOR, AND UNITED STATES OF AMERICA, DEPARTMENT OF ENERGY, BONNEVILLE POWER ADMINISTRATION, AS RECORDED JANUARY 22, 1997, UNDER INSTRUMENT NO. 97-0277, RECORDS OF WASCO COUNTY, OREGON. THIS EASEMENT IS FOR THE RELOCATED DALLES-GOLDENDALE TRANSMISSION LINE EASEMENT. EASEMENT WIDTH IS 100 FEET. THIS EASEMENT IS SHOWN AND NOTED ON THE MAP. MAPPING IS BY FIELD TIES TO THE EXISTING STRUCTURES.

11. COVENANT(S) AND EASEMENT AGREEMENT(S), INCLUDING THE TERMS AND PROVISIONS THEREOF, AS CONTAINED IN EASEMENT AND RELEASE TRANSMISSION LINE, BY AND BETWEEN MARTIN MARRETTA CORPORATION, A MARYLAND CORPORATION, GRANTOR, AND UNITED STATES OF AMERICA, DEPARTMENT OF ENERGY, BONNEVILLE POWER ADMINISTRATION, AS RECORDED JANUARY 22, 1997, UNDER INSTRUMENT NO. 97-0277, RECORDS OF WASCO COUNTY, OREGON. THIS EASEMENT IS FOR ADDITIONAL WIDTH FOR GUY AND ANCHOR. THE GUY AND ANCHOR LOCATIONS ARE SHOWN AND NOTED ON THE MAP.
12. AGREEMENT AND THE TERMS AND CONDITIONS CONTAINED THEREIN BETWEEN NORTHWEST ALUMINUM COMPANY, AN OREGON CORPORATION, AND CITY OF THE DALLES FOR PUBLIC IMPROVEMENTS, AS RECORDED SEPTEMBER 20, 2006, AT INSTRUMENT NO. 2006-005493. THIS DOCUMENT IS A BLANKET ENCUMBRANCE OVER THE SUBJECT PROPERTY. NOT FURTHER SHOWN OR NOTED ON THE MAP.
13. AGREEMENT AND THE TERMS AND CONDITIONS CONTAINED THEREIN BETWEEN CITY OF THE DALLES AND NORTHWEST ALUMINUM COMPANY WITH THE PURPOSE OF WAIVER OF REMONSTRANCE AGREEMENT, AS RECORDED SEPTEMBER 20, 2006, AT INSTRUMENT NO. 2006-005493. THIS DOCUMENT IS A BLANKET ENCUMBRANCE OVER THE SUBJECT PROPERTY. NOT FURTHER SHOWN OR NOTED ON THE MAP.
14. TERMS, COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS AS CONTAINED IN PARTITION PLAT NO. 2006-0046, AS RECORDED SEPTEMBER 20, 2006, AT INSTRUMENT NO. 2006-005496, RECORDS OF WASCO COUNTY, OREGON. EASEMENTS CREATED BY PARTITION PLAT 2006-0046, WHICH LIE ON THE SUBJECT PROPERTY, ARE SHOWN ON THE MAP OR BY NOTE.
15. AGREEMENT AND THE TERMS AND CONDITIONS CONTAINED THEREIN BETWEEN NORTHWEST ALUMINUM COMPANY AND CITY OF THE DALLES WITH THE PURPOSE OF DELAYED IMPROVEMENT AGREEMENT, AS RECORDED DECEMBER 24, 2008, AT INSTRUMENT NO. 2008-005261. THIS DOCUMENT IS A BLANKET ENCUMBRANCE OVER THE SUBJECT PROPERTY. NOT FURTHER SHOWN OR NOTED ON THE MAP.
16. TERMS, COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS AS CONTAINED IN PARTITION PLAT NO. 2008-0042, AS RECORDED DECEMBER 31, 2008, AT INSTRUMENT NO. 2008-005319, RECORDS OF WASCO COUNTY, OREGON. NO EASEMENTS OR OTHER RESTRICTIONS WERE CREATED BY THE RECORDING OF PARTITION PLAT 2008-0042. NOT FURTHER SHOWN OR NOTED ON THE MAP.
17. TERMS, COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS AS CONTAINED IN REPLAT NO. 2011-0003, AS RECORDED JANUARY 19, 2011, AT INSTRUMENT NO. 2011-000215, RECORDS OF WASCO COUNTY, OREGON. NO EASEMENTS OR ADDITIONAL RESTRICTIONS WERE CREATED BY THE RECORDING OF REPLAT 2011-0003. NOT FURTHER SHOWN OR NOTED ON THE MAP.
18. AN EASEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, AFFECTING THE PORTION OF SAID PREMISES AND FOR THE PURPOSES STATED THEREIN AS SET FORTH IN INSTRUMENT GRANTED TO NORTHWEST ALUMINUM SPECIALTIES, INC., AN OREGON CORPORATION, AS RECORDED SEPTEMBER 9, 2015, AT INSTRUMENT NO. 2015-003614. 30 FOOT WIDE PRIVATE ACCESS EASEMENT. THIS EASEMENT IS SHOWN AND NOTED ON THE MAP.
19. AGREEMENT AND THE TERMS AND CONDITIONS CONTAINED THEREIN BETWEEN NORTHWEST ALUMINUM COMPANY, AN OREGON CORPORATION, AND NORTHWEST ALUMINUM SPECIALTIES, INC., AN OREGON CORPORATION, FOR THE PURPOSE OF UTILITY EASEMENT AGREEMENT, AS RECORDED SEPTEMBER 9, 2015, AT INSTRUMENT NO. 2015-003617. 20 FOOT WIDE PRIVATE POWER LINE EASEMENT. IT IS SHOWN AND NOTED ON THE MAP.
20. MATTERS AS DISCLOSED BY SURVEY BY TENNESON ENGINEERING CORP., DATED JULY 31, 2015, JOB NO. 14082:
  - A. EASEMENTS
  - B. WETLAND AREAS
  - C. REDUCED AREA

THIS SURVEY WAS AN ALTA SURVEY COMPLETED IN FEBRUARY 2016. THE ALTA SURVEY SHOWED THEN EXISTING SITE CONDITIONS AND RECORD ENCUMBRANCES. NO ADDITIONAL ENCUMBRANCES WERE CREATED BY THE ALTA SURVEY. THIS PARTITION SHOWS CURRENT EASEMENTS OF RECORD, IT DOES NOT SHOW WETLANDS IF ANY OR RESTRICTED AREAS. NOT FURTHER SHOWN OR NOTED ON THE MAP.

02/14/2024  
REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
JULY 13, 1999  
JENNIFER B. BESEDA  
50900  
RENEWS: 12/31/2025

## **ENGINEER / SURVEYOR:**

TENNESON ENGINEERING CORP.  
3775 CRATES WAY  
The Dalles, Oregon, 97058  
Ph. 541-296-9177  
FAX 541-296-6657

SHEET 4 OF 5  
W.D. #16142.pdf

PARCEL 1 4.56 AC.  
PARCEL 2 33.42 AC.  
PARCEL 3 35.05 AC.  
TOTAL 73.03 Acres  
(TAX LOT 02N-13E-33 200)

# **PARTITION PLAT**

TAX LOT 02N-13E-33 200 (ACCT. #15065)  
A REPLAT OF PARCEL 2, PARTITION PLAT 2015-0015  
IN THE SHAUG D.L.C. #41 AND IN SECTION 33,  
TWP. 2 N., RANGE 13 E., W.M.  
CITY OF THE DALLES, WASCO COUNTY, OREGON  
FEBRUARY 14, 2024

## **OWNER:**

MORANE INDUSTRIES LLC  
1801 CENTERVILLE ROAD  
WILMINGTON, DE 19806

## **WASCO COUNTY SURVEYOR'S OFFICE**

Survey No. 24-008

Filed 02/27/2024

By Patricia Winter

RECORDING INFORMATION	
Wasco County Clerk Seal Renewal	2024-000437
Print Sheet Wasco County	02/27/2024 01:55 PM
AGREEMENT TO RECORD	\$178.00
	
L. L. Winter, County Clerk and Recorder Wasco County, Oregon 1000 1st Street, Suite 100 Wasco, Oregon 97140	

Document Number 2024-0137

Plat Number 2024-0003

Slide Number E-027A

## **EXCEPTION LISTING (CONTINUED):**

21. AGREEMENT AND THE TERMS AND CONDITIONS CONTAINED THEREIN BETWEEN NORTHWEST ALUMINUM COMPANY AND NORTHWEST ALUMINUM SPECIALTIES, INC., FOR THE PURPOSE OF WATER SHARING AND EASEMENT AGREEMENT, AS RECORDED SEPTEMBER 18, 2015, AT INSTRUMENT NO. 2015-003745.

AMENDED BY FIRST AMENDMENT TO WATER SHARING AGREEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, AS RECORDED DECEMBER 8, 2017, AT INSTRUMENT NO. 2017-004621.

THIS DOCUMENT ENCUMBERS THE SUBJECT PROPERTY. NOT FURTHER SHOWN OR NOTED ON THE MAP.

22. TERMS, COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS AS CONTAINED IN PARTITION PLAT NO. 2015-0015, AS RECORDED NOVEMBER 19, 2015, AT INSTRUMENT NO. 2015-004543, RECORDS OF WASCO COUNTY, OREGON. THIS PARTITION PLAT CREATED THE SUBJECT PROPERTY IN ITS CURRENT CONFIGURATION. THIS PARTITION DID NOT CREATE ANY EASEMENTS OR PROPERTY ENCUMBRANCES. NOT FURTHER SHOWN OR NOTED ON THE MAP.

23. CONSENT JUDGMENT IN THE STATE CIRCUIT COURT, COUNTY OF WASCO, SUBJECT TO THE TERMS AND PROVISIONS THEREOF. PLAINTIFF STATE OF OREGON, EX REL. DICK PEDERSEN, DIRECTOR DEPARTMENT OF ENVIRONMENTAL QUALITY, DEFENDANT MORANE INDUSTRIES, CASE NO. 1500212CC, ENTERED AUGUST 28, 2015, MODIFIED CONSENT JUDGMENT, ENTERED SEPTEMBER 25, 2015, ALSO RECORDED ON MARCH 17, 2016, AT INSTRUMENT NO. 2016-000935.

AMENDED BY CERTIFICATION OF COMPLETION CASE NO. CO15-212 (CIRCUIT COURT OF STATE OF OREGON FOR THE COUNTY OF WASCO) INCLUDING THE TERMS AND PROVISIONS THEREOF, AS RECORDED JANUARY 3, 2019, AT INSTRUMENT NO. 2019-000047.

THESE DOCUMENTS ENCUMBER THE SUBJECT PROPERTY. THEY ARE NOT FURTHER SHOWN OR NOTED ON THE MAP.

24. TERMS, PROVISIONS AND CONDITIONS, INCLUDING BUT NOT LIMITED TO MAINTENANCE PROVISIONS, CONTAINED IN APPURTENANT EASEMENT, AS RECORDED MARCH 17, 2016, AT INSTRUMENT NO. 2016-000935. THIS IS A PRIVATE ACCESS AND UTILITY EASEMENT OF VARIABLE WIDTH. IT LIES ON THE HYDRO EXTRUSION USA PROPERTY, BEING THE NORTH ADJOINER TO THE SUBJECT PROPERTY. IT IS SHOWN AND NOTED ON THE MAP.

25. EASEMENT AND EQUITABLE SERVITUDES, INCLUDING THE TERMS AND PROVISIONS THEREOF, AS RECORDED MARCH 17, 2016, AT INSTRUMENT NO. 2016-000937.

AMENDED BY AMENDMENT TO EASEMENT AND EQUITABLE SERVITUDES, INCLUDING THE TERMS AND PROVISIONS THEREOF, AS RECORDED MAY 2, 2019, AT INSTRUMENT NO. 2019-001261.

AMENDED BY SECOND AMENDMENT TO EASEMENT AND EQUITABLE SERVITUDES, INCLUDING THE TERMS AND PROVISIONS THEREOF, AS RECORDED MARCH 12, 2021, AT INSTRUMENT NO. 2021-001094.

THESE DOCUMENTS ENCUMBER THE SUBJECT PROPERTY. THEY ARE NOT FURTHER SHOWN OR NOTED ON THE MAP.

26. ACCESS AGREEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, AS RECORDED MARCH 17, 2016, AT INSTRUMENT NO. 2016-000935. THIS IS A PRIVATE EASEMENT FOR ACCESS TO A MONITORING WELL. THE EASEMENT LOCATION IS APPROXIMATELY SHOWN AND NOTED ON THE MAP.

27. TERMS, PROVISIONS AND CONDITIONS, INCLUDING BUT NOT LIMITED TO MAINTENANCE PROVISIONS, CONTAINED IN APPURTENANT EASEMENT, AS RECORDED MARCH 17, 2016, AT INSTRUMENT NO. 2016-000940. THIS IS A 50 FOOT WIDE PRIVATE ACCESS AND UTILITY EASEMENT. THIS EASEMENT IS BENEFICIARY TO THE SUBJECT PROPERTY. IT LIES ON PROPERTY TO THE NORTH OF THE SUBJECT PROPERTY. IT IS NOT SHOWN OR NOTED ON THE MAP.

28. AN EASEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, AFFECTING THE PORTION OF SAID PREMISES AND FOR THE PURPOSES STATED THEREIN AS SET FORTH IN INSTRUMENT GRANTED TO CITY OF THE DALLES, AS RECORDED MARCH 1, 2017, AT INSTRUMENT NO. 2017-000726. THIS IS A 15 FOOT WIDE WATER LINE EASEMENT. IT IS SHOWN AND NOTED ON THE MAP.

29. AN EASEMENT INCLUDING THE TERMS AND PROVISIONS THEREOF, AFFECTING THE PORTION OF SAID PREMISES AND FOR THE PURPOSES STATED THEREIN AS SET FORTH IN INSTRUMENT GRANTED TO CITY OF THE DALLES, AS RECORDED MARCH 13, 2017, AT INSTRUMENT NO. 2017-000891. THIS WAS A TEMPORARY EASEMENT, 40 FEET IN WIDTH, FOR CONSTRUCTION OF A CITY OF THE DALLES WATER LINE. CONSTRUCTION ON THIS WATER LINE IS COMPLETE. THE TERM OF THIS EASEMENT WAS TO REMAIN IN EFFECT UNTIL COMPLETION OF THE WEST SECOND STREET UTILITIES PROJECT. WITH ITS COMPLETION, THIS EASEMENT IS ASSUMED TO BE EXTINGUISHED. IT IS NOT FURTHER SHOWN OR NOTED ON THE MAP. FOR REFERENCE IT DID LIE ADJOINING TO AND EASTERLY OF 15 FOOT EASEMENT DESCRIBED IN #28 ABOVE.

30. AGREEMENT AND THE TERMS AND CONDITIONS CONTAINED THEREIN BETWEEN LOCKHEED MARTIN CORPORATION AND MORANE INDUSTRIES, LLC, FOR THE PURPOSE OF EASEMENT AGREEMENT (IRRIGATION WATERLINE), AS RECORDED APRIL 18, 2018, AT INSTRUMENT NO. 2018-001350. THIS EASEMENT IS 20 FEET IN WIDTH FOR IRRIGATION WATER LINE PURPOSES. IT IS A BENEFITTING EASEMENT TO THE SUBJECT PROPERTY AND LIES NORTHWEST OF THE SUBJECT PROPERTY. IT IS NOT FURTHER SHOWN OR NOTED ON THE MAP.

31. INFRASTRUCTURE AGREEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, AS RECORDED DECEMBER 14, 2021, AT INSTRUMENT NO. 2021-005387. THE SUBJECT PROPERTY IS ONE OF THE PROPERTIES LISTED AS SUBJECT TO THIS AGREEMENT. NOT FURTHER SHOWN OR NOTED ON THE MAP.

32. THE RIGHT OF FIRST REFUSAL TO LEASE/PURCHASE DISCLOSED BY REGULARS SET FORTH IN DOCUMENT, AS RECORDED DECEMBER 14, 2021, AT INSTRUMENT NO. 2021-005384, IN FAVOR OF GOOGLE, LLC, A DELAWARE LIMITED LIABILITY COMPANY, DESIGN, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND MORANE INDUSTRIES, LLC, A DELAWARE LIMITED LIABILITY COMPANY. THE SUBJECT PROPERTY IS ONE OF THE PROPERTIES LISTED IN THIS NOTICE OF RIGHT OF FIRST REFUSAL. IT IS NOT FURTHER SHOWN OR NOTED ON THE MAP.

33. UTILITY EASEMENT AGREEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, AS RECORDED JANUARY 24, 2023, AT INSTRUMENT NO. 2023-000177. THIS IS A 15 FOOT WIDE POWER LINE EASEMENT GRANTED TO NORTHERN WASCO COUNTY PUD. THE EASEMENT IS SHOWN AND NOTED ON THE MAP.

34. TERMS, PROVISIONS AND CONDITIONS, INCLUDING BUT NOT LIMITED TO MAINTENANCE PROVISIONS, CONTAINED IN APPURTENANT EASEMENT, AS RECORDED JULY 24, 2023, AT INSTRUMENT NO. 2023-001867. THIS IS A PRIVATE ACCESS AND UTILITY EASEMENT WHICH BENEFITS THE SUBJECT PROPERTY. IT LIES TO THE NORTH OF THE SUBJECT PROPERTY. IT IS SHOWN AND NOTED ON THE MAP.



RENEWS: 12/31/2028

**ENGINEER / SURVEYOR:**  
TENNESON ENGINEERING CORP.  
3775 GRATES WAY  
The Dalles, Oregon 97058  
PH. 541-296-9177  
FAX 541-296-8657

**SHEET 5 OF 5**

W.C. #16142.ppt

## **EXHIBIT B**

Copy of Phase I  
Attached.

All Appendices and Linked Materials reference in the Phase I are included in the Evaluation Material.

EXHIBIT B

# PHASE I ENVIRONMENTAL SITE ASSESSMENT

---

PROPOSED PARCEL 3 PORTION OF TAX LOT 2N 13E 33 200  
2650 RIVER ROAD, THE DALLES, OREGON

CONFIDENTIAL



*Prepared for*  
**MORaine INDUSTRIES LLC**

*October 20, 2023*  
*Project No. M1663.08.028*

*Prepared by*  
*Maul Foster & Alongi, Inc.*  
*805 Washington Street, Unit 11, The Dalles, OR 97058*

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## ILLUSTRATIONS

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FOLLOWING EXECUTIVE SUMMARY:

FIGURES

- ES-1 PROPERTY LOCATION
- ES-2 PROPERTY FEATURES
- ES-3 PROPERTY SHOWING RESTRICTED AREA

FOLLOWING REPORT:

FIGURES

- 1 PROPERTY LOCATION
- 2 PROPERTY FEATURES
- 3 PROPERTY SHOWING RESTRICTED AREA

## ACRONYMS AND ABBREVIATIONS

---

AAI	all appropriate inquiries
AST	aboveground storage tank
ASTM	American Society for Testing and Materials
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
CFR	Code of Federal Regulations
Client	Moraine Industries LLC (Moraine)
CREC	controlled recognized environmental condition
CRL	Oregon Confirmed Release List
DEQ	Oregon Department of Environmental Quality
ECSI	Environmental Cleanup Site Information
EDR	Environmental Data Resources, Inc.
EES	Easement and Equitable Servitudes
EPA	U.S. Environmental Protection Agency
EPC	exposure point concentration
ESA	environmental site assessment
Geraghty & Miller	Geraghty & Miller, Inc.
HREC	historical recognized environmental condition
LMC	Lockheed Martin Corporation
MFA	Maul Foster & Alongi, Inc.
mg/L	milligrams per liter
MMRF	Martin Marietta Aluminum Reduction Facility site
Moraine	Moraine Industries LLC
MOU	memorandum of understanding
NAC	Northwest Aluminum Company
NFA	No Further Action
NPL	National Priorities List
NWA	Northwest Aluminum Company
PAH	polycyclic aromatic hydrocarbon
PCB	polychlorinated biphenyl
PPA	Prospective Purchaser Agreement
Property	the proposed Parcel 3 portion of tax lot 2N 13E 33 200, 2650 River Road, The Dalles, Oregon
RBCs	risk-based concentrations
RCRA	Resource Conservation and Recovery Act
REC	recognized environmental condition
SFIM	Sanborn Fire Insurance Map
TDDS	The Dalles Disposal Site
user	Moraine

## EXECUTIVE SUMMARY

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*This summary is not intended as a stand-alone document and must be evaluated in context with the entire document.*

At the request of Moraine Industries LLC (Moraine), Maul Foster & Alongi, Inc. (MFA), conducted a Phase I environmental site assessment (ESA) of the proposed Parcel 3 portion of Wasco County tax lot 2N 13E 33 200, located at 2650 River Road, The Dalles, Oregon (see Figure ES-1, the Property).

MFA conducted the Phase I ESA in accordance with the requirements of the ASTM International Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process (ASTM E1527-21). In addition, the Phase I ESA report was prepared to support the Bona Fide Prospective Purchaser defense (Comprehensive Environmental Response, Compensation, and Liability Act [CERCLA] § 101(4), as amended by the Superfund Amendments and Reauthorization Act of 1986 and the Small Business Liability Relief and Brownfields Revitalization Act of 2002, 42 U.S. Code §9601 et seq.) and the innocent purchaser defense (CERCLA § 101(35)(A)(i)), if applicable. The Phase I ESA generally complies with 40 Code of Federal Regulations Part 312, adopted by the U.S. Environmental Protection Agency on November 5, 2005, and effective November 1, 2006. These rules identify the standards and practices for all appropriate inquiries under CERCLA § 101(35)(B). The purpose of the Phase I ESA is to identify, to the extent reasonably feasible, recognized environmental conditions (RECs).

### PROPERTY SUMMARY

The Property consists of the proposed Parcel 3 portion of tax lot 2N 13E 33 200 (see Figure ES-1), formerly part of the landholdings associated with the former aluminum reduction facility on tax lots 2N 13E 28 700 and 2N 13E 28 1000 located approximately a half mile north of the Property. The former aluminum reduction facility and related landholdings (i.e., including the Property) were listed on the National Priority List in 1986 and delisted in 1996. The Property is also listed in the Oregon Department of Environmental Quality's Environmental Cleanup Site Information Database. The Property has remained largely undeveloped, with the exception of the former rodeo arena and a portion of a municipal landfill.

The Property includes approximately 0.37 acres of a capped 3.65-acre municipal landfill that was used as an open pit landfill for residential, commercial, and industrial waste from 1938 through 1955 (see Figure ES-2). The Oregon Department of Environmental Quality (DEQ) site name associated with the landfill is The Dalles Disposal Site (TDDS).

As part of the due diligence process, MFA conducted soil and groundwater investigations on the Property in 2014 (MFA 2015). These investigations showed soil and minimal groundwater impacts. Through the consent judgment filed on August 23, 2015, Moraine and DEQ entered into a Prospective Purchaser Agreement (PPA). As part of the PPA, Moraine agreed to conduct remedial actions on the Property and record a grant of Easement and Equitable Servitudes (EES), which was filed with Wasco County on March 17, 2016, and subsequently amended on May 24, 2019, and March

2, 2021 (DEQ 2016, 2019, 2021). The potentially complete exposure pathways to impacts at the Property are controlled via engineering and institutional controls, as outlined in the EES.

## RECOGNIZED ENVIRONMENTAL CONDITIONS

ASTM E1527-21 defines RECs as (1) the presence of hazardous substances or petroleum products in, on, or at the Property due to a release to the environment; (2) the likely presence of hazardous substances or petroleum products in, on, or at the subject property due to a release or likely release to the environment; or (3) the presence of hazardous substances or petroleum products under conditions that pose a material threat of a future release to the environment.

MFA did not identify any RECs for the Property.

## HISTORICAL RECOGNIZED ENVIRONMENTAL CONDITIONS

ASTM E1527-21 defines historical RECs (HRECs) as a previous release of hazardous substances or petroleum products affecting the Property that has been addressed to the satisfaction of the applicable regulatory authority or authorities and that meets unrestricted use criteria established by the applicable authority or authorities without subjecting the Property to any controls (for example, activity and use limitations or other property use limitations).

MFA did not identify any HRECs on the Property.

## CONTROLLED RECOGNIZED ENVIRONMENTAL CONDITIONS

ASTM E1527-21 defines controlled RECs (CRECs) as a recognized environmental condition affecting the Property that has been addressed to the satisfaction of the applicable regulatory authority or authorities with hazardous substances or petroleum products allowed to remain in place subject to implementation of required controls.

MFA identified the following CRECs for the Property, which include soil and low-level groundwater impacts controlled through the engineering and institutional controls set forth in the EES, as discussed below:

### Groundwater Impacts

Low-level impacts to groundwater from fluoride have been documented on the Property in relation to the former aluminum reduction facility and TDDS. This CREC is controlled through a groundwater restriction on the Property:

- DEQ entered into a PPA for the Property in August 2015, stipulating that the engineering and institutional controls on the site are to be implemented and maintained. As previously discussed, Moraine recorded an EES with Wasco County as part of the PPA in advance of purchasing the Property (DEQ 2016). The property is also subject to a 1989 Consent Decree between the United States and Martin-Marietta Corporation that restricts the use of

groundwater from the S-aquifer and a 1986 Memorandum of Lease and Agreement with Amendment (1991). Groundwater restrictions are as follows:

Owner may not extract through wells or by other means or use the groundwater at the Property from the shallow aquifer (or "S-aquifer") or from perched water at the Property for consumption or beneficial use. The term perched water refers to small, non-contiguous areas of subsurface water present at the Property which are shallower than and distinguishable from groundwater from the uppermost S-aquifer. This prohibition does not apply to extraction of groundwater associated with groundwater treatment or monitoring activities approved by DEQ or the United States Environmental Protection Agency 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 for disposal off-site and handle, store and manage such wastewater according to applicable laws. This prohibition shall also not apply to any groundwater use from deeper aquifers below the S-aquifer at the Property.

Further information pertaining to the determination of this CREC is provided below.

The Martin Marietta Aluminum Reduction Facility site (MMRF) was placed on the U.S. Environmental Protection Agency (EPA) National Priorities List (NPL) in 1986. After going through the Superfund remedial investigation/feasibility study and remedial action process, the MMRF was removed from the NPL in 1996.

EPA is the lead agency and the final authority for the delisted MMRF NPL site, which includes the Property. Three monitoring wells (MW-1, MW-2, and MW-5) are located on the Property, though the status of the wells (i.e., relating to decommissioning) has not been confirmed. One of the three wells (MW-5) is still sampled annually. Historically, fluoride concentrations in MW-5 have fluctuated seasonally and sporadically exceeded the site-specific groundwater protection standard (9.7 milligrams per liter [mg/L]). Decreasing concentrations of fluoride have been observed in recent years (WSP 2023). However, the fluoride concentration measured in the 2023 event (8.90 mg/L) was only slightly below the groundwater protection standard (9.7 mg/L).

Additional constituents that have been detected in the past and are monitored as part of the groundwater monitoring program for the MMRF include sulfate, cyanide, and polycyclic aromatic hydrocarbons (PAHs). Concentrations of these additional constituents are not analyzed as part of the ongoing annual groundwater monitoring at MW-5.

In 2014, MFA conducted reconnaissance groundwater sampling from two temporary borings (B50 and B51) on the Property as part of a focused site assessment (MFA 2015). Groundwater samples were analyzed for cyanide, fluoride, sulfate, and PAHs. No exceedances of risk-based concentrations were identified.

Based on the potential for seasonal fluctuations to result in site-specific groundwater protection standard exceedances of fluoride, and in consideration of controls enacted through the EES, groundwater impacts on the Property have been identified as a CREC.

## Presence of Landfill, Soil Impacts, and the Potential for Landfill Gas

The Property contains a portion of TDDS (of which approximately 0.37 acres is estimated to contain landfill material) (see Figure ES-2). Multiple investigations (1997, 2010–2011, and 2012) have been conducted on TDDS, and approximately 375 tons of waste, including 420 drums, were removed and disposed of off-site at the Wasco County Landfill. Concentrations of lead, arsenic, PAHs, and some pesticides (dieldrin, 4,4'-DDT, 4,4'-DDE, heptachlor epoxide) above DEQ occupational direct-contact risk-based concentrations (RBCs) remain. Lead, PAHs, and pesticides also exceed the construction and excavation worker RBCs. In 2012, soil vapor was sampled for landfill gas impacts (i.e., methane and volatile organic compounds [VOCs]) (GeoPro 2013). Methane was not detected during field screening of soil vapor points. Ten VOCs were detected in soil gas; however, detections were below available risk-based concentrations. While the soil gas investigation did not identify impacts from landfill material, the material may continue to degrade over time and result in increased landfill gas production.

DEQ issued a conditional No Further Action determination for TDDS in June 2013, stipulating that the engineering and institutional controls on the site are to be implemented and maintained. As previously discussed, Moraine recorded an EES with Wasco County as part of the PPA in advance of purchasing the Property (DEQ 2016). TDDS landfill on the Property is referred to as Restricted Area 1 (RA1) (see Figure ES-3).

In consideration of controls enacted through the EES, the presence of the landfill, soil impacts in RA1, and the potential for landfill gas on the Property has been identified as a CREC.

## DE MINIMIS CONDITIONS

A de minimis condition, as defined by ASTM E1527-21, generally does not present a threat to human health or the environment and generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies. An identified de minimis condition is neither a REC nor a CREC.

MFA did not identify any de minimis conditions for the Property.

## DATA GAPS

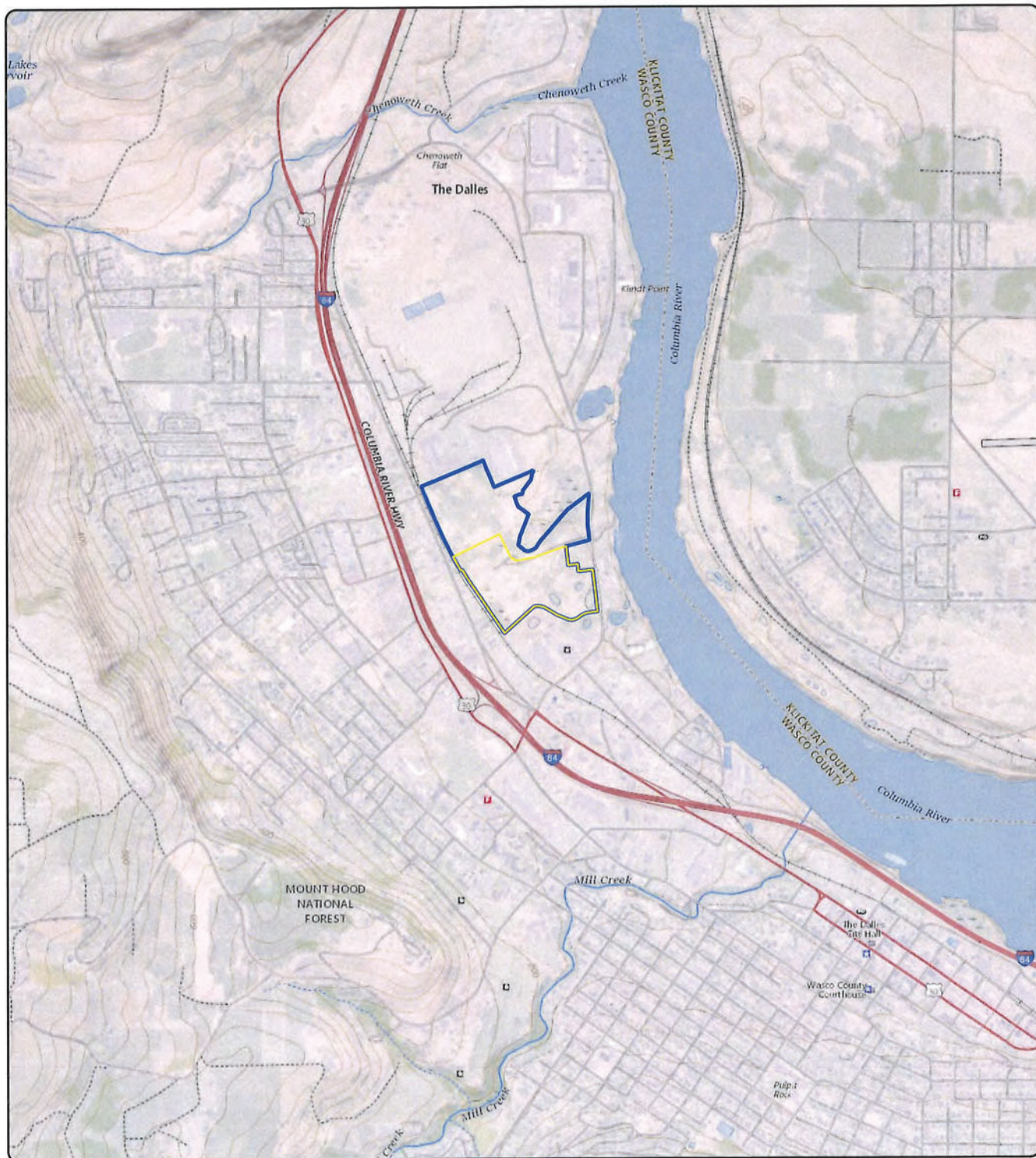
MFA did not identify any significant data gaps.

## CONCLUSIONS

MFA has conducted a Phase I ESA of 2650 River Road, The Dalles, Oregon, in conformance with the scope and limitations of ASTM E1527-21.

The Phase I ESA revealed the following CRECs in connection with the Property:

- The presence of a landfill with the potential for landfill gas in addition to soil and low-level groundwater impacts on the Property controlled through the engineering and institutional controls set forth in the EES.



#### Notes

U.S. Geological Survey 7.5-minute topographic quadrangle (2020): The Dalles South, Township 2 north, range 13 east, section 33.

#### Data Source

Tax lot obtained from Wasco County; property boundary obtained from Moraine Industries, LLC.



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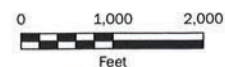
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#### Legend

- Property
- Existing Property Tax Lot

### Figure ES-1 Property Location

2650 River Road  
The Dalles, OR









# Figure ES-2 Property Features

2650 River Road  
The Dalles, OR

**Draft Confidential  
Subject to Change**

## Legend

-  Monitoring Well
-  Decommissioned Well
-  River Flow Direction
-  Landfill (GeoPro estimate from site investigation)
-  The Dalles Disposal Site
-  Property
-  Existing Property Tax Lot
-  Tax Lot

**Note**  
The former aluminum reduction facility was located approximately 0.25 mile to the northwest.



**Data Sources**  
Aerial photograph (2021) obtained from Google Earth; well locations are approximated from Terra Tech, 2014. The Dalles Disposal Site boundaries are approximated from Appendix 2 of the 2013 DEC Staff Report for ESC 22059, as obtained from Wasco County. Property boundaries obtained from Moraine Industries, LLC.

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# Figure ES-3 Property Showing Restricted Areas

2650 River Road  
The Dalles, OR

**Draft Confidential  
Subject to Change**

- Legend**
- Restricted Area 1 (RA 1)
  - River Flow Direction
  - Property
  - Existing Property Tax Lot
  - Tax Lot

**Note**  
The former aluminum reduction facility was located approximately 0.25 mile to the northwest.



**Data Sources**  
Aerial photograph (2021) obtained from Google Earth; tax lots obtained from Wasco County; property boundary obtained from Moulton Properties, LLC.

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# 1 INTRODUCTION

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## 1.1 Purpose

On behalf of Moraine Industries LLC (Moraine), Maul Foster & Alongi, Inc. (MFA), conducted a Phase I environmental site assessment (ESA) of the property located at 2650 River Road, The Dalles, Oregon (the Property) (see Figure 1). MFA conducted the Phase I ESA in accordance with the requirements of the ASTM International Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process (ASTM E1527-21).<sup>1</sup> In addition, this Phase I ESA report was prepared to support the Bona Fide Prospective Purchaser defense (Comprehensive Environmental Response, Compensation and Liability Act [CERCLA] § 101(4), as amended by the Superfund Amendments and Reauthorization Act of 1986 and the Small Business Liability Relief and Brownfields Revitalization Act of 2002, 42 US Code §9601 et seq.) and the innocent purchaser defense (CERCLA § 101(35)(A)(i)), if applicable. The Phase I ESA generally complies with 40 Code of Federal Regulations (CFR) Part 312, adopted by the U.S. Environmental Protection Agency (EPA) on November 5, 2005, and effective November 1, 2006. These rules identify the standards and practices for all appropriate inquiries (AAI) under CERCLA § 101(35)(B). The purpose of the Phase I ESA is to identify, to the extent reasonably feasible, recognized environmental conditions (RECs). ASTM E1527-21 defines RECs as the following:

a previous release of hazardous substances or petroleum products affecting the property that has been addressed to the satisfaction of the applicable regulatory authority or authorities and meeting unrestricted use criteria established by the applicable authority or authorities without subjecting the property to any controls (for example, activity and use limitations or other property use limitations).

RECs include the presence of hazardous substances or petroleum products even under conditions that comply with applicable environmental laws. The term is not intended to include de minimis conditions that generally do not present a material risk of harm to public health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.

## 1.2 Scope of Work

The scope of work, as outlined in ASTM E1527-21, included four components—site reconnaissance, records review, interviews, and preparation of a report—each of which is briefly described below.

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<sup>1</sup> ASTM E1527-21 is at least as stringent as, if not more stringent than, ASTM E1527-13. This assessment was prepared to meet the intent of both ASTM E1527-21 and ASTM E1527-13.

## 1.2.1 Site Reconnaissance

On September 19, 2023, Amanda Bixby of MFA conducted reconnaissance of the Property to look for evidence of RECs. Photographs taken during the site reconnaissance are provided in Appendix B, and Section 2 documents the results of the site visit.

## 1.2.2 Records Review

MFA reviewed the following records:

- State and federal agency database records as described in Section 4.1.
- Aerial photographs of the Property as described in Section 4.3.1.
- Historical topographic maps related to the Property. See Section 4.3.2.
- Sanborn Fire Insurance Map (SFIM) report for the Property. See Section 4.3.3.
- Historical city directories for the Property. See Section 4.3.4.
- Prior site assessment reports for the Property. See Section 4.4.

MFA used the U.S. Geological Survey (USGS) 7.5-minute quadrangle map (2020) for The Dalles South as the physical setting source (see Figure 1).

## 1.2.3 Interviews

To obtain site-specific information regarding the Property, MFA completed interviews of current and former managers, owners, occupants, and operators of the Property and adjoining properties as deemed prudent. MFA also interviewed state and/or local government officials for information about the Property. Section 5 of this report discusses the interviews MFA completed.

## 1.2.4 Report Preparation

MFA prepared this report in accordance with ASTM E1527-21. The recommended format was adjusted to improve usability and comprehension. Consistent with this ASTM guidance document, the following issues were not evaluated during the Phase I ESA: asbestos-containing materials (ACM) unrelated to releases into the environment; biological agents; cultural and historic resources; ecological resources; endangered species; health and safety; indoor air quality unrelated to releases of hazardous substances or petroleum products into the environment; industrial hygiene; lead-based paint unrelated to releases into the environment; lead in drinking water; mold or microbial growth conditions; building materials containing polychlorinated biphenyls (PCBs) (for example, interior fluorescent light ballasts, paint, and caulk); naturally occurring radon; regulatory compliance; substances not defined as hazardous substances (including some substances sometimes generally referred to as emerging contaminants) unless or until such substances are classified as a CERCLA hazardous substance; and wetlands. Fluorescent light ballasts, caulk, paint, and other materials that may contain PCBs and that are located inside and/or are part of the building or structure are outside the scope of this ESA.

### 1.3 Presumed Viability

To qualify for one of the threshold criteria for satisfying the landowner liability protections (LLPs) to CERCLA liability, the AAI components listed below must be conducted or updated within 180 days of and prior to the date of acquisition of the Property, and all other components of AAI must be conducted within one year prior to the date of acquisition of the Property. The date of the report generally does not represent the date the individual components of AAI were completed and should not be used when evaluating compliance with the 180-day or one-year AAI requirements. Based on the earliest conducted AAI component noted below, this assessment is presumed to be viable until March 13, 2024.

- Interviews with owners, operators, and occupants—To be determined.
- Searches for recorded environmental cleanup liens (a user responsibility).
- Reviews of federal, tribal, state, and local government records—September 15, 2023.
- Visual inspections of the Property and of adjoining properties—September 18, 2023.
- The declaration by the environmental professional responsible for the assessment—To be determined.

### 1.4 Significant Assumptions

Significant assumptions include any assumptions made during the Phase I ESA process that have the potential to impact the opinions put forth in this report. MFA made the following significant assumptions: the Property will be partitioned per the documentation provided by the Client, the Property will include a deed restriction, and the Prospective Purchaser Agreement (PPA) with EES requirements will transfer to the new property owner, if sold.

### 1.5 Limitations and Exceptions

Any opinions and recommendations presented in this Phase I ESA report apply to conditions that existed at the Property when MFA performed the services. No environmental assessment can wholly eliminate uncertainty regarding the potential for RECs in connection with a property. Performance of a Phase I ESA is intended to reduce, but not eliminate, uncertainty regarding the existence of RECs in connection with a property.

MFA conducted AAI regarding the potential for RECs at the Property. ASTM E1527-21 defines AAI as:

inquiry constituting “all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice” as defined in CERCLA, 42 U.S.C. § 9601(35)(B) and 40 C.F.R. Part 112, that will qualify a party to a commercial real estate transaction for one of the threshold criteria for satisfying the LLPs to CERCLA liability (U.S.C §§ 9601(35)(A) & (B), § 9607(b)(3), § 9607(q), and § 9607(r)), assuming compliance with other elements of the defense.

MFA is not responsible for the impacts of any changes in environmental standards, practices, or regulations subsequent to performance of services and does not warrant the accuracy of information supplied by others or the use of segregated portions of this report.

Identification of activity and use limitations or findings based on implementation of required controls does not imply evaluation or confirmation of the adequacy, implementation, or continued effectiveness of the controls.

## 1.6 Special Terms and Conditions

No special terms or conditions apply to this Phase I ESA other than those set forth in ASTM E1527-21, CERCLA 101(35)B(iii), and 40 CFR Part 312.

## 1.7 Deviations

There were no deviations from ASTM E1527-21, CERCLA 101(35)B(iii), and 40 CFR Part 312.

## 1.8 Additional Services

Additional services performed outside the scope of ASTM Standard Practice E1527-21 for Phase I ESAs do not impact the methodology of this ESA.

## 1.9 Qualifications of Responsible Environmental Professionals

Environmental professionals experienced in performing ESAs and familiar with ASTM E1527-21 conducted the Phase I ESA of the Property. Résumés of the environmental professionals involved in performing the Phase I ESA are provided in Appendix A.

## 1.10 Reliance

For the purposes of the contractual relationship, the term Client refers to Moraine, which, in addition to its affiliates, and its agents, has permission to rely on this report. ASTM E1527-21 defines the user as the party seeking to use Practice E1527 to complete an ESA of the Property. The Client is the user of this Phase I ESA. The Client has permission to provide this report to other parties for non-reliance/informational use only.

# 2 SITE DESCRIPTION AND RECONNAISSANCE

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## 2.1 Objective and Methodology

Amanda Bixby of MFA conducted a site reconnaissance visit on September 19, 2023, to obtain information indicating the presence of RECs in connection with the Property. During the site visit,

Amanda Bixby visually and physically observed the Property for evidence of the presence of RECs, including evidence of underground storage tanks (USTs) and aboveground storage tanks (ASTs), petroleum products, transformers containing PCBs, and the use and storage of hazardous material. No building structures were present on the Property during the site visit. Amanda Bixby also observed the Property and adjacent properties from public thoroughfares. Photographs taken during the site reconnaissance are provided in Appendix B.

### 2.1.1 Exterior

Amanda Bixby visually and physically observed the periphery of the Property. MFA identified the Property's roads and paths with no apparent outlet in an effort to determine whether these roads were likely to have been used as avenues for disposal of hazardous substances or petroleum products. The Property and adjacent properties were also observed from public thoroughfares.

### 2.1.2 Interior

No buildings were present on the Property at the time of the site walk.

### 2.1.3 Limiting Conditions

Access limitations were not encountered during the site visit. Access to the Property is secured via a locked gate, to which the Client provided the code.

## 2.2 General Site Setting

### 2.2.1 Property Location and Legal Description

The approximately 35-acre Property is located at 2650 River Road, The Dalles, Oregon, in section 33, township 2 north, range 13 east, of the Willamette Meridian, and consist of a portion of tax lot 2N 13E 33 200 (see Figures 1 and 2).

### 2.2.2 Site and Vicinity Characteristics

According to Wasco County, the Property is currently zoned Industrial (Wasco County n.d.). The Property is located in the northwestern part of the city of The Dalles, in an economic development zone, the Enterprise Zone, surrounded by mixed-use properties (i.e., industrial, commercial, and undeveloped). In general, the Property gradually slopes to the east, toward the Columbia River.

### 2.2.3 Current Uses of Property

The vacant Property is owned by the Client (Moraine). One monitoring well on the Property, MW-5, is used for annual groundwater monitoring associated with the Martin Marietta Aluminum Reduction Facility site (MMRF) Superfund Site.

## 2.2.4 Past Uses of Property

The past uses of the Property include:

- Municipal landfill—A 0.37-acre portion of The Dalles Disposal Site (TDDS) is located on the eastern portion of the Property (discussed further in Section 4.3).
- A rodeo arena—The former rodeo arena located on the central portion of the Property, was leased by the Fort Dalles Rodeo Association, and was largely dismantled in 2016.

The Property was formerly part of the landholdings associated with the MMRF which has been delisted from the National Priorities List (NPL). A portion of the MMRF was formerly used for aluminum reduction. Industrial activities are not known to have been conducted on the Property.

## 2.2.5 Current Uses of Adjoining Properties

The Property is bordered by the following:

- North—Vacant land associated with the former recreation area and scrubber sludge ponds.
- South—Juvenile detention facility and storage warehouses.
- East—River Road, utility district offices, government offices, and the Columbia River.
- West—Union Pacific Railroad, West 2nd Street, and primarily light industrial or commercial properties.

## 2.2.6 Past Uses of Adjoining Properties

Past uses of adjoining properties are discussed in the review of historical aerial photographs in Section 4.4.1 (primarily agricultural or undeveloped) and in Sections 4.2 and 4.3 as related to historical operations of the former aluminum reduction facility.

## 2.2.7 Current or Past Uses in Surrounding Area

Based on the findings of this ESA, the surrounding area has transitioned over time from undeveloped to rural residential and agricultural, to mixed-use with primarily industrial, commercial, and undeveloped properties.

## 2.2.8 Geologic, Hydrogeologic, Hydrologic, and Topographic Conditions

The Property and vicinity are situated on the axis of the northeast-trending The Dalles syncline. Structurally, this area is bounded by the following features: the northwest-trending Three Mile Fault on the east, the Cascade Upwarp on the west, The Dalles syncline south limb on the south, and the Chenoweth fault on the north (Geraghty & Miller 1988). Stratigraphically, the Property is underlain

by Miocene Columbia River Basalts that are composed of many separate flows and that collectively may be greater than 2,000 feet in thickness. The hydraulic properties of the different basalt flows vary markedly, based on their placement, weathering, and fracturing. Characteristics of the tops and bases of the flows include widespread fracturing and higher permeability. The hydrogeology of this area is influenced by the fault zones and structure of the basalt flows.

Remedial investigations conducted at the MMRF by Geraghty & Miller, CH2M Hill, and others report the presence of shallow perched water underlain by basalt bedrock aquifer zones, including the S-aquifer, A-aquifer, B-aquifer, and The Dalles Groundwater Reservoir (listed in order of increasing depth) (CH2M Hill 2012; Geraghty & Miller 1988). The perched water and S-aquifer are not hydraulically connected to the Columbia River. Tetra Tech reported that groundwater flow in the S-aquifer is not impacted by the stage of the Columbia River (Tetra Tech 2014). In comparison, the confined A- and B-aquifers are recharged by the Columbia River.

The perched water, with thickness of less than 10 feet in some areas, may occur in unconsolidated material on top of bedrock. The S-aquifer, with an average thickness of 100 feet, is an unconfined aquifer and occurs within the Lolo flow, Byron Interbed, and the subaerial portion of the Rosalia flow (Geraghty & Miller 1988).

The A-aquifer, with a thickness of 5 to 45 feet, has an east-to-west groundwater flow component and hydraulic conductivity of approximately 15 feet per day (Geraghty & Miller, 1988). This aquifer occurs within the upper pillow lava horizon of the Rosalia flow.

The B-aquifer, with a thickness of 30 to 50 feet, has a west-to-southwest groundwater flow direction and a hydraulic conductivity of up to approximately 1,300 feet per day (Geraghty & Miller 1988). This aquifer occurs within the lower pillow lava horizon of the Rosalia flow.

The Dalles Groundwater Reservoir, with a general thickness of approximately 20 to 40 feet, is a highly permeable aquifer with yields of over 1,000 gallons per minute (Geraghty & Miller 1988).

## 2.3 Interior and Exterior Observations

Feature	Observed on the Property?		Notes
	Yes	No	
Structures		X	No structures are present on the Property; however, remnant foundations and a portion of the rodeo arena remain.
Roads	X		Multiple paved and unpaved access roads are present on the Property.
Potable water supply		X	Drinking water is not known to be provided to the Property, although, a public water supply system is available in the area.
Sewage-disposal system		X	The Property is not known to be connected to the municipal sewage system, although, services are available in the area.

Feature	Observed on the Property?		Notes
	Yes	No	
Hazardous substances and petroleum products in connection with identified uses		X	
Storage tanks		X	
Odors		X	
Pools of liquid		X	
Drums, totes, and intermediate bulk containers		X	
Hazardous-substance and petroleum-product containers not connected with identified uses		X	
Unidentified-substance containers		X	
Items potentially containing polychlorinated biphenyls		X	
Stains or corrosion		X	
Drains or sumps		X	
Pits, ponds, or lagoons	X		Natural low areas are present on the Property.
Stained soil or pavement		X	
Stressed vegetation		X	
Solid waste	X		Signage detailing the former TDDS operation on the Property was observed.
Wastewater		X	
Stormwater		X	Stormwater on the Property was not observed to be managed.
Wells	X		Two monitoring wells (MW-1 and MW-5) were observed on the Property (see Figure 2). MW-2 was unable to be located and may be decommissioned.
Septic systems		X	No evidence of septic systems was observed.

### 3 USER-PROVIDED INFORMATION

The completed Client/User Questionnaire is provided in Appendix C, along with the Property deed, deed use restrictions and activity use limitations, the Easement and Equitable Servitude (EES) agreement and subsequent amendments, and the preliminary Property partition (DEQ 2016, 2019, 2021). All documentation was provided by the Client.

### 3.1 Land Title Records

The Client provided land title records (see Appendix C).

### 3.2 Environmental Liens or Activity and Use Limitations

The Client reported that, to the best of their knowledge, there were no environmental liens on the Property. The identified activity use limitations identified for the Property include the EES restrictions discussed in Section 4.2.

### 3.3 Specialized Knowledge

The Client stated that information has been obtained during the due diligence process for the Property and nearby properties as specified in various documents completed or reviewed by MFA on their behalf. The Client stated that they are not in the same operations as the former occupants.

### 3.4 Commonly Known or Reasonably Ascertainable Information

Numerous environmental documents associated with the former aluminum reduction portion of the MMRF were provided by the Client, or were obtained from the EPA or DEQ database listings. Time and budget constraints restricted a thorough review of every file. A review of provided documentation focused on, but was not limited to, the documents noted in Section 8 as well as the documents provided in Appendix D. The Client noted (as part of the Client-User Questionnaire provided in Appendix D) the following information regarding the Property:

“The Property, a portion of the landholdings associated with the former MMRF, was listed on the NPL in 1986. Actions in regards to the MMRF site have included past litigation, administrative proceedings, and notices regarding possible violation of environmental law. To the best of my knowledge these actions (litigation, administrative proceedings, and notices regarding possible violations of environmental laws), as related to the Property, occurred and were concluded in the past with the exception of continued groundwater monitoring conducted by Lockheed Martin as ordered by the EPA. The DEQ issued a conditional NFA [No Further Action] determination for the portion of the Property that lies within the bounds of The Dalles Disposal Site in June of 2013. More recently, Moraine and DEQ entered into the PPA for the Property. In addition, on October 8, 2015, EPA issued Moraine a comfort letter explaining how Moraine's proposed use of the Property would be compatible with the EPA's selected remedy for the Property and the larger MMRF site.”

“[Environmental cleanups have taken place at the Property;] as noted in the 2013 DEQ Staff Report for The Dalles Disposal Site (a portion of which was on the Property) approximately 375 tons of waste, including 420 drums, were removed and disposed of off-site at the Wasco County Landfill. Some portion of these materials came from the Property; the balance came from the off-Property portion of The Dalles Disposal Site. Concentrations of lead, arsenic, PAHs [polycyclic aromatic hydrocarbons], and some pesticides (dieldrin, 4,4'-DDT, 4,4'-DDE heptachlor epoxide) above applicable DEQ direct-contact risk-based concentrations remain.”

In regards to knowledge of pending, threatened, or past litigation, administrative proceedings, or notices from government agencies relevant to hazardous substances or petroleum products in, on or from the Property, the Client noted the following:

“The Property, a portion of the landholdings associated with the MMRF, was listed on the NPL in 1986. Actions in regards to the MMRF site have included past litigation, administrative proceedings, and notices regarding possible violation of environmental law. To the best of my knowledge these actions (litigation, administrative proceedings, and notices regarding possible violations of environmental laws), as related to the Property, occurred and were concluded in the past with the exception of continued groundwater monitoring conducted by Lockheed Martin as ordered by the EPA. The DEQ issued a conditional NFA determination for the portion of the Property that lies within the bounds of The Dalles Disposal Site in June of 2013. More recently, Moraine and DEQ entered into the PPA for the Property. In addition, on October 8, 2015, EPA issued Moraine a comfort letter explaining how Moraine's proposed use of the Property would be compatible with the EPA's selected remedy for the Property and the larger MMRF site.”

### 3.5 Valuation Reduction for Environmental Issues

The Client has determined that the purchase price reasonably reflects fair market value of the Property if it were not contaminated.

### 3.6 Owner, Property Manager, and Occupant Information

According to Wasco County, the Property is owned by the Client. The Property is currently vacant.

### 3.7 Reason for Performing Phase I ESA

To update the 2016 Phase I ESA (MFA 2016) for informational purposes in advance of potential transfer of the Property.

## 4 RECORDS REVIEW

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### 4.1 Standard Environmental Record Sources

MFA contracted EDR to search state and federal agency record sources for information regarding the Property and sites near the Property. MFA searched all databases using the standard approximate minimum search distances specified in ASTM E1527-21 or the search distances used by EDR, if those are greater. The following table shows the sites identified by this database search. MFA also researched a list of orphan sites with inadequate address information for mapping; orphan sites found to be within the appropriate search radii are also included in this table. The EDR-generated report is provided in Appendix E.

Databases Searched	Sites Listed	
	EDR GeoCheck	Orphan
<b>Approximate Minimum Search Distance: 1 Mile from Property Boundary</b>		
U.S. Environmental Protection Agency (EPA) NPL Sites	0	0
Federal Resource Conservation and Recovery Act (RCRA) Facilities Undergoing Corrective Action	1	0
Oregon Department of Environmental Quality (DEQ) Environmental Cleanup Site Information (ECSI)	39	4
State and/or Tribal Equivalent NPL	0	0
<b>Approximate Minimum Search Distance: 0.5 Miles from Property Boundary</b>		
Superfund Enterprise Management System (SEMS) or EPA's Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)	0	0
SEMS Archive or CERCLA No Further Remedial Action Planned	0	1
Federal Delisted NPL	1	0
RCRA Information System Non-CORRACTS Treatment, Storage, and Disposal	0	0
Federal CERCLA Removals and CERCLA Orders	0	0
State and/or Tribal Hazardous Waste Facilities	2	0
State and/or Tribal Leaking Underground Storage Tank	15	1
State and/or Tribal SEMS Equivalent, Voluntary Cleanup Sites, and Brownfield Sites	10	1
State and/or Tribal Landfill and Solid Waste Disposal Sites	4	0
Federal Engineering or Institutional Control Sites	0	0
State and/or Tribal Engineering or Institutional Control Sites	2	0
<b>Approximate Minimum Search Distance: 0.25 Miles from Property Boundary</b>		
EPA RCRA Large-Quantity Generator	0	0
EPA RCRA Small-Quantity Generator	0	0
State and/or Tribal Underground Storage Tank Database	13	1
State and/or Tribal AST Database	6	0
<b>Approximate Minimum Search Distance: Target Property</b>		
Federal Emergency Response Notification System	0	0
Underground Injection Control Program	0	0

Based on MFA's review of the report provided by EDR, in addition to the Property, the following sites were identified for further research as to their potential to impact the Property (discussed further in Section 4.3):

- Merrion Fuel Oil (Former)
- The Dalles Transfer Station
- Northwest Aluminum – Tax Lot 200 (includes the Property)
- TDDS (a portion of this site is on the Property)

- The delisted MMRF (i.e., Martin Marietta, Lockheed Martin, Northwest Aluminum, the Scrubber Sludge Ponds, “RCRA” Landfill, “CERCLA” Landfill) (this site encompasses the Property and other parcels in the area)

The remaining sites have no reported releases, have reported that cleanup is complete, have received NFA determinations from the Oregon Department of Environmental Quality (DEQ), or have little potential to impact the Property, based on their proximity or elevation in relation to the Property.

## 4.2 Regulatory Setting

The MMRF was placed on the EPA NPL in 1986 while under ownership of the Martin Marietta Corporation (now Lockheed Martin Corporation [LMC]). While listed on the NPL, the MMRF was leased and then subsequently purchased by Northwest Aluminum Company (NWA), which utilized tax lots near the Property for aluminum production. After the Superfund remedial investigation/feasibility study and remedial action process, the MMRF was deleted from the NPL in 1996. Remedial actions largely included consolidation of aluminum process waste in landfills near the Property (referred to as the CERCLA and RCRA landfills), landfill closure, and leachate treatment. The issuance of the EPA statement of substantial completion, followed by a memorandum of understanding (MOU) between the EPA and the DEQ, concluded the EPA’s role as the lead agency for the site.

NWA entered bankruptcy in 2003 and ceased plant operations. As part of the court-ordered reorganization plan, Golden Northwest Aluminum Holding Company and the subsidiary Northwest Aluminum Company (NAC) were formed. In 2007, NAC sought an industrial certification from Business Oregon to increase the marketability and facilitate sale of the MMRF. The certification was obtained on December 23, 2010, under the condition that the property attain an NFA determination from the DEQ or have a DEQ-approved cleanup plan in place within a specified timeframe after certification. Under DEQ guidance, NAC proceeded with site investigation, risk assessment, and additional remedial action on the portion of the MMRF where active industrial operations formerly took place (tax lots 2N 13E 28 700 and 2N 13E 28 1000). Remedial actions completed during DEQ oversight largely consisted of removal of process waste and soil; building demolition; and backfilling. On September 12, 2012, the DEQ issued a conditional NFA determination for a portion of the MMRF (not including the Property) over the EPA’s objection.

On October 4, 2012, the EPA terminated the MOU and reengaged more directly with the DEQ’s management of the site and the process. With the MOU termination, the EPA resumed the role as the lead agency and remains the final authority for the site under CERCLA.

The portion of the Property that lies within the bounds of TDDS is subject to a DEQ conditional NFA determination. The conditional NFA was issued in June 2013, stipulating that the engineering and institutional controls on the site are to be implemented and maintained (DEQ 2013b).

As part of the due diligence process, MFA conducted soil and groundwater investigations on the Property in 2014 (MFA 2015) and a focused soil investigation on the Property in 2018 (MFA, 2018). The 2014 investigation showed soil and minimal groundwater impacts. The 2018 focused soil investigation provided a refined understanding of the soil impacts previously observed in the former

Restricted Area 2 (RA2), resulting in the conclusion that previously established site restrictions for RA2 were no longer necessary to protect human health or the environment (MFA 2018). Through the consent judgment filed on August 23, 2015, Moraine and DEQ entered into a PPA. To house documents for the PPA process the Property was added to DEQ's ECSI database (ECSI #5955). As part of the PPA, Moraine agreed to conduct remedial actions on the Property and record an EES, which was filed with Wasco County on March 17, 2016, and subsequently amended on May 24, 2019, and March 2, 2021 (DEQ 2016, 2019, 2021). The potentially complete exposure pathways to impacts at the Property are controlled via engineering and institutional controls, as outlined in the EES.

The EES identifies the following controls:

**Groundwater Use Restrictions.** Owner may not extract through wells or by other means or use the groundwater at the Property from the shallow aquifer (or "S-aquifer") or from perched water at the Property for consumption or beneficial use. The term perched water refers to small, non-contiguous areas of subsurface water present at the Property which are shallower than and distinguishable from groundwater from the uppermost S-aquifer. This prohibition does not apply to extraction of groundwater associated with groundwater treatment or monitoring activities approved by DEQ or the United States Environmental Protection Agency 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 for disposal off-site and handle, store and manage such wastewater according to applicable laws. This prohibition shall also not apply to any groundwater use from deeper aquifers below the S-aquifer at the Property.

**Soil Cap Engineering Control.** A surface cap is present over the entire area of RAI. Except upon prior written approval from DEQ or as provided in a contaminated media management plan approved by DEQ, Owner may not conduct or allow operations or conditions on the Property or use of the Property in any way that might penetrate any cap constructed in RAI or jeopardize the cap's protective function as an engineering control that prevents exposure to contaminated soil, including without limitation any excavation, drilling, scraping, or uncontrolled erosion. Owner shall inspect and maintain the cap in RAI in accordance with a contaminated media management plan<sup>2</sup> approved by DEQ. DEQ has approved a contaminated media management plan prepared by Maul Foster & Alongi, Inc. dated September 7, 2018, see ECSI file No. 5955.

**Use of the Property.** Owner may not occupy or allow other parties to occupy the Property unless the controls...are maintained.

### 4.3 Regulatory File Review

The following adjoining sites were identified in one or more of the standard environmental databases. The databases for which these sites were listed and the information reviewed in the EDR report reveal that these sites have no reported releases and/or have little potential to impact the Property, based on their proximity and/or elevation in relation to the Property.; therefore, a file review was not relevant.

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<sup>2</sup> The contaminated media management plan requires design mitigation for landfill gas (i.e., soil vapor) for structures or utilities planned for construction in Restricted Area 1 (RA1).

- Former Merrion Fuel Oil (744 N Frontage Road) was identified in the ECSI database. The DEQ site description indicates the site was added to the database for tracking purposes as a former AST facility. The location of the site is mapped in the EDR Report as west of W 2nd Street; however, the location could not be identified based on the associated site address. No release from this property has been identified.
- The Dalles Transfer Station (2400 West 2<sup>nd</sup> Street) was identified in the FINDS and Solid Waste Facility/Landfill databases. Listing in the Solid Waste Facility/Landfill database may indicate a release or material threat of release; however, this site is noted to be a transfer station with no listings in databases specifying a known release, and therefore it was determined that a file review was not warranted.

The following adjoining sites and portions of the Property were identified in one or more of the standard environmental databases. A regulatory files review was conducted, and the files reviewed have been provided in Appendix D.

The following sites have been determined to have the potential to impact the Property but conditions are controlled through the engineering and institutional controls memorialized in the EES discussed above.

- TDDS (2652 River Road) was listed in the ECSI, Voluntary Cleanup Program, OR CRL, INST Control databases. Sufficient information was available in the ECSI online listing to determine that this site has the potential to impact the Property. The Property contains approximately 0.37 acres of a capped 3.65-acre municipal landfill. TDDS was used as an open-pit landfill for waste generated from residential, commercial, and industrial properties from 1938 through 1955 (see Figure 2). TDDS was placed on the DEQ ECSI database. Two investigations (1997 and 2010–2011) have been conducted on the site and approximately 375 tons of waste, including 420 drums, were removed and disposed of offsite at the Wasco County Landfill (DEQ 2013a). Concentrations of lead, arsenic, PAHs, and some pesticides (dieldrin, 4,4'-DDT, 4,4'-DDE, heptachlor epoxide) above DEQ occupational direct-contact risk-based concentrations (RBCs) remain. Lead, PAHs, and pesticides also exceed the construction and excavation worker RBCs. The DEQ issued a conditional NFA determination for TDDS in June 2013, stipulating that the engineering and institutional controls on the site are to be implemented and maintained (DEQ 2013b).

Through the consent judgment filed on August 23, 2015, Moraine and DEQ entered into a PPA. As part of the PPA, Moraine agreed to conduct remedial actions on the Property and record an EES, which was filed with Wasco County on March 17, 2016, and subsequently amended on May 24, 2019, and March 2, 2021 (DEQ 2016, 2019, 2021). The potentially complete exposure pathways to impacts at the Property are controlled via engineering and institutional controls, as outlined in the EES.

- The delisted MMRF (i.e., Martin Marietta, LMC, Northwest Aluminum, The Scrubber Sludge Ponds, RCRA Landfill, CERCLA Landfill). Much of the regulatory history of this site (of which the Property is a part) is discussed above in Section 4.2. One portion of this site off-Property, the Scrubber Sludge Ponds, appears to have the potential to impact the Property.

The Scrubber Sludge Ponds are located to the north, on tax lot 2N 13E 33 100. In Section VI of LMC's post-closure permit (DEQ 2000), the ponds are collectively designated as a solid waste management unit. The Scrubber Sludge Ponds were used as sedimentation basins for primary and secondary air emission control sludge from both dry and wet processes and dredged sediment from process water and stormwater settling ponds from the aluminum reduction process from the former Martin Marietta/Northwest Aluminum operations at 3313 W 2nd Street. Sludge was placed in the unlined Scrubber Sludge Ponds from approximately 1958 through 1980.

Three monitoring wells (MW-1, MW-2, and MW-5) are located on the Property, though the status of the wells (i.e., relating to decommissioning) has not been confirmed. One of the three wells (MW-5) is still sampled annually. Historically, fluoride concentrations in MW-5 have fluctuated seasonally and sporadically exceeded the post-closure groundwater protection standard (9.7 milligrams per liter [mg/L]) specified in the December 5, 2017, landfill closure permit. Decreasing concentrations of fluoride have been observed in recent years. However, the fluoride concentration measured in the 2023 event (8.90 mg/L) was only slightly below the groundwater protection standard (9.7 mg/L) (WSP 2023).

## 4.4 Historical Use Information about Property and Adjoining Properties

MFA used the following information sources to obtain historical use(s) information.

### 4.4.1 Historical Aerial Photographs Review

MFA obtained aerial photographs of the Property from 1947, 1952, 1955, 1973, 1975, 1981, 1990, 1996, 2000, 2006, 2011, 2014, 2017, and 2020 from EDR and reviewed the photographs to identify historical changes to the Property and its historical uses, if any (see Appendix F).

Year of Image	Observations
1947	The Property and much of the surrounding area are largely undeveloped. Railroad tracks are located along the west border of the Property. Of the developed portions of the surrounding area, rural residential and agricultural uses appear to dominate. River Road appears to be unpaved.
1952, 1955	The Property remains largely undeveloped. The surrounding area appears sparsely developed, with rural residential and agricultural uses predominant.
1973, 1975	The Property appears to remain largely undeveloped; however, a portion of land in the center of the Property appears to be graded by 1975. Buildings associated with the recreational facility for the NWA employees appear further north on the adjacent site. The Scrubber Sludge Ponds are visible near the Property. The surrounding area is sparsely developed around the Property, with development increasing along W 2nd Street (likely dominated by commercial use) and residential neighborhoods to the west of Highway 30. Two areas that contain either buildings or graded areas are visible south of the Property. River Road now appears to be paved.

Year of Image	Observations
1981, 1990	The rodeo arena and associated buildings are present near the center of the Property. Development of the surrounding area, primarily areas to the west and south of the Property, has continued. On nearby properties, the RCRA and CERCLA landfills are now visible. Development appears to be in the early stages on the Hydro Extrusions (Hydro, formerly Northwest Aluminum Specialties and Sapa) property to the north.
1996	The Hydro property is now developed into what appears to be much of its present-day configuration. What appears to be a wetted ditch is visible on TDDS. The Property remains largely unchanged. Development has continued in the surrounding area. The USDA building is present to the east of the Property, across River Road.
2000, 2006	Further development of the rodeo arena appears on the Property. Development has continued in the surrounding area, including the construction of the correctional facility to the south and the addition of the Northern Wasco County Public Utility District buildings to the east. The warehouse located south of the Property increased in size by 2006. TDDS appears to have been filled.
2011	The Property and surrounding area appear largely unchanged, except that a stockpile of what looks like gravel is now located on the southwestern corner of the Property.
2014	The Property and surrounding area appear largely unchanged, except that the stockpile has now been removed from the southwestern corner of the Property. The adjoining property to the northeast has been developed into a parking lot/exterior storage lot.
2017	The rodeo arena and the associated buildings have been removed from the Property. The concrete foundations are visible in the center of the Property. The adjoining parking lot/gravel cap to the northeast has expanded onto the Property.
2020	The Property and surrounding area appear largely unchanged.

#### 4.4.2 Historical Topographic Maps

EDR provided historical topographic maps for the area from 1934, 1957, 1974, 1975, 1977, 1995, 2014, 2017, and 2020 (see Appendix G). The maps show a railroad track along the west boundary of the Property since at least 1934. The Property is labeled as a rodeo ground in 1995. The maps also display changes in transportation (i.e., additional road construction) over time in The Dalles area.

#### 4.4.3 Sanborn Map Review

MFA requested SFIMs from EDR. EDR reported that SFIMs for the Property were not available (see SFIM report in Appendix H).

#### 4.4.4 City Directories

EDR provided city directories for 1948, 1954, 1960, 1965, 1968, 1973, 1978, 1983, 1987, 1992, 1995, 2000, 2005, 2010, 2014, 2017, and 2020 (see Appendix I) and reviewed. The listing for the address associated with the Property (2650 River Road) was identified as noted below:

1948 to 1987—The Property does not appear to be listed from 1948 through 1987.

1992—Fort Dalles Rodeo Grounds.

1995—No listing.

2000—Fort Dalles Rodeo Association

2005—No listing.

2010—Steve Hunt.

2014—Steve Hunt.

2017—No listing.

2020—No listing.

The city directory listings for the surrounding area identify a number of the sites mentioned in Section 4.2 above. Additional uses of the surrounding area identified in the city directories include mini storage facilities, welding supply companies, residential listings, auto repair stations, and facilities selling heavy equipment and mobile homes.

## 4.5 Prior Environmental Reports or Other Helpful Documents for Property

MFA requested prior environmental reports and other helpful documents from the owner, key site manager, and user (see Sections 3 and 5 for further information about the people MFA contacted). Appendix J outlines the types of documents requested. As described in Section 3.4, numerous environmental documents were provided by the Client, or were obtained from the EPA or DEQ database listings. Time and budget constraints restricted a thorough review of every file. A review of provided documentation that this assessment focused on are provided in Appendix D.

# 5 INTERVIEWS

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## 5.1 Interview with Representative of Owner

The Client is the owner of the Property. For relevant information, refer to the Client User questionnaire in Appendix C.

## 5.2 Interview with Key Site Manager

The Property is currently vacant; there is no key site manager.

## 5.3 Interview with Current Occupant

The Property is currently vacant; there is no occupant.

## 5.4 Interview with Previous Operator, Owner, and Occupant

Current contact information for previous operators, owners or occupants were not provided.

During preparation of the 2016 Phase I ESA, Caitlin Bryan of MFA was directed to Galen May, representative of the former Property owner, for general and site-specific information regarding the Property (MFA 2016). Galen May is the environmental manager for NAC and has been employed on the Property since operation of the aluminum facility by NWA. He provided historical content as to the prior plant's operations and the cleanup and dismantling of the former aluminum reduction facilities on the adjacent north property. He provided details regarding the filling and subsequent capping of the Scrubber Sludge Ponds. He noted the recreational uses of the northwest adjacent property. Galen May was not aware of any industrial activities taking places on the Property.

On February 1, 2016, during Caitlin Bryan's site reconnaissance visit to the Property, she spoke with Howard Anderson, another employee of NAC. Caitlin Bryan asked if there was any new information related to the Property and Howard Anderson noted that the dismantling of the rodeo arena was in-progress.

## 5.5 Interview with State and/or Local Government Officials

On October 5, 2023, Amanda Bixby of MFA interviewed Kathleen Daugherty of the DEQ for information regarding the Property and surrounding area and to get an update on information gained through prior interviews conducted as part of this assessment. Kathleen Daugherty was not aware of any area-wide environmental concerns or new information regarding the Property. The most up-to-date information for the Property is available on the ECSI site. She was aware of no new information related to sites in the surrounding area that could pose concern to the Property.

## 5.6 Interview with Owners or Occupants of Adjoining or Nearby Properties

ASTM E1527-21 requires interviews with owners or occupants of nearby properties for abandoned properties and properties that have evidence of potential unauthorized uses or evidence of uncontrolled access. Adjoining properties do not fit this description; therefore, MFA did not conduct interviews of these neighbors.

# 6 FINDINGS AND OPINIONS

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## 6.1 Recognized Environmental Conditions

ASTM E1527-21 defines RECs as (1) the presence of hazardous substances or petroleum products in, on, or at the Property due to a release to the environment; (2) the likely presence of hazardous substances or petroleum products in, on, or at the Property due to a release or likely release to the

environment; or (3) the presence of hazardous substances or petroleum products under conditions that pose a material threat of a future release to the environment.

MFA did not identify any RECs for the Property.

## 6.2 Historical Recognized Environmental Conditions

ASTM E1527-21 defines historical RECs (HRECs) as a previous release of hazardous substances or petroleum products affecting the Property that has been addressed to the satisfaction of the applicable regulatory authority or authorities and that meets unrestricted use criteria established by the applicable authority or authorities without subjecting the Property to any controls (for example, activity and use limitations or other property use limitations).

MFA did not identify any HRECs on the Property.

## 6.3 Controlled Recognized Environmental Conditions

ASTM E1527-21 defines CRECs as a recognized environmental condition affecting the Property addressed to the satisfaction of the applicable regulatory authority or authorities, with hazardous substances or petroleum products allowed to remain in place subject to implementation of required controls.

MFA identified the following CRECs for the Property, which include soil and low-level groundwater impacts controlled through the engineering and institutional controls set forth in the EES, as discussed below:

### Groundwater Impacts

Low-level impacts to groundwater from fluoride have been documented on the Property in relation to the former aluminum reduction facility and TDDS. This CREC is controlled through a groundwater restriction on the Property:

- DEQ entered into a PPA for the Property in August 2015, stipulating that the engineering and institutional controls on the site are to be implemented and maintained. As previously discussed, Moraine recorded an EES with Wasco County as part of the PPA in advance of purchasing the Property (DEQ 2016). The property is also subject to a 1989 Consent Decree between the United States and Martin-Marietta Corporation that restricts the use of groundwater from the S-aquifer and a 1986 Memorandum of Lease and Agreement with Amendment (1991). Groundwater restrictions are as follows:

Owner may not extract through wells or by other means or use the groundwater at the Property from the shallow aquifer (or "S-aquifer") or from perched water at the Property for consumption or beneficial use. The term perched water refers to small, non-contiguous areas of subsurface water present at the Property which are shallower than and distinguishable from groundwater from the uppermost S-aquifer. This prohibition does not apply to extraction of groundwater associated with groundwater treatment or

monitoring activities approved by DEQ or the United States Environmental Protection Agency 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 for disposal off-site and handle, store and manage such wastewater according to applicable laws. This prohibition shall also not apply to any groundwater use from deeper aquifers below the S-aquifer at the Property.

Further information pertaining to the determination of this CREC is provided below.

The MMRF was placed on the EPA NPL in 1986. After going through the Superfund remedial investigation/feasibility study and remedial action process, the MMRF was removed from the NPL in 1996.

EPA is the lead agency and the final authority for the delisted MMRF NPL site, which includes the Property. Three monitoring wells (MW-1, MW-2, and MW-5) are located on the Property, though the status of the wells (i.e., relating to decommissioning) has not been confirmed. One of the three wells (MW-5) is still sampled annually. Historically, fluoride concentrations in MW-5 have fluctuated seasonally and sporadically exceeded the site-specific groundwater protection standard (9.7 mg/L). Decreasing concentrations of fluoride have been observed in recent years (WSP 2023). However, the fluoride concentration measured in the 2023 event (8.90 mg/L) was only slightly below the groundwater protection standard (9.7 mg/L).

Additional constituents that have been detected in the past and are monitored as part of the groundwater monitoring program for the MMRF include sulfate, cyanide, and PAHs. Concentrations of these additional constituents are not analyzed as part of the ongoing annual groundwater monitoring at MW-5.

In 2014, MFA conducted reconnaissance groundwater sampling from two temporary borings (B50 and B51) on the Property as part of a focused site assessment (MFA 2015). Groundwater samples were analyzed for cyanide, fluoride, sulfate, and PAHs. No exceedances of risk-based concentrations were identified.

Based on the potential for seasonal fluctuations to result in groundwater protection standard exceedances of fluoride, and in consideration of controls enacted through the EES, groundwater on the Property has been identified as a CREC.

## Presence of Landfill, Soil Impacts, and the Potential for Landfill Gas

The Property contains a portion of TDDS (of which approximately 0.37 acres is estimated to contain landfill material) (see Figure 2). Multiple investigations (1997, 2010–2011, and 2012) have been conducted on TDDS, and approximately 375 tons of waste, including 420 drums, were removed and disposed of off-site at the Wasco County Landfill. Concentrations of lead, arsenic, PAHs, and some pesticides (dieldrin, 4,4'-DDT, 4,4'-DDE, heptachlor epoxide) above DEQ occupational direct-contact RBCs remain. Lead, PAHs, and pesticides also exceed the construction and excavation worker RBCs. In 2012, soil vapor was sampled for landfill gas impacts (i.e., methane and volatile organic compounds [VOCs]) (GeoPro 2013). Methane was not detected during field screening of soil vapor

points. Ten VOCs were detected in soil gas; however, detections were below available risk-based concentrations. While the soil gas investigation did not identify impacts from landfill material, the material may continue to degrade over time and result in increased landfill gas production.

DEQ issued a conditional No Further Action determination for TDDS in June 2013, stipulating that the engineering and institutional controls on the site are to be implemented and maintained. As previously discussed, Moraine recorded an EES with Wasco County as part of the PPA in advance of purchasing the Property (DEQ 2016). TDDS landfill on the Property is referred to as Restricted Area 1 (RA1) (see Figure 3).

In consideration of controls enacted through the EES, the presence of the landfill, soil impacts in RA1, and the potential for landfill gas on the Property has been identified as a CREC.

## 6.4 De Minimis Conditions

A de minimis condition, as defined by ASTM E1527-21, generally does not present a threat to human health or the environment and generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies. An identified de minimis condition is neither a REC nor a CREC.

MFA did not identify any de minimis conditions for the Property.

## 6.5 Data Gaps

MFA did not identify any significant data gaps.

## 6.6 Conclusions

MFA has conducted a Phase I ESA of 2650 River Road, The Dalles, Oregon, in conformance with the scope and limitations of ASTM E1527-21.

The Phase I ESA revealed the following CRECs in connection with the Property:

- The presence of a landfill with the potential for landfill gas in addition to soil and low-level groundwater impacts on the Property controlled through the engineering and institutional controls set forth in the EES.

## 6.7 Activity Use Limitations Compliance

As previously discussed, DEQ entered into a PPA for the Property in August 2015, stipulating that the engineering and institutional controls on the site are to be implemented and maintained. Moraine recorded an EES with Wasco County as part of the PPA in advance of purchasing the Property (DEQ 2016). The Property is also subject to a 1989 Consent Decree between the United States and Martin-Marietta Corporation that restricts the use of groundwater from the S-aquifer and a 1986 Memorandum of Lease and Agreement with Amendment (1991).

## 6.8 Statement of Environmental Professionals Conducting Phase I Environmental Site Assessment

proposed Parcel 3 portion of Tax Lot 2N 13E 33 200  
2650 River Road, The Dalles, Oregon

*The material and data in this report were prepared under the supervision and direction of the undersigned.*

MAUL FOSTER & ALONGI, INC.

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*Caitlin Bryan*  
*Principal Environmental Scientist*

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*Amanda Bixby, GIT*  
*Project Geologist*

We declare that, to the best of our professional knowledge and belief, we meet the definition of environmental professional as defined in §312.10 of 40 CFR 312. We have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. We have developed and performed all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312.

## 7 CONCLUSIONS

MFA has conducted a Phase I ESA, in conformance with the scope and limitations of ASTM E1527-21 of 2650 River Road, The Dalles, Oregon, the Property. MFA describes any exceptions to, or deviations from, this practice in Section 1 of this report.

The Phase I ESA revealed the following CRECs in connection with the Property:

- The presence of a landfill with the potential for landfill gas in addition to soil and low-level groundwater impacts on the Property controlled through the engineering and institutional controls set forth in the EES.



## REFERENCES

- CH2M Hill. 2012. Final Report. Remedial Investigation Risk Assessment Remedial Action Report Northwest Aluminum Co. Prepared for Ater Wynne LLP, on behalf of Northwest Aluminum Company. CH2MHill. March.
- DEQ. 2013a. Staff Report for The Dalles Disposal Site, The Dalles, Oregon, ECSI #2165. Oregon Department of Environmental Quality. March.
- DEQ. 2013b. Conditional No Further Action Determination, The Dalles Disposal Site, ECSI 2165. Oregon Department of Environmental Quality. June 17.
- DEQ. 2016. Easement and Equitable Servitudes for Moraine Industries LLC for 2650, 2652, and 2625 River Road, The Dalles, Oregon. Oregon Department of Environmental Quality. March 17. Filed with Wasco County March 17.
- DEQ. 2019. Amendment to Easement and Equitable Servitudes for Moraine Industries LLC for 2650, 2652, and 2625 River Road, The Dalles, Oregon. Oregon Department of Environmental Quality. April 24. Filed with Wasco County May 2.
- DEQ. 2021. Amendment to Easement and Equitable Servitudes for Moraine Industries LLC for 2650, 2652, and 2625 River Road, The Dalles, Oregon. Oregon Department of Environmental Quality. March 2. Filed with Wasco County March 12.
- GeoPro. 2013. Site Investigation Report, The Dalles Disposal Site. Prepared for Golden Northwest Aluminum Holding Company. GeoPro, LLC, Battle Ground, Washington. March.
- Geraghty & Miller. 1988. Preliminary Investigation Report, Martin Marietta Reduction Facility, The Dalles, Oregon. Geraghty & Miller, Inc. March.
- MFA. 2015. Focused Site Assessment. 2650, 2652, and 2625 River Road, Tax Lot 2N 13E 33 200 in The Dalles, Oregon. Maul Foster & Alongi, Inc., Portland, Oregon. February 12.
- MFA. 2018. Focused Soil Investigation. ESCI number 5955, Tax Lot 2N 13E 23[sic] 200, The Dalles, Oregon. Maul Foster & Alongi, Inc., Portland, Oregon. September 7.
- MFA. 2016. Phase I Environmental Site Assessment. Parcel 2 of Tax Lot 2N 13E 33 200, 2650 River Road, The Dalles, Oregon. Maul Foster & Alongi, Inc., Portland, Oregon. February 26.
- Tetra Tech. 2014. Final Work Plan for Comprehensive Groundwater Investigation. Former Martin Marietta Reduction Facility. The Dalles, Oregon. Prepared for Lockheed Martin Corporation. April.
- Wasco County. n.d. "City of The Dalles Web Map," Wasco County GIS. Accessed October 2, 2023. <https://public.co.wasco.or.us/gisportal/apps/webappviewer/index.html?id=90994ca55a724603a2281e5e40139457>

WSP. 2023. Draft Combined 2023 Semi-Annual RCRA and Annual CERCLA Report. Former Martin Marietta Reduction Facility. The Dalles, Oregon. Prepared for Lockheed Martin Corporation. June 16.

## LIMITATIONS

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The services undertaken in completing this report were performed consistent with generally accepted professional consulting principles and practices. No other warranty, express or implied, is made. These services were performed consistent with our agreement with our Client. This report is solely for the use and information of our Client unless otherwise noted. Any reliance on this report by a third party is at such party's sole risk.

Opinions and recommendations contained in this report apply to conditions existing when services were performed and are intended only for the Client, purposes, locations, time frames, and project parameters indicated. We are not responsible for the impacts of any changes in environmental standards, practices, or regulations subsequent to performance of services. We do not warrant the accuracy of information supplied by others, or the use of segregated portions of this report.

The purpose of an environmental assessment is to reasonably evaluate the potential for or actual impact of past practices on a given site area. In performing an environmental assessment, it is understood that a balance must be struck between a reasonable inquiry into the environmental issues and an exhaustive analysis of each conceivable issue of potential concern. The following paragraphs discuss the assumptions and parameters under which such an opinion is rendered.

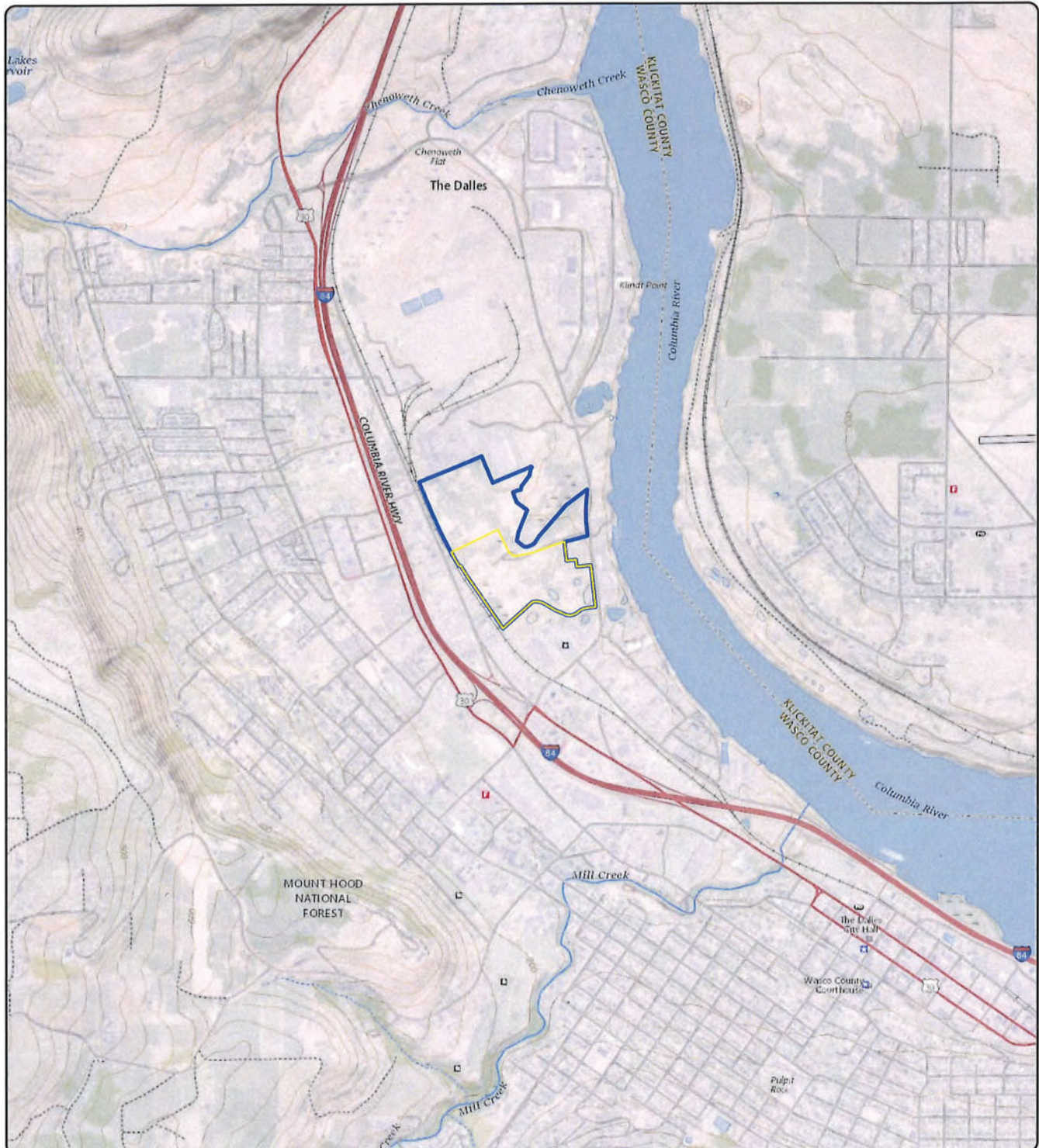
No investigation is thorough enough to exclude the presence of hazardous materials at a given site. If hazardous conditions have not been identified during the assessment, such a finding should not, therefore, be construed as a guarantee of the absence of such materials on the site, but rather as the result of the services performed within the constraints of the agreed-upon scope, limitations, and costs.

Environmental conditions that cannot be identified by visual observation may exist at the site. Where subsurface work was performed, our professional opinions are based in part on interpretation of data from discrete sampling locations that may not represent actual conditions at unsampled locations.

Except where there is express concern by our Client, or where specific environmental contaminants have been previously reported by others, the presence of naturally occurring toxic substances, potential environmental contaminants inside buildings, or contaminant concentrations that are not of current environmental concern may not be reflected in this document.

# FIGURES





**Notes**  
 U.S. Geological Survey 7.5-minute topographic quadrangle (2020): The Dalles South.  
 Township 2 north, range 13 east, section 33.

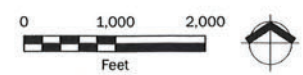
**Data Source**  
 Tax lot obtained from Wasco County; property boundary obtained from Moraine Industries, LLC.

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- Legend**
- Property
  - Existing Property Tax Lot

**Figure 1**  
**Property Location**  
 2650 River Road  
 The Dalles, OR







**Figure 2**  
**Property Features**

2650 River Road  
The Dalles, OR

**Draft Confidential**  
**Subject to Change**

**Legend**

-  Monitoring Well
-  Monitoring Well, Decommissioned
-  River Flow Direction
-  Landfill (GeoPro estimate from site investigation)
-  The Dalles Disposal Site
-  Property
-  Existing Property Tax Lot
-  Tax Lot

**Note**  
The former aluminum reduction facility was located approximately 0.25 mile to the northwest.



**Data Sources**  
Aerial imagery (2021) obtained from Google Earth; well locations are approximated from Terra Tech, 2014. The Dalles Disposal Site boundaries are approximated from Appendix 2 of the 2013 ESO Staff Report for ESOI #2185; tax lots obtained from Wasco County; property boundary obtained from Morane Industries, LLC.

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**Figure 3**  
**Property Showing**  
**Restricted Areas**  
 2650 River Road  
 The Dalles, OR  
**Draft Confidential**  
**Subject to Change**

- Legend**
- Restricted Area 1 (RA 1)
  - River Flow Direction
  - Property
  - Existing Property Tax Lot
  - Tax Lot

**Note**  
 The former aluminum reduction facility was located approximately 0.25 mile to the northwest.



**Data Sources**  
 Aerial photograph (2021) obtained from Google Earth; tax lots obtained from Wasco County; property boundary obtained from Moraine Industries, LLC.

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**EXHIBIT C**  
**Current Title Report**



100 W Second St., The Dalles, OR 97058  
PHONE (541)296-9194 FAX (541)296-5534

---

To: Tenneson Engineering  
3775 Crates Wy.  
The Dalles, OR 97058  
Attn: Ben Beseda

Date: October 3, 2023  
Order No. 608046AM  
Reference: 2650 River Rd  
The Dalles, OR 97058

We have enclosed our SORT Report pertaining to order number 608046AM.

*Thank you for the opportunity to serve you. Your business is appreciated!*

If you have any questions or need further assistance, please do not hesitate to contact your Title Officer listed below.

Sincerely,

*Megan Kaufman*

megan.kaufman@amerititle.com  
Title Officer

**NOTICE:** Please be aware that, due to the conflict between federal and state laws concerning the legality of the cultivation, distribution, manufacture or sale of marijuana, the Company is not able to close or insure any transaction involving land that is associated with these activities.

---

EXHIBIT C



100 W Second St., The Dalles, OR 97058  
PHONE (541)296-9194 FAX (541)296-5534

---

#### STATUS OF RECORD TITLE

Ben Beseda  
Tenneson Engineering  
3775 Crates Wy.  
The Dalles, OR 97058

October 3, 2023  
Title Number: 608046AM  
Title Officer: Megan Kaufman  
Fee: \$300.00

#### We have searched the status of record title as to the following described property:

Parcel 2 of Partition Plat recorded November 19, 2015 under Microfilm No. 2015-004543, Plat No. 2015-0015, Slide No. D-135B, Records of Wasco County, State of Oregon.

#### Vestee:

**Moraine Industries LLC, a Delaware Limited Liability Company**

and dated as of **November 2, 2020** at 7:30 a.m.

#### Said property is subject to the following on record matters:

1. The 2023-2024 Taxes: Alien not yet due or payable.
2. City liens, if any, of the City of The Dalles.
3. Unrecorded leaseholds, if any, and the rights of vendors and holders of security interest in personal property of tenants to remove said personal property at the expiration of the term.
4. The rights of the public in and to that portion of the herein described property lying within the limits of public roads, streets or highways.
5. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument:  
Granted To: The United States of America  
Recorded: June 8, 1939  
[Instrument No. Book: 90, Page: 427](#)
6. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument:  
Granted To: Pacific Power & Light Company, a corporation, its successors and/or assigns  
Recorded: July 25, 1945  
[Instrument No. Book: 101, Page: 325](#)
7. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument:  
Granted To: The United States of America  
Recorded: September 18, 1947  
[Instrument No. Book: 111, Page: 381](#)

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EXHIBIT C

8. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument:  
Granted To: Pacific Power & Light Company, a corporation its successors and assigns  
Recorded: January 24, 1964  
[Instrument No.: 640190](#)
9. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument:  
Granted To: The United States of America  
Recorded: September 26, 1974  
[Instrument No.: 742220](#)
10. Covenant(s) and Easement Agreement(s), including the terms and provisions thereof, as contained in Easement and Release Transmission line, by and between Martin Marietta Corporation, a Maryland corporation, Grantor, and United States of America, Department of Energy, Bonneville Power Administration, recorded January 22, 1997, under Microfilm No. [970227](#), Microfilm Records for Wasco County, Oregon.
11. Covenant(s) and Easement Agreement(s), including the terms and provisions thereof, as contained in Easement and Release Transmission line, by and between Martin Marietta Corporation, a Maryland corporation, Grantor, and United States of America, Department of Energy, Bonneville Power Administration, recorded January 22, 1997, under Microfilm No. [970228](#), Microfilm Records for Wasco County, Oregon.
12. Agreement and the terms and conditions contained therein  
Between: Northwest Aluminum Company, an Oregon corporation  
And: City of The Dalles  
Purpose: Public Improvements  
Recorded: September 20, 2006  
[Instrument No.: 2006-005493](#)
13. Agreement and the terms and conditions contained therein  
Between: City of The Dalles  
And: William Reid for Northwest Aluminum Company  
Purpose: Waiver of Remonstrance Agreement  
Recorded: September 20, 2006  
[Instrument No.: 2006-005495](#)
14. Terms, Covenants, Conditions, Restrictions and Easements as contained in:  
Partition Plat No.: 2006-0046  
Recorded: September 20, 2006  
Microfilm No.: [2006-005496](#), Records of Wasco County, Oregon  
but omitting any covenants or restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that such covenant or restriction is permitted by applicable law.
15. Agreement and the terms and conditions contained therein  
Between: Northwest Aluminum Company  
And: City of The Dalles  
Purpose: Delayed Improvement Agreement  
Recorded: December 24, 2008  
[Instrument No.: 2008-005261](#)
16. Terms, Covenants, Conditions, Restrictions and Easements as contained in:  
Partition Plat No.: 2008-0042  
Recorded: December 31, 2008  
Microfilm No.: [2008-005319](#), Records of Wasco County, Oregon

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EXHIBIT C

but omitting any covenants or restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that such covenant or restriction is permitted by applicable law.

17. Terms, Covenants, Conditions, Restrictions and Easements as contained in:  
Replat No.: 2011-0003  
Recorded: January 19, 2011  
Microfilm No.: [2011-000215](#), Records of Wasco County, Oregon  
but omitting any covenants or restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that such covenant or restriction is permitted by applicable law.
18. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument:  
Granted To: Northwest Aluminum Specialties, Inc., an Oregon corporation  
Recorded: September 9, 2015  
[Instrument No.: 2015-003614](#)
19. Agreement and the terms and conditions contained therein  
Between: Northwest Aluminum Company, an Oregon corporation  
And: Northwest Aluminum Specialties, Inc., an Oregon corporation  
Purpose: Utility Easement Agreement (Power Line)  
Recorded: September 9, 2015  
[Instrument No.: 2015-003617](#)
20. Matters as disclosed by Survey by Tenneson Engineering Corp.,  
Dated: July 31, 2015  
Job No 14582  
A. Easements  
B. Wetland Areas  
C. Restricted Area
21. Agreement and the terms and conditions contained therein  
Between: Northwest Aluminum Company  
And: Northwest Aluminum Specialties, Inc.  
Purpose: Water Sharing and Easement Agreement  
Recorded: September 18, 2015  
[Instrument No.: 2015-003745](#)  
  
Amended by First Amendment to Water Sharing Agreement, including the terms and provisions thereof,  
Recorded: December 8, 2017  
[Instrument No.: 2017-004821](#)
22. Terms, Covenants, Conditions, Restrictions and Easements as contained in:  
Partition Plat No.: 2015-0015  
Recorded: November 19, 2015  
Microfilm No.: [2015-004543](#), Records of Wasco County, Oregon  
but omitting any covenants or restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that such covenant or restriction is permitted by applicable law.
23. Consent Judgment in the State Circuit Court, County of Wasco, subject to the terms and provisions thereof;  
Plaintiff: State of Oregon, ex rel. Dick Pedersen, Director Department of Environmental Quality

---

EXHIBIT C

Defendant: Moraine Industries  
Case No.: 1500212CC  
Entered: August 28, 2015  
Modified Consent Judgment  
Entered: September 25, 2015  
Also recorded on March 17, 2016  
[Instrument No. 2016-000938](#)

Amended by Certification of Completion Case No. CC15-212 (Circuit Court of State of Oregon for the County of Wasco) including the terms and provisions thereof,  
Recorded: January 3, 2019  
Instrument No.: 2019-000047

24. Terms, provisions and conditions, including but not limited to maintenance provisions, contained in appurtenant easement,  
Recorded: March 17, 2016  
[Instrument No.: 2016-000935](#)

25. Easement and Equitable Servitudes, including the terms and provisions thereof,  
Recorded: March 17, 2016  
[Instrument No.: 2016-000937](#)

Amended by Amendment to Easement and Equitable Servitudes, including the terms and provisions thereof,  
Recorded: May 2, 2019  
[Instrument No.: 2019-001261](#)

Amended by Second Amendment to easement and Equitable Servitudes, including the terms and provisions thereof,  
Recorded: March 12, 2021  
Instrument No.: [2021-001094](#)

26. Access Agreement, including the terms and provisions thereof,  
Recorded: March 17, 2016  
[Instrument No.: 2016-000939](#)

27. Terms, provisions and conditions, including but not limited to maintenance provisions, contained in appurtenant easement,  
Recorded: March 17, 2016  
[Instrument No.: 2016-000940](#)

28. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument:  
Granted To: City of The Dalles  
Recorded: March 1, 2017  
[Instrument No.: 2017-000726](#)

29. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument:  
Granted To: City of The Dalles  
Recorded: March 13, 2017  
[Instrument No.: 2017-000891](#)

30. Agreement and the terms and conditions contained therein  
Between: Lockheed Martin Corporation  
And: Moraine Industries, LLC  
Purpose: Easement Agreement (Irrigation Waterline)

---

EXHIBIT C

Recorded: April 18, 2018  
[Instrument No.: 2018-001350](#)

31. Infrastructure Agreement, including the terms and provisions thereof,  
Recorded: December 14, 2021  
Instrument No.: [2021-005367](#)

32. The right of first refusal to lease/purchase disclosed by recitals set forth in document:  
Recorded: December 14, 2021  
Instrument No.: [2021-005384](#)  
In favor of: Google, LLC a Delaware limited liability company, Design, LLC, a Delaware limited liability company, and Moraine Industries LLC, a Delaware limited liability company

33. Utility Easement Agreement, including the terms and provisions thereof,  
Recorded: January 24, 2023  
Instrument No.: [2023-000177](#)

34. Terms, provisions and conditions, including but not limited to maintenance provisions, contained in appurtenant easement,  
Recorded: July 24, 2023  
Instrument No.: [2023-001867](#)

NOTE: Any map or sketch enclosed as an attachment herewith is furnished for information purposes only to assist in property location with reference to streets and other parcels. No representation is made as to accuracy and the company assumes no liability for any loss occurring by reason of reliance thereon.

THIS IS NOT A TITLE REPORT, A COMMITMENT TO ISSUE TITLE INSURANCE OR A GUARANTEE OF ANY KIND. No liability is assumed with this report. The fee charged for this service does not include supplemental reports or other services. Further dissemination of the information in this report in a form purporting to insure title to the herein described land is prohibited by law.

*"Superior Service with Commitment and Respect for Customers and Employees"*

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## EXHIBIT C

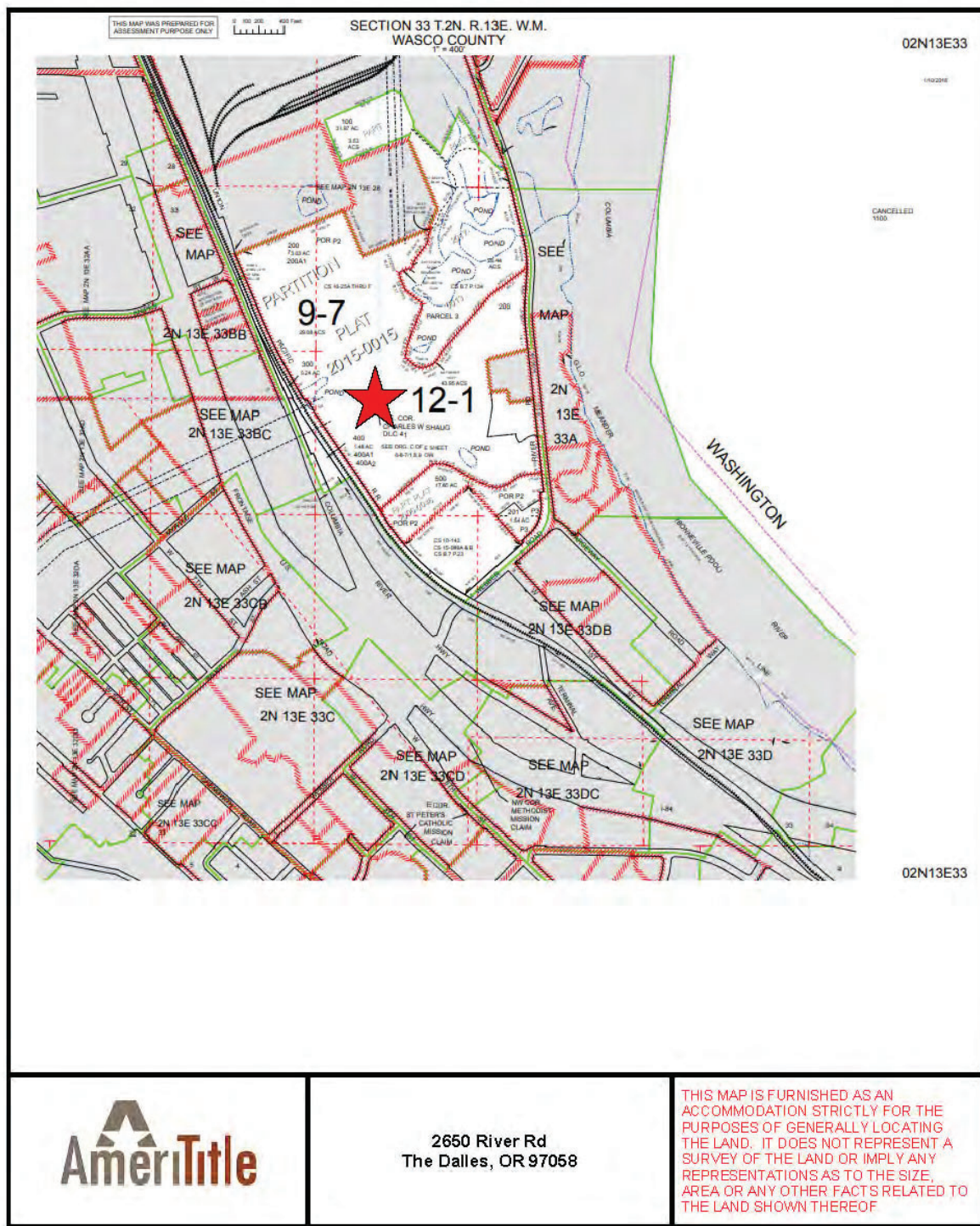


EXHIBIT C

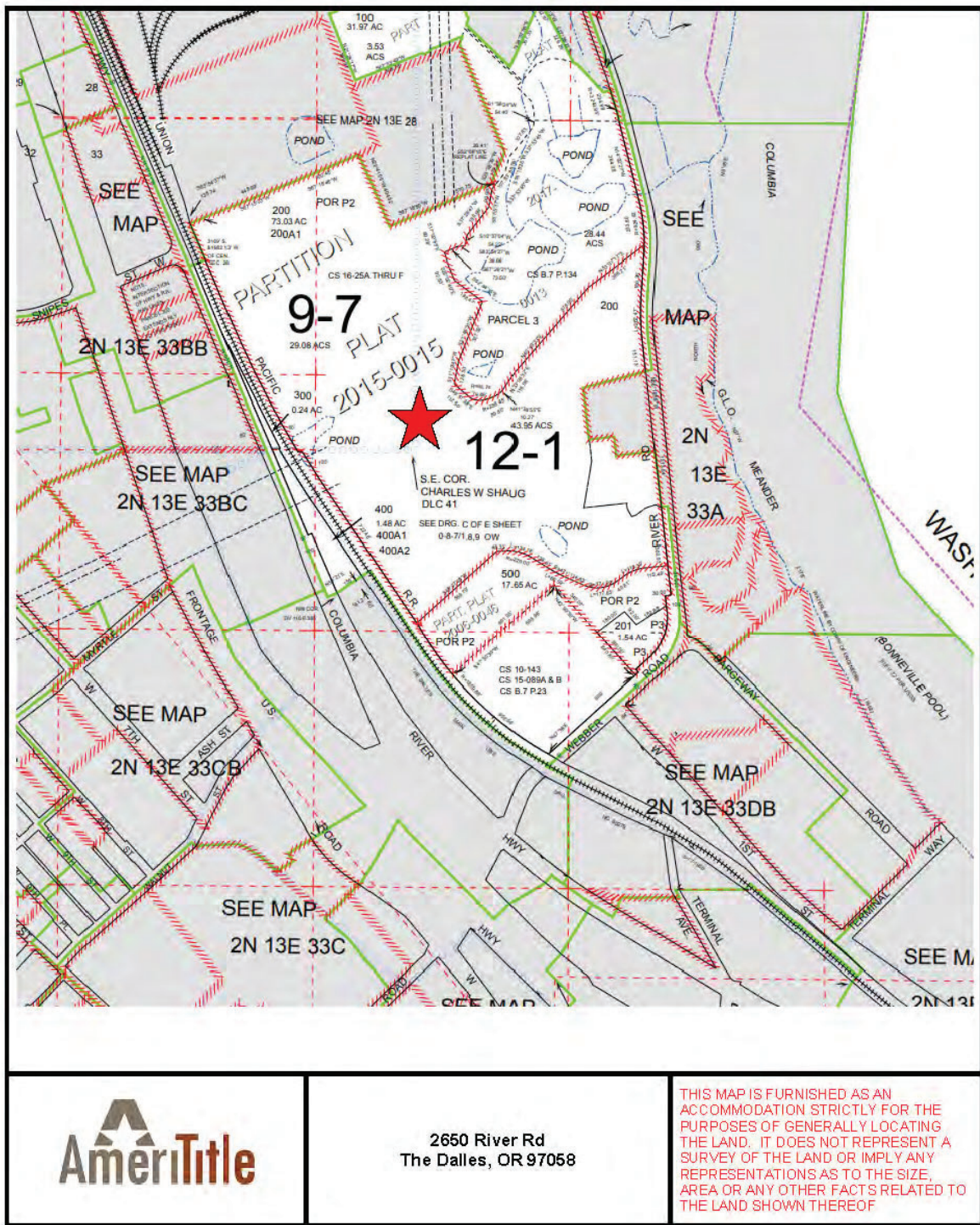


EXHIBIT C

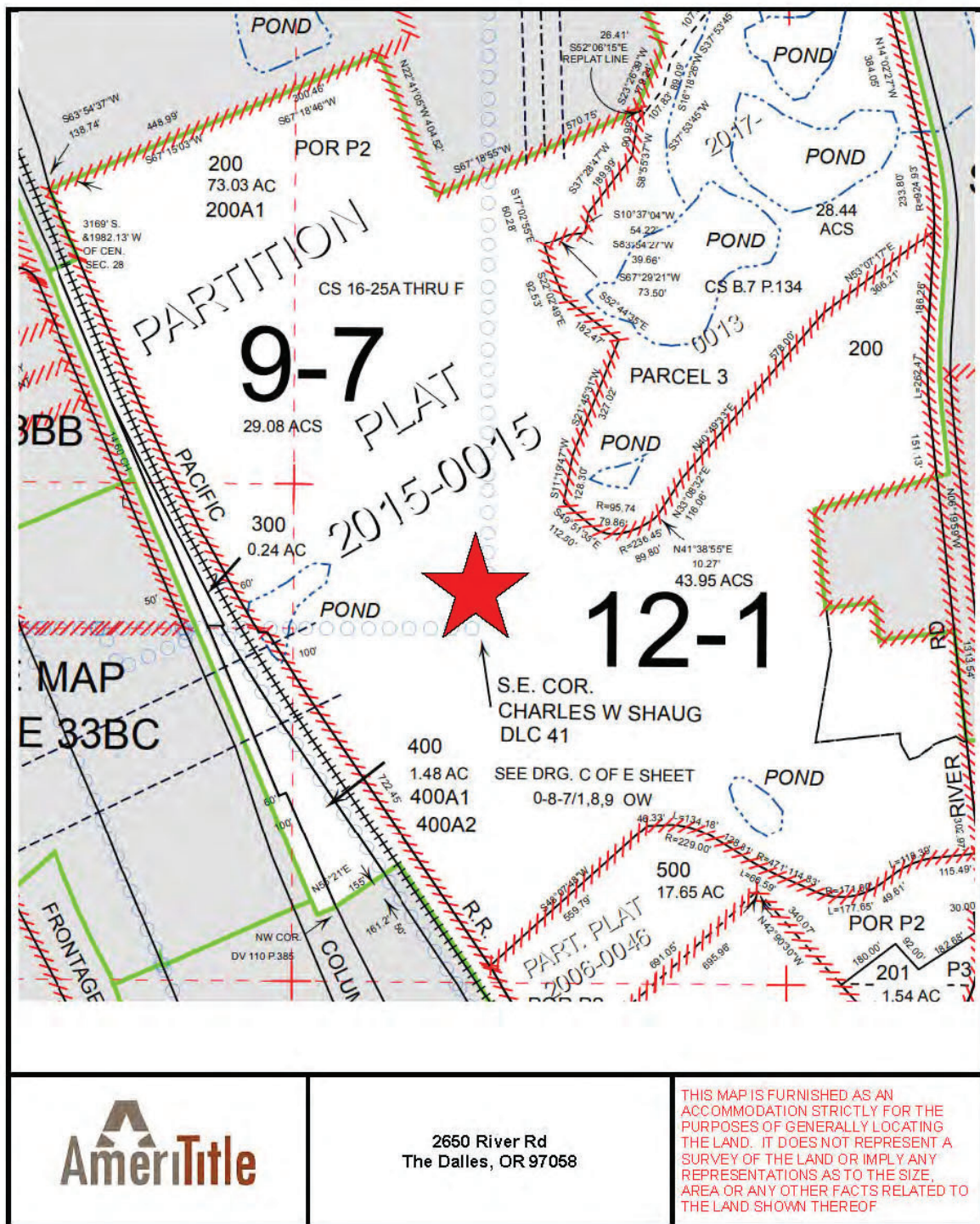


EXHIBIT C

## EXHIBIT D

### Form of Special Warranty Deed

Grantor's Name and Address:

**MORAINE INDUSTRIES, LLC**  
**1600 Amphitheatre Parkway**  
**Mountain View, CA 94043**

Grantee's Name and Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

After recording return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

True and actual consideration:

Until a change is requested all tax statements shall be  
sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

---

#### SPECIAL WARRANTY DEED

**MORAINE INDUSTRIES, LLC**, a Delaware limited liability company, hereinafter called the grantor, for the consideration hereinafter stated, does hereby convey and specially warrant unto **WASCO COUNTY, a political subdivision of the State of Oregon**, hereinafter called grantee, and unto grantees' heirs, successors and assigns, all of that certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and free of encumbrances created or suffered by the grantor except as specifically set forth herein, situated in the County of **Wasco** and State of Oregon, described as follows, to wit:

Legal to be inserted.

SUBJECT TO AND EXCEPTING:

[All matters on title, including Easement and Equitable Servitudes in favor of DEQ and Prospective Purchaser  
Agreement with DEQ]

[Restrictive Use Convened]

To Have and to Hold the same unto the said grantee and grantee's heirs, successors and assigns forever.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ \_\_\_\_\_

EXHIBIT D

IN WITNESS WHEREOF, the grantor has caused its corporate name to be signed and its corporate seal affixed hereto by its officers duly authorized thereunto by order of its board of directors this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009 AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009 AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

MORaine INDUSTRIES, LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF OREGON                    )  
  ) ss.  
County of Wasco

This record was acknowledged before me on \_\_\_\_\_, 2024,  
by \_\_\_\_\_ as \_\_\_\_\_  
\_\_\_\_\_ of \_\_\_\_\_,  
a(n) \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
My commission expires: \_\_\_\_\_

EXHIBIT D

## EXHIBIT E

### Form of Notice of Transfer to DEQ

#### AFTER RECORDING, RETURN TO:

\_\_\_\_\_  
[INSERT WASCO COUNTY CONTACT  
INFORMATION]

### NOTICE OF TRANSFER OF PROPERTY AND PARTIAL ASSIGNMENT AND ASSUMPTION OF PROSPECTIVE PURCHASER AGREEMENT

This Notice of Transfer of Property and Partial Assignment and Assumption of Prospective Purchaser Agreement (“Notice”) is made by the undersigned and is consistent with Section 8 of that certain Prospective Purchaser Agreement Consent Judgment between the Oregon Department of Environmental Quality (“DEQ”) and Moraine Industries LLC entered by the Wasco County Circuit Court in *State of Oregon, ex rel. Dick Pedersen, Director Department of Environmental Quality v. Moraine Industries LLC* (Case No. CC15-212) on August 24, 2015, as modified on September 28, 2015, and recorded in the Official Records of Wasco County on March 17, 2016 (#2016-006938) (the “PPA”). On December 14, 2018, the Wasco County Circuit Court entered a Certification of Completion, which terminated the PPA except for the specific obligations and subsections of the PPA which, by its terms, survive termination (the “COC”). The COC was recorded in the Official Records of Wasco County on January 3, 2019 (#2019-000047).

The parties to this Notice are Moraine Industries LLC, a Delaware limited liability company (“Seller”), Wasco County, a political subdivision of the State of Oregon (“Buyer”), and DEQ.

The property subject to this Notice is described in Exhibit A hereto (the “Property”). The Property is subject to the PPA, and the PPA specifies certain obligations related to further development of the Property that are required to protect public health and the environment. The documents containing the obligations applicable to the Property pursuant to the PPA include both the PPA and that certain Easement and Equitable Servitudes to the State of Oregon dated March 17, 2016 and recorded as Document No. 2016-000937 in Wasco County Official Records, amended as of April 24, 2019 by that certain Amendment to Easement and Equitable Servitudes recorded as Document No. 2016-001261 (collectively, the “EES”).

EXHIBIT E

Subject to the closing of the purchase of the Property described in the Purchase and Sale Agreement dated [insert] between Buyer and Seller (the “Purchase and Sale Agreement”), Buyer and Seller hereby notify DEQ and that Buyer will be acquiring the Property.

By its signature below, Seller confirms that it will continue to comply with the terms of the PPA until the date of acquisition of ownership of the Property by Buyer, after which time Seller will be released from all obligations under the PPA with respect to the Property.

By its signature below, Buyer confirms that it assumes and agrees to be bound by such terms of the PPA that are applicable to the Property as of the date of its acquisition of ownership of that Property. As a result of such assumption, Buyer shall assume the burdens and obtain the benefits of the PPA applicable to the Property, as are more specifically identified below, including but not limited to the release from liability, covenant not to sue and contribution protections.

By its signature below, DEQ acknowledges receipt of this Notice, and approves of the proposed transfer and assumption and assignment of the PPA as to the Property, as provided herein.

The parties to this Notice each agree that the following sections of the PPA either apply, or do not apply, to the Property, as indicated below:

1. Buyer reaffirms the provisions of Sections 1 and 2 of the PPA.
2. Buyer shall comply with Section 3.A.(2) and Section 3.D. of the PPA, which obligate Buyer to comply with the EES as to the Property.
3. Pursuant to the COC, Buyer’s remaining obligations under the PPA are specified in Section 10 therein.
4. Sections 5, 6 and 8 of the PPA will apply to Buyer as owner of the Property.

Buyer and Seller both acknowledge and agree that this Notice does not alter, amend or modify their respective obligations to each other as set forth in the Purchase and Sale Agreement.

#### EXHIBIT E

This Notice is executed by the Parties as of the \_\_\_\_ day of \_\_\_\_\_, 2024.

**SELLER:**

MORAINÉ INDUSTRIES LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BUYER:**

WASCO COUNTY,  
a political subdivision of the State of Oregon

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT E

STATE OF OREGON            )  
  )ss.  
County of \_\_\_\_\_ )

This record was acknowledged before me on \_\_\_\_\_, 2024, by \_\_\_\_\_ as  
\_\_\_\_\_ of MORaine INDUSTRIES LLC, a(n) \_\_\_\_\_ limited liability  
company on behalf of the company.

\_\_\_\_\_  
Title of Office: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF OREGON            )  
  )ss.  
County of \_\_\_\_\_ )

This record was acknowledged before me on \_\_\_\_\_, 2024, by \_\_\_\_\_ as  
\_\_\_\_\_ of WASCO COUNTY, a political subdivision of the State of Oregon.

\_\_\_\_\_  
Title of Office: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

EXHIBIT E

By its signature below, DEQ acknowledges receipt of this Notice and approves of the proposed transfer and assumption and assignment of the PPA as it relates to the Property, as provided herein.

THE OREGON DEPARTMENT OF  
ENVIRONMENTAL QUALITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF OREGON            )  
  )ss.  
County of \_\_\_\_\_ )

This record was acknowledged before me on \_\_\_\_\_, 2024, by \_\_\_\_\_ as  
\_\_\_\_\_ of THE OREGON DEPARTMENT OF ENVIRONMENTAL  
QUALITY.

\_\_\_\_\_  
Title of Office: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

EXHIBIT E

**Exhibit A**

**Description of Property**

[INSERT]

EXHIBIT E



## MOTION

**SUBJECT: Purchase and Sale Agreement**

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I move to approve the Purchase and Sale Agreement between Wasco County and Moraine Industries for a portion of Parcel Tax Lot 2N 13E 33 200. I further move to authorize the Administrative Officer to sign any necessary documents, pending legal review, to complete the sales transaction.



WASCO COUNTY BOARD OF COMMISSIONERS  
REGULAR SESSION  
MARCH 20, 2024

This meeting was held in person and on Zoom

<https://wascocounty-org.zoom.us/j/3957734524>

Or call in to [1-253-215-8782](tel:1-253-215-8782) Meeting ID: 3957734524#

PRESENT: Steve Kramer, Chair (virtual)  
Scott Hege, Vice-Chair  
Phil Brady, County Commissioner  
STAFF: Kathy Clark, Executive Assistant  
Tyler Stone, Administrative Officer

Vice-Chair opened the session at 9:00 a.m. with the Pledge of Allegiance.

**Discussion Item – Homeland Security Grant Application**

Emergency Manager Sheridan McClellan explained that the State has funds available and requested applications for projects that can be completed by July 1, 2024.

Sheriff's Deputy Veracruz explained that he serves on the NORTAC Team, a multi-jurisdictional special weapons and tactical team founded in 2020 and augmented by The Dalles Police Department. The team has identified a need for technical advancement. Gilliam County has supplied the team with night vision and the team is currently working toward acquiring an armored vehicle. A robot has been discussed for officer and public safety. The team has reached out to other entities for guidance.

Vice-Chair Hege asked how the robot would be used. Deputy Veracruz provided some examples. He said that if a subject is barricaded in a home, it might take 4 officers to get into the door – that is 4 lives at risk. A robot would reduce the risk for both the subject and the officers. In a hostage situation, officers add pressure and tension; a robot would not have that effect.

Vice Chair Hege asked if this equipment will be a regional asset. Deputy Veracruz said that the team serves communities from Cascade Locks to Gilliam County.

Commissioner Brady observed that the robot also increases the time officers

have to make decisions; it actually enhances the humanity in crisis situations. He asked about the armored vehicle. Deputy Veracruz said that the team has access to an armored vehicle through the City of The Dalles, but it is not administratively at the disposal of the team. They are trying to fund a vehicle through NORTAC.

Commissioner Brady observed that some robots are designed for bomb response. Deputy Veracruz stated that Portland has a fleet of such robots and augments tactical teams in the area.

Chair Kramer stated his full support for this application. He said he is pleased to see these jurisdictional relationships that will make us all safer.

**\*\*\*The Board was in consensus for Emergency Management to move forward with an application for funding to acquire a tactical robot for the Northern Oregon Regional Tactical Response Team for counter-terrorism and emergency response.\*\*\***

**Discussion Item – Parks and Recreation Grant Application Support**

Administrative Services Director Ali Postlewait reviewed the memo included in the Board Packet.

Commissioner Brady asked if the funding will be for both planning and construction. Ms. Postlewait replied that there is already infrastructure as well as a design for the project. This will fund the continuation of the work.

Commissioner Brady asked that since this is an existing project, will it still require scenic area approval. Mr. Stone replied that we are going through a conditional use permitting process.

**{{{Chair Kramer moved to approve Resolution 24-002 authorizing Wasco County to apply for a Local Government Grant from the Oregon Parks and Recreation Department for the improvement of an RV park at the 159-acre County-owned property and authorizing the Director of Administrative services to sign the application. Commissioner Brady seconded the motion which passed unanimously.}}}**

**Agenda Item – Code Compliance Updates Direction**

Planning Director Kelly Howsley-Glover reviewed the education slides of the presentation included in the packet.

## Brief History

- **1955:** First LUDO (Zoning Ordinance). Fines \$100/day/violation. Matters went to Courts.
- **1970:** Enforcement conducted by Planning staff.
- **1986:** Columbia River Gorge National Scenic Area Act passed in Congress
- **1989:** Development of Chapter 15. Citations issued by PD or Sanitarian. Fines \$100 day/violation. Failure to appear at court resulted in an arrest warrant.
- **2004:** Planning Department presented to the County Court issues with addressing complaints without an FTE
- **2006:** A shared FTE between Planning & Public Health was trialed
- **2008:** County funded first FTE to address both public health and land use violations
- **2009:** First WCCCNAO was adopted
- **2012:** WCCCNAO amended
- **2016-2018:** Abatement Assistance Program

## Process to Combine Nuisance and Land Use Violations

- Joint effort between Public Health and Planning
- A Citizen Advisory Group was formed, four regional work sessions in 2007
- Countywide Public Notice
- Stated goal was to reduce citizen frustration with enforcement
- “Given the commitment to have a unified position, it was decided a unified nuisance ordinance would be more consistent and effective than the three ordinances required to currently implement both health and land use code compliance.”

- Clearly stated voluntary compliance goals
- Complaint aspect incorporated into the decision tree
- We still retain enforcement in both LUDOs, as well as revocation of CUPs

## Status of Current Program

- Re organized the program in 2020
- Eliminated anonymous complaints, based on data
- Nuisance cases take an average of 6 years to resolve
- Instituted a three tier priority schedule to reprioritize land use violations

Ms. Howsley-Glover explained that enforcement and abatement are the last resort. There is a complaint process with overlapping authorities which is why the ordinance is not more specific that we only react to complaints. With Land Use violations and NSA requirements, there are times when action must be taken without a complaint filed. She went on to say that we have seen a lot of turnover in this position due to the nuisance items that we do not have the capacity to address. We lowered the priority for those issues. Anonymous complaints were usually unfounded so we no longer accept those.

Ms. Howsley-Glover reviewed the proposed Triage Schedule:

**Priority 1 Violations: Land use activities that impact environmental/natural resources, pose significant health and safety issues, or involve structures under construction that do not meet standards.**

- Floodplain/drainage/wetland/riparian area disturbances (illegal crossings, development, grading, etc.)
- Dwellings or other structures without a permit
- Violations of conditions of approval for development permits
- Overgrown vegetation or violations of Fire Safety standards/defensible space

**Priority 2 Violations: Land use or nuisance activities that pose health/safety issues or involve development that does not meet standards.**

- Grading without permits
- Commercial/industrial/recreation activities without permits (includes home occupations, agricultural buildings converted to nonagricultural uses)
- Outdoor parking or storage of five or more operable vehicles

**Priority 3 Violations: Nuisance violations that pose potential health and safety hazards.**

- Junk accumulation
- Trash accumulation

## Prioritization

Violations will be addressed accordingly:

- a. Priority 1 Violations: 70% of staff time
- b. Priority 2 Violations: 20% of staff time
- c. Priority 3 Violations: 10% of staff time

Ms. Howsley-Glover explained that after changes were made to the prioritization of cases, the program went from an average of 60-70 open cases to 20-25 open cases at a time. We have successfully transitioned many from being out of compliance to getting a permit; this is good for them and good for the public. Our revisions are intended to continue this success by making it easier for staff and the public to understand the process. We are always trying to pursue voluntary compliance but in extreme cases, we need the enforcement tools.

Codes Compliance Officer Ted Palmer continued to review the presentation slides with a history of the case load.

## Program in Action

- Average 20 new cases per year (last 5 years), with average case load of 60 cases

### **First 5 years of program under WCCCNAO**

- Between 50 – 100 cases per year

### **Land Use vs. Nuisance (last 5 years)**

- Average of 10 land use cases per year
- Average of 8 nuisance cases per year

### Land Use

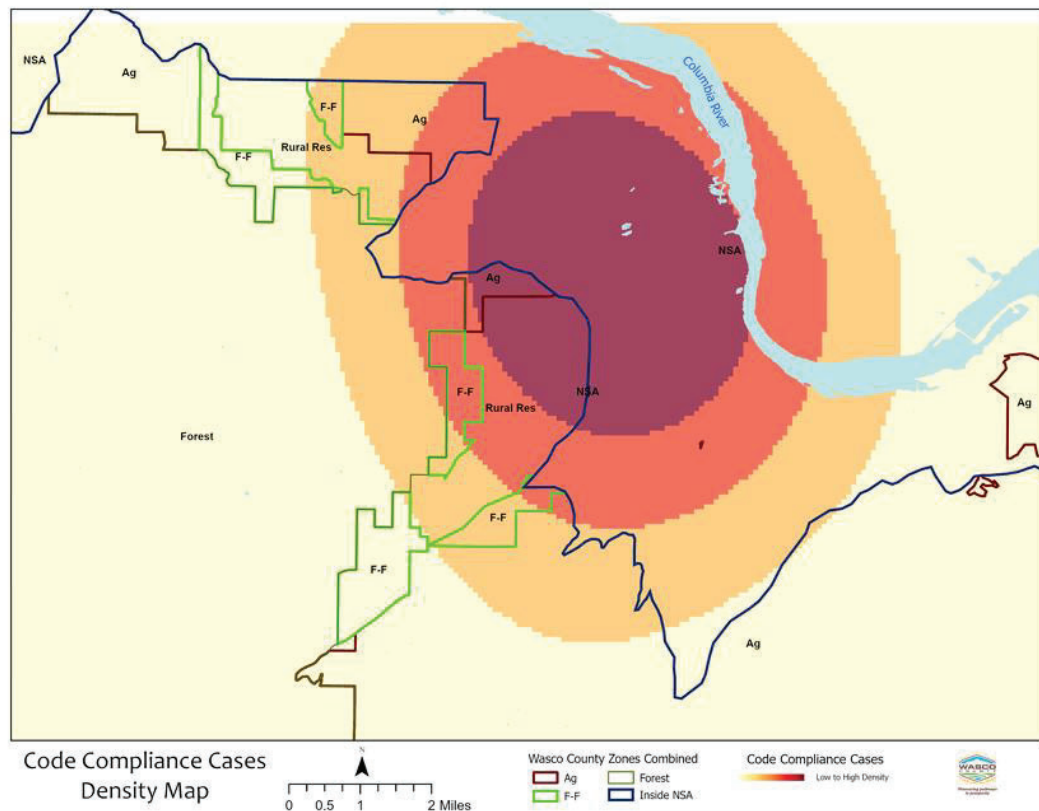
- Average 1.5 years to resolution
- Two long-standing cases, 4 years/10 years

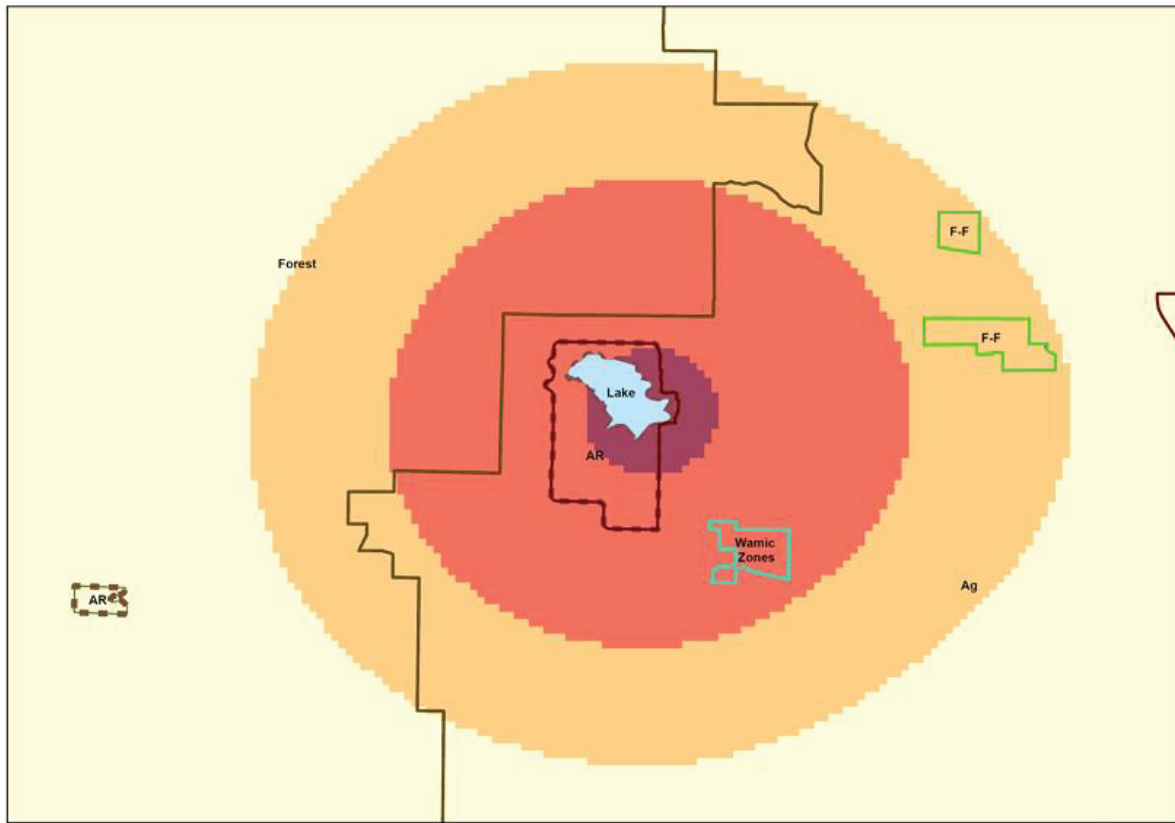
### Nuisance

- Average 1 year to resolution
- Five long-standing cases, 3yrs/10-13 years

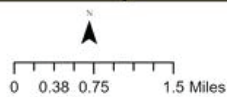
Mr. Palmer noted that the general concentration of complaints are in more populated areas where impact to neighbors is greater.

## Location and Zoning





Code Compliance Cases  
 Density Map



Wasco County Zones Combined

AR	Forest
Ag	Lake
F-F	Warric Zones

Code Compliance Cases  
 Low to High Density



## Defensible Space Standards

### Section 10.120 - Defensible Space - Clearing and Maintaining a Fire Fuel Break

#### DEFENSIBLE SPACE



Fire Fuel Break Includes: Irrigated fire resistant domestic plantings, low volume slow burning plantings, and trees encouraged to provide shade and ground cooling. Trees should be grouped. Groups of trees shall be spaced to avoid creation of a continuous tree canopy. Trees shall be kept in healthy fire resistant condition. Trees shall be limbed up to create a vacant area between ground fuels and canopy fuels. Under story vegetation shall be minimized and ground cover shall be kept trimmed low to the ground.

#### Is your building surrounded by a 50-foot wide fire fuel break?



Fire Fuel Break Area Plan View  
 Illustration



Fire Fuel Break Area Sample

#### MAINTENANCE STANDARDS FOR FIRE FUEL BREAK AREA:

- Ground cover maximum 4 inches tall;
- Trees limbed up approximately 8 feet from the ground,
- Trees kept free from dead, dry, or flammable material;
- Ladder fuels must be removed;
- No shrubs or tall plants under trees;
- Shrubs only in isolated groupings that maximize edges of ornamental beds to avoid continuous blocks of ground fuel;

**DEFENSIBLE SPACE 10.120/11.120** – Please show building location(s) including a boundary for the 50 foot fire fuel break boundary on the site plan. Information shall be sufficient to demonstrate the following:  
**NOTE: Select either A or B.**

A. You have identified site(s) for the proposed building(s) that allow for a full 50 foot fire fuel break either on the parcel or by easement over the necessary portion of an adjoining parcel;

☐ Yes – Comment ☐ No, See Attached Fire Safety Plan

B. Your property is located in an exception area or smaller lot residential zone and building(s) are located to accommodate a 30 foot fire fuel break where a full 50 foot fire fuel break cannot be provided for.

☐ Yes – Comment ☐ No, See Attached Fire Safety Plan

Mr. Palmer reviewed the defensible space standards and provided examples of overgrowth that creates a fire hazard:



Mr. Palmer went on to explain that uncovered abandoned vehicles create a hazard as do tires due to deterioration.





Mr. Palmer reviewed the various updates that could be made to the Ordinance:

## Optional Updates

- **Environmental Violations**
  - Overgrown Vegetation and Grading
  - Enforceable through LUDOs
- **Updated “Purpose”**
  - Appropriate use of land
- **Updated/Added Definitions**
  - “Disabled Vehicle”
  - “Firewood”, “Firewood, Useable”
- **Condensing of Solid Waste/Junk Nuisances**
  - Retain current language with minor revisions

## Substantive

- **Scope: Solid Waste provisions applying to all Wasco County**
- **Modified Enforcement Authority**
- **Daily Penalties**
- **Changes to Solid Waste and Junk Nuisances**
  - Firewood, pallets, number of allowed tires
- **Vehicle Storage**
- **Changing 15-day Appeal Timeline**

## Non-Substantive

- **Restructuring Definitions**
- **Renumbering of Sections**
- **Restructuring Sections For Clarity**
  - Example- 2.025(B) Vehicle Storage

Ms. Howsley-Glover reviewed 4 proposed alternatives to move the update process forward:

## Alternative 1: No Action

Pros	Cons
Pause the process for more public input	Does not address citizen and BOCC concerns about enforcement/abatement
	Procedure still unclear/problematic
	Does not incorporate legal review recommendations

## Alternative 2: Proceed with Current Draft, remove only optional additions

Pros	Cons
Address citizen & BOCC enforcement concerns	Outstanding citizen concerns
Address legal review concerns	Will necessitate future updates
Makes transparent enforcement and abatement procedures	
Strengthens nexus to existing plans	
Little added cost	



## Feedback Classification

Non Substantive/Non Programmatic	Substantive/Programmatic
Clarify case initiation*	Agricultural exemptions
Improve clarity around some language/definitions	Evaluate/address existing violations like: firewood, vehicles, fill dirt
	Modifying appeal period
	Modifying enforcement authority
	Modifying abatement notices

## Alternative 3: Make Non-Substantive Edits

Pros	Cons
Offers more clarity on several items	Additional delays on enforcement
	Added cost



## Alternative 4: Make Substantive Edits

Pros	Cons
Expanded public input	3-5 year to adoption
Establish a new TAC	Opens up entire document to varied feedback
Could eliminate the need for more regular updates	Requires CRGC concurrence (more hearings)
	High cost (min. \$25k, not including staff time)

Ms. Howsley-Glover summarized by saying that #1 would leave us with the same issues that motivated an update. #2 would allow us to proceed with the removal of only the optional additions and would require future updates; the timeline would allow for more education and could come back to the Board in June or July.

#3 would allow for non-substantive edits to include language review, environmental violations, etc. It will create additional delays and increased costs and would come back to the Board in December or January.

#4 would strip down the ordinance and start from scratch for a 3-5 year timeline for adoption. There will be some who want more regulations and more rules. A new advisory group would need to be formed to include Public Health, Fire Departments, Emergency Services, Soil and Water, etc. This option would come at a high cost - \$25,000 or more not including staff time. We would also need Gorge Commission concurrence. They would like for it to be more proactive to not require complaints before action is taken. We would need to go through the Planning Commission, the County Board of Commissioners, the Gorge Commission, and the U.S. Secretary of Agriculture.

Chair Kramer said he thinks we need to move forward to keep our county one of the best in the state. There may have been some overreaction to the proposed changes. He reported that he met with a partner agency that is looking to do some of these same things but were more proactive. He said he agrees with the intent and believes we need these updates. We need to get the most egregious

cases cleaned up. We are not talking about the farm equipment; we are trying to make it so we can all live civilly in a clean county. He said he would support Alternative #2. He noted that we will see disabled vehicles come back through the legislature in 2025.

Commissioner Brady thanked staff for responding to the Board's requests. He asked why it is important that vehicles be kept under cover. Mr. Palmer replied that they need to be protected to prevent deterioration.

Commissioner Brady said he thinks we need to keep the process moving forward and better clarify the enforcement procedures. He said he would support option #3 but is open to discussion. It is a reasonable time frame and takes advantage of the work that has been done.

Chair Kramer added that disabled vehicles have hazardous waste in them – we need to keep an eye on that. We all want clean air and water. Option #3 slows down the process of our enforcement of the most egregious cases. A picture was shared of one such case:



Vice Chair Hege said he understands the concerns; in reading the ordinance, he himself is a violator. However, this picture is an example of what we are trying to address. It is not a pile of firewood or used tires. We are trying to deal with the egregious items. We have no interest in chasing down random piles of wood. He said that based on feedback from neighbors, they want us to do our job and fix

this kind of issue. The ordinance we have now allows us to do a lot as long as the violator voluntarily complies. They may not have the means to comply or may be struggling with mental health or addiction issues.

Vice-Chair Hege asked if anyone can know the location of the 10-20 active cases. Ms. Howsley-Glover said that they do not broadcast the information; they try to be sensitive to both the property owner and the complainant. However, the information is discoverable under the Freedom of Information Act.

Vice-Chair Hege said that our goal is to help the citizens. Most of them want the help; but some will just not comply. He asked if all of the pictures in the presentation are from Wasco County. Ms. Howsley-Glover said they tried to not use pictures that would be easily identifiable. Some are from Wasco County; others are illustrative and close to what we have here.

Vice-Chair Hege said that what is important is that some farmers use tires in their operation and some have infrequently-used vehicles – that is not what we are talking about. We are talking about decaying equipment. If you look at the map, you would see that most of the cases are near The Dalles. Ms. Howsley-Glover said that we get a lot within the urban growth boundary of The Dalles. Most are within areas with intense population density such as Rowena, Pine Hollow, etc.

Chair Hege asked about the substantive changes. Ms. Howsley-Glover explained that these are things they heard from the public need to be changed.

Chair Hege observed that the rules around tires and junk have been in our ordinance for decades and we are not changing that. Ms. Howsley-Glover concurred saying that the public health issues come from our Solid Waste Ordinance.

Chair Hege commented that when he started reading about the unstacked firewood and tires in the Ordinance, he was also concerned. However, the fact is that it has not been a problem unless there is a complaint. We would not pursue it because it is not egregious. He said that in part he would like to see this move forward expeditiously. Whatever we do, we want people to be more comfortable that these issues are not concerns. We need to be able to address the egregious cases in less than the 10-year timeline we are seeing now. Even with all the changes, it will still be a long, laborious process.

Commissioner Brady said that he recognizes the picture which is from a property located on route to the Fair Grounds; this becomes a visitor issue. Most of the cases are for people who have a weakened ability to respond. He said he likes both options #2 and #3. He said he appreciates the need for an expeditious process but would like to see the 6-month option for a more robust process.

Vice-Chair Hege concurred saying that another 6 months will not hurt. The one thing that is not clear is if there will be input allowed along the way. Ms. Howsley-Glover explained that citizens are always welcome to provide feedback in writing or in person. There is a portal on our website that allows citizens to connect with a Planner. We have a tool we can use for citizens to review and comment on draft documents. Her plan would to have it open for public review for 1 or 2 months. Legal review could shorten that timeline, but that would be the goal.

Vice-Chair Hege reported that near where he lives a homeless camp grew – it was substantial. Mr. Palmer worked with the property owner to resolve the situation; over a period of months, it was all cleaned up. He said that Mr. Palmer is easy to work with; if you have questions or concerns, talk to him.

Commissioner Brady said he would like to hear Chair Kramer's views on Option #3. He stated that if we move forward with that option, he would like to see an interim report before January on the progress in Chapters 3 & 4. Ms. Howsley-Glover said she thinks that is something they would be able to do.

Vice-Chair Hege opened the floor to public comment:

Eric Schmid asked why, since there are only a few egregious cases, the ordinance does not target issues of that nature. Mr. Howsley-Glover replied that those are their current focus. To unwind the entire ordinance would take many years. What we are doing now is done with an eye toward capacity.

Lanny Matier said we need to stay in line with the founding fathers and what the constitution says. If we do not have private property, we do not have freedom. If you see something you do not like, you can look away. We cannot tell one another how to live. Where do you draw the line?

Matt Chaisson said these kinds of ordinances are clear violations for private property use. He said he has a hay farm and a creek that this ordinance will prevent me from crossing. If we give you an inch, you will take a mile. Eventually, it will get to your wood pile and 5 tires. Checks and balances will need to be put in place and have a committee with citizens. He said he would choose option #4 – scrap the whole thing. He asked if you have to be a resident of the County to file a complaint. He said that this county has a lot of fixed income people who may not be able to clean up; there needs to be some assistance in place.

Vice-Chair Hege noted that this ordinance has been in place for decades and that has not been the practice.

Steve Ronfeld asked if a nuisance is not seen from the road, is it still a nuisance and still considered a health hazard.

Vice-Chair Hege asked for staff to address the creek crossing and residence status. Ms. Howsley-Glover said that they had an instance of people who were driving through a fish-bearing creek; that would be a violation. We would want to see a bridge. We have no restrictions on the submission of complaints except that they cannot be anonymous. In 70 years, we have not had a complaint that came from outside the county.

Vice-Chair Hege agreed that with a complaint driven system, out of sight/out of mind is true. Mr. Ronfeld commented that you could have a health issue without it being addressed. Ms. Howsley-Glover stated that nuisance cases are complaint driven. We have enforced on cases that were reported by neighbors but not visible from the road.

Mr. Ronfeld pointed out that he could fly a drone over your house and determine that it is not in compliance and file a complaint.

Marilyn Clifford said she wonders if there are squatter's rights. She said that the clock starts from the time a notice is mailed rather than when it is received. If someone does not receive it because they are away or the address is wrong, they could be in violation before they are ever notified. She said she would like to see what the letter looks like – it may look like junk mail. She pointed out that it took them 7 years to get rid of the tires they inherited when they bought their property. She said she has yet to find out what the maximum penalty is. She said she does believe that the county wants to work in good faith with citizens.

Vice-Chair Hege said he thinks many of these questions can be answered by meeting with Mr. Palmer.

**A citizen from Brown's Creek** stated that we have a lot of tourists and it would not be fair to accept complaints from outside the county. He said he would like to see the Board choose Option #3. He suggested that we use the Planning Commission to help with public input.

Kim Mead of Juniper Flat noted that it says this will apply to all of Wasco County. She asked if that includes Warm Springs. Ms. Howsley-Glover replied that we have no authority over the tribes.

Ms. Mead said that there are mixed messages; in Option #4 you say there is a chance of a lot of feedback as a con but you say you appreciate feedback. Vice-Chair Hege replied that what he thinks Ms. Howsley-Glover is trying to say is that there are people with views on all sides. There are people who want more

regulations. If it goes through the Gorge Commission for review, it broadens the input to others such as the Friends of the Gorge. We do want to hear from our citizens.

Vice-Chair Hege pointed out that if the Board chooses Option 3, it doesn't mean that at the end of that process, we could not decide to go further with Option 4. He thanked the citizens for their participation.

Commissioner Brady asked what happens if something is a nuisance and not seen. Ms. Howsley-Glover replied that if there is something like a meth lab, the Sheriff's Office would become involved.

Vice-Chair Kramer stated that he is not in favor of Option 3 – it puts us another year out. There is another fair before this would conclude.

Commissioner Brady asked if Option 3 will put a hold on work for cases. Ms. Howsley-Glover said that it will not, but it is difficult with the enforcement ordinance we currently have.

**{{{Commissioner Brady moved to direct staff to pursue Option 3 with an interim report on the enforcement and abatement process. Chair Kramer seconded the motion. Commissioner Brady voted aye; Vice-Chair Hege voted aye; Chair Kramer voted nay. The motion passed.}}}**

#### Public Comment

Little League President Katie Kelly thanked the Board for hearing their concerns and taking them seriously. She said that collaboration between the leagues and the County has improved the space at Kramer Field; she feels confident that the County is the partnership they need as they cannot correct the issues on their own. She invited the Board and county staff to attend opening ceremonies at 9 a.m. on April 6<sup>th</sup>. She went on to describe some of the activities that will take place on that day.

#### Agenda Item – Veterans Service Office Updates/Liaison Appointment

Wasco County Treasurer Elijah Preston reviewed the material in the Board Packet, reading the summary of HB2147:

Directs governing body of each county to designate person to ensure interment of unclaimed human remains of veteran or survivor of veteran. Limits civil liability except for gross negligence.

Requires certain funerary entities in possession of unclaimed human remains of veteran or survivor of veteran, under certain circumstances, to release human

remains and associated veteran status information upon request to veterans' remains coordinator, notify county veterans' service officer and apply for state or federal benefits.

Limits civil liability for release of veteran status information except for gross negligence.

Authorizes certain funerary entities in possession of unclaimed human remains of veteran or survivor of veteran to cremate, reduce or inter unclaimed human remains under certain circumstances.

Directs county veterans' service officer to report information about veteran or survivor of veteran to United States Department of Veterans Affairs. Requires county veterans' service officer to establish and maintain list of reported information and to make information available upon request to veterans' remains coordinator.

Mr. Preston explained that one county had accumulated many boxes of unclaimed veterans' remains, which is what prompted this legislation.

Commissioner Brady asked who covers the expenses. Mr. Preston replied that he believe the Department of Veterans Affairs covers that with Willamette National Cemetery taking on the actual burial. He stated that in most cases, the mortuary covers the cost of transportation; but he would be willing to transport to Willamette.

**{{{Commissioner Brady moved to approve Order 24-008 appointing Elijah Preston to serve as Wasco County's Veterans Liaison for Unclaimed Remains. Vice-Chair Hege seconded the motion which passed unanimously.}}}**

Mr. Preston reported statistics for the Wasco County Veterans Service Office from last March until now:

- Brought in \$604,524.97 new federal dollars to Wasco County residents, including \$436,821.86 in retroactive lump sum payments.
- 105 New disability claims
- 7 new survivor claims
- 53 Appeals of all levels
- 52 Power of Attorney forms for new clients and 23 renewals
- Held 3 hearings with a federal law judge with the Board of Veterans' Appeals

Mr. Preston added that during the majority of this timeframe, Veterans Service Officer Russell Jones has been working by himself. We recently hired Chelsea Perritt to assist in that office.

Vice-Chair Hege pointed out that many of these are ongoing payments rather than one-time payouts.

**Work Session – Information System Partner Services/CGCC Agreement**

Information Services Director Andrew Burke reviewed the information included in the Board Packet saying that this is an opportunity to look at how IT works in our community. IT is difficult to staff – it can be expensive and it is hard to attract employees. He said another thing to think about is materials and services. He reported he has recently been negotiating with Critical Insights; because he could bring two agencies in, he was able to get a significant discount.

Mr. Burke stated that on the 3<sup>rd</sup> page of his memo is an outline of what this could look like when adding other entities. We can look at software support, database systems, information sharing, network administration, telecommunications, etc. These are key disciplines. By building them out as pipelines that others can buy into, it creates a contribution matrix to support the work. Wasco County alone cannot support the role, but with just one other agency, we can do that. Enterprise IT will enhance our capability to deal with the digital information age and into the future of AI. We have to be prepared, build solutions, and protect against cyber-attacks.

Commissioner Brady thanked Mr. Burke for the thorough report. He asked what happens if we add Columbia Gorge Community College; will that mean staff will serve more people so we will get less service. Mr. Burke responded that that is a key concern. Each agency will have help desk onsite employed by that agency. MCCFL currently has 2 and will be adding a 3<sup>rd</sup>. Those are the easy-to-fill positions. In this way, we can maintain a high-quality service level. The more key skilled positions require education, experience, and developed skill sets. CGCC wants to buy into a network administrator position. We look at capacity against cost. If we need 3 network administrators, we spread that cost based on use through a calculated contribution rate. Another advantage is to ease employee transition periods. For instance, MCCFL recently had an employee leave; we were able to support them through the transition to a new employee.

Commissioner Brady asked how the management structure will work. Mr. Burke replied that it will also be capacity-dependent – how many employees can Mr. Burke supervise. He said he has created a supervision model and we may need supervisors within a pipeline. Right now we have 4 on service desk; we need to

budget a supervisor for that pipeline.

Commissioner Brady asked where the funds to support that will come from. Mr. Burke replied that we have the budget, but the partners will contribute. The cost for the help desk services will remain with each agency. That is scalable and collaborative.

Commissioner Brady asked about equipment. Mr. Burke said they are working on a “network box” so we can plug in and unplug more easily. We have designed an enterprise system. We are currently upgrading our phone system. MCCFL will have their own hardware; the County will provide oversight and management of that system. They would not have had the capacity to do that on their own. If they choose to unplug, they would take on the management themselves. That will be true for all of the pipelines.

Chair Kramer said he approves of this; it is good for our community. We have talked about it for a long time.

Vice-Chair Hege agreed saying that it has worked well and provides an economy of scale. We can do more at a lower cost.

Mr. Burke said that CGCC has had a network position posted for some time and it is difficult to attract key talent. We have John Adams and Dennis Zipprich who we have been able to hold on to. The CGCC IGA will provide leadership and network administration support for \$134,000 annually. This is a 3-year agreement with an option to renew. Personnel costs come to us. They can buy the materials and services directly or enter into another agreement with us for those items.

Vice-Chair Hege asked if this agreement is similar to the one we have with MCCFL. Mr. Burke replied that it is more detailed and under an enterprise IT model which is where we are headed. Vice-Chair Hege noted that the Education Service District used to do something similar.

**{{{Commissioner Brady moved to approve the Information Services Master Agreement between Wasco County and Columbia Gorge Community College. Chair Kramer seconded the motion which passed unanimously.}}}**

**\*\*\*The Board was in consensus for the IS Director to move forward with the Enterprise Model for community partner IT services.\*\*\***

Discussion Item – Museum Appointment
--------------------------------------

Ms. Clark explained that the Museum Commission has a vacancy; they reviewed Ms. Telfer’s application at their last meeting and are recommending her

appointment.

**{{{Chair Kramer moved to approve Order 24-007 appointing Barbara Telfer to the Wasco County/The Dalles Museum Commission. Commissioner Brady seconded the motion which passed unanimously.}}}**

#### Discussion Item – Finance Report

Finance Director Mike Middleton reviewed the report included in the Board Packet. He noted that he will return at a future session for a Fair Fund budget change.

#### Consent Agenda – 3.6.2024 Regular Session Minutes

**{{{Chair Kramer moved to approve the Consent Agenda. Commissioner Brady seconded the motion which passed unanimously.}}}**

#### Commission Call

Commissioner Brady reported that there were good meetings during his recent trip to Washington D.C. with the Community Outreach Team. There were some successes. For instance, Washington State Representative Cantwell looked at the airport hangar project and told her staff to get it done.

He said that during that trip he spent some time with City of The Dalles Economic Development Officer Dan Spatz; they talked a lot about urban renewal which is a complex subject. He said he would be interested in forming a task force to look at what has been, what could be, and how to provide information to the public. Chair Kramer encouraged him to look at the original purpose of urban renewal to confirm that it is operating as intended. He suggested that County Assessor Jill Amery could help with that.

Chair Kramer said he would like to have a work session regarding North Central Public Health District (NCPHD). He pointed out that we do not have an updated IGA; they are contracting for a sanitarian; and they are contracting with an ex-employee for environmental health. We need a sanitarian to review our Outdoor Mass Gathering applications. He said he would like to have more details. Public Health is a county responsibility and he wants to make sure we are meeting our statutory obligations. He said he does not understand why we are not hiring another Environmental Health Supervisor rather than contracting with someone who already has a full-time job with DEQ.

Commissioner Brady asked if a report from NCPHD would be satisfying. Chair Kramer said it would help; we used to get updates from them.

Vice-Chair Hege adjourned the meeting at 11:49 a.m.

## Summary of Actions

### MOTIONS

- **To approve Resolution 24-002 authorizing Wasco County to apply for a Local Government Grant from the Oregon Parks and Recreation Department for the improvement of an RV park at the 159-acre County-owned property and authorizing the Director of Administrative services to sign the application.**
- **To approve Order 24-007 appointing Barbara Telfer to the Wasco County/The Dalles Museum Commission.**
- **To approve the Consent Agenda: 3.6.2024.2024 Regular Session Minutes.**
- **To approve Order 24-008 appointing Elijah Preston to serve as Wasco County's Veterans Liaison for Unclaimed Remains.**
- **To approve the Information Services Master Agreement between Wasco County and Columbia Gorge Community College.**
- **To direct staff to pursue Option 3 to update the Codes Compliance Ordinance with an interim report on the enforcement and abatement process.**

### CONSENSUS

- **For Emergency Management to move forward with an application for funding to acquire a tactical robot for the Northern Oregon Regional Tactical Response Team for counter-terrorism and emergency response.**
- **For the IT Director to move forward with the Enterprise Model for community partner IT services.**

Wasco County  
Board of Commissioners

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Steven D. Kramer, Commission Chair

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Vice-Chair Hege C. Hege, Vice-Chair

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Philip L. Brady, County Commissioner



## EMERGENCY MANAGEMENT

511 Washington Street , Suite 102 • The Dalles, OR 97058

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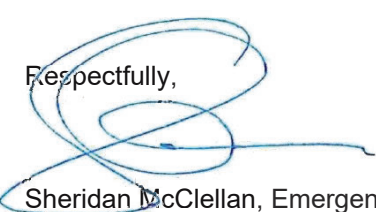
Board of County Commissioners  
511 Washington St . Ste 302  
The Dalles, OR 97058

### Homeland Security Grant 23-216 Closeout

Each year Oregon receives funding from the Federal Government that supports the State Homeland Security Program. The State Homeland Security Grant Program (SHSP) supports implementation of state homeland security strategies to address planning, organization, equipment, training, and exercises (POETE) needed to prevent, prepare for, protect against, and respond to acts of terrorism and other catastrophic events. For the FY22 SHSP grant cycle, the Oregon Office of Emergency Management allocated a base amount of \$25,407 and a population-based amount (\$0.272 per capita) to each county. Wasco County received an allocated amount of \$32,603.74 composed of a base amount of \$25,407 and an additional \$7,196.33 based on the population.

Wasco County's allocated amount was spent on the 3<sup>rd</sup> phase of the Wasco County Communications upgrade. The upgraded communications equipment purchased with this grant consisted of six portable dual band XL 200p LTE radios. These radios are part of a larger project in upgrading all of Wasco County Sheriff's Office radios from single to dual band radios. A total amount of \$31,907.59 was expended of the Homeland Security Grant 23-216.

Respectfully,



Sheridan McClellan, Emergency Manager  
Wasco County Emergency Management  
Email: [sheridanm@co.wasco.or.us](mailto:sheridanm@co.wasco.or.us)  
Phone: 541-506-2790



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### Resilience Hubs and Networks Grant application

The Resilience Hubs and Networks Grant was funded by the Oregon State Legislature through House Bill 3409 Section 86 and its purpose is to support the needs of community members or tribal communities, facilitates gathering and communication, distributes resources and otherwise enhances quality of life within a community. Oregon Department of Human Services received 10 million dollars for Resilience Hubs and Networks and is now soliciting for applications.

Wasco County Emergency Operations Plan (EOP) is in need of an update and a revision. The Wasco County Emergency Management Department would like to take the opportunity in applying for the Resilience Grant to update the EOP. This will give the Emergency Management Department the opportunity to integrate the cities and unincorporated communities into one robust plan, which will also include city and community specific annexes and evacuation plans for each area. Our current plan only has a basic plan and general annexes for the Emergency Support Functions and does not include the cities and unincorporated communities of Wasco County.

A statement of work (Enclosure 1) and a solicitation for quotes was send out Stantec (enclosure 2), WSP Consulting Firm (Enclosure 3) and Fair Winds Consulting (Enclosure 4). Two quotes were received with WSP Consulting Firm withdrawing from bidding. After careful consideration and with the consultation from Sheriff Magill, it was determined to utilize the quote received from Fair Winds Consulting as the winning bid due to the lower cost and local knowledge and connections.

Respectfully,

  
Sheridan McClellan, Emergency Manager  
Wasco County Emergency Management  
Email: [sheridanm@co.wasco.or.us](mailto:sheridanm@co.wasco.or.us)  
Phone: 541-506- 2790

Enclosure 1 – Statement of Work  
Enclosure 2 – Stantec Quote  
Enclosure 3 – Email from WSP Consulting Firm  
Enclosure 4 – Fair Winds Consulting  
Enclosure 5 – Support Letters



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Subject: Statement of Work for Revision of Emergency Operations Plan

### Project Overview:

This Statement of Work (SOW) outlines the scope, objectives, deliverables, and timeline for the revision of the Emergency Operations Plan (EOP). The purpose of this project is to update and enhance the existing EOP to ensure its effectiveness in responding to emergencies and disasters. The revision will incorporate best practices, lessons learned, and changes in the organizational structure or environment since the last update.

### **\*\*Project Objectives:\*\***

1. Review the current Emergency Operations Plan to identify strengths, weaknesses, and gaps.
2. Collaborate with key stakeholders, including emergency response teams, relevant authorities, and department heads, to gather input and insights.
3. Research and incorporate industry best practices, regulatory requirements, and technological advancements relevant to emergency management.
4. Update the plan to reflect changes in the organizational structure, personnel, and facilities.
5. Combine The Dalles EOP and Wasco County EOP Basic Plan and ESF to be adopted by all parties.
6. **Incorporate a city specific annex/addendum for each city/town jurisdiction (Mosier, The Dalles, Dufur, Maupin, Shaniko, Antelope), for specific incidents unique to the jurisdiction that is not covered by the basic plan and ESF's**
7. Include a Critical Facility section for those facilities that are solely within urban jurisdictions, and a separate Critical Facilities list for facilities that are within Wasco County's jurisdiction.
8. Include an evacuation plan for each incorporated (including Towns and cities (maybe in city specific annex) and unincorporated areas
9. Ensure alignment with national and local emergency management frameworks.

10. Enhance communication strategies within the plan, including internal and external communication protocols.

11. Develop and implement a training program for relevant personnel on the revised Emergency Operations Plan.

12. Develop job sheets specific to each ICS position for incorporation into the Emergency Operations Plan.

**\*\*Deliverables:\*\***

1. Gap analysis report highlighting weaknesses and areas of improvement in the current EOP.
2. Updated Emergency Operations Plan document reflecting changes, enhancements, and additions.
3. Documentation of stakeholder consultations, including feedback received and incorporated into the plan.
4. Training materials and documentation for the education of relevant personnel.
5. Tabletop exercise to test parts of the EOP.

**\*\*Timeline:\*\***

1. Project Kickoff: [Insert Date]
2. Gap Analysis and Stakeholder Consultations: [Insert Date Range]
3. Draft Emergency Operations Plan: [Insert Date]
4. Review and Feedback Period: [Insert Date Range]
5. Finalize Emergency Operations Plan: [Insert Date]
6. Develop Training Materials: [Insert Date Range]
7. Training Sessions/Exercise: [Insert Date Range]
8. Project Closure: [Insert Date]

**\*\*Roles and Responsibilities:\*\***

- **\*\*Project Manager:\*\*** Oversees the entire project, coordinates activities, and ensures adherence to the timeline.
- **\*\*Emergency Management Team:\*\*** Collaborates with the project team, provides input, and reviews the draft and final versions of the EOP.
- **\*\*Stakeholders:\*\*** Participate in consultations, provide feedback, and ensure representation of their respective departments.

**\*\*Budget:\*\***

The budget for this project includes personnel costs, materials, and any external resources required. A detailed breakdown will be provided upon request.

**\*\*Quality Assurance:\*\***

The revised Emergency Operations Plan will undergo a rigorous review process to ensure accuracy, completeness, and effectiveness in addressing potential emergencies and disasters.

**\*\*Approval:\*\***

This Statement of Work requires approval from the [Insert Appropriate Authority] before the commencement of the project.

**\*\*Confidentiality:\*\***

All information shared during the course of this project, including existing Emergency Operations Plan documentation and stakeholder feedback, will be treated with the utmost confidentiality.

**\*\*Change Control:\*\***

Any changes to the scope, timeline, or budget of this project must be documented and approved in writing by the project manager and relevant stakeholders.

By accepting this Statement of Work, all parties agree to abide by the terms and conditions outlined herein.

Sheridan McClellan, Emergency Manager  
Wasco County Emergency Management  
Email: sheridanm@co.wasco.or.us  
Phone: 541-506- 2790



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5. Combine The Dalles EOP and Wasco County EOP Basic Plan and ESF to be adopted by all parties.
6. **Incorporate a city specific annex/addendum for each city/town jurisdiction (Mosier, The Dalles, Dufur, Maupin, Shaniko, Antelope), for specific incidents unique to the jurisdiction that is not covered by the basic plan and ESF's**
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- **\*\*Emergency Management Team:\*\*** Collaborates with the project team, provides input, and reviews the draft and final versions of the EOP.
- **\*\*Stakeholders:\*\*** Participate in consultations, provide feedback, and ensure representation of their respective departments.

**\*\*Budget:\*\***

The budget for this project includes personnel costs, materials, and any external resources required. A detailed breakdown will be provided upon request.

**\*\*Quality Assurance:\*\***

The revised Emergency Operations Plan will undergo a rigorous review process to ensure accuracy, completeness, and effectiveness in addressing potential emergencies and disasters.

**\*\*Approval:\*\***

This Statement of Work requires approval from the [Insert Appropriate Authority] before the commencement of the project.

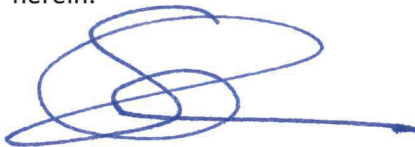
**\*\*Confidentiality:\*\***

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**\*\*Change Control:\*\***

Any changes to the scope, timeline, or budget of this project must be documented and approved in writing by the project manager and relevant stakeholders.

By accepting this Statement of Work, all parties agree to abide by the terms and conditions outlined herein.



Sheridan McClellan, Emergency Manager  
Wasco County Emergency Management  
Email: sheridanm@co.wasco.or.us  
Phone: 541-506- 2790



March 20, 2024

**Stantec Consulting Services Inc.**

601 SW 2nd Avenue, Portland, OR 97204

**Attention: Sheridan McClellan, Wasco County Emergency Manager**

511 Washington St. Suite 102  
The Dalles, OR 97058

**Reference: Proposal to Update the Wasco County Emergency Operations Plan, Develop City Annexes, and Conduct Tabletop Exercise**

Dear Mr. McClellan,

Oregon communities are faced with a range of potential disasters that can range from naturally occurring hazards (e.g., severe weather, flooding) to human-caused threats (e.g., hazardous materials spills, active assailants) that impact the people, property, and environment—and unfortunately, it is not a question of if, but when potential disasters may happen. A critical element of Wasco County's (County's) approach to maintaining a comprehensive emergency management program is the development of an Emergency Operations Plan (EOP) that describes how County departments and partners should coordinate and communicate to effectively respond to and recover from these events. Maintaining a current and functional EOP supports the County by establishing mutually understood roles, responsibilities, and operational concepts. Additionally, regular updates of the Wasco County EOP would ensure eligibility for certain grant programs and compliance with state and federal planning requirements.

**We are leaders in EOP development.** The Stantec team is invested in continuing to level up EOPs in Oregon and our project team has worked with Oregon communities since 2008. Our team recently completed updates to EOPs for Clatsop County (Warrenton and Gearhart), Douglas County, Josephine (inclusive of the cities of Grants Pass and Cave Junction), Malheur County, and the Jackson County EOP. We understand the doctrine that guides EOP development, including Comprehensive Preparedness Guide (CPG) 101.

**We understand these communities, and their unique risk profile.** The Stantec team can hit the ground running on an update process that is supported by staff who, for a previous firm, supported development of EOPs across the State of Oregon, provided statewide technical assistance support for the 2016 Cascadia Rising Exercise, and led emergency fuel, mass care management and evacuation facility improvement planning for communities across Oregon.

**We have a local team ready to meet your timeline.** We understand this project is prioritized for completion in 2024. Our Portland-based Principal-in-Charge and Project Manager are available to begin work upon contract execution.

We would look forward to partnering with the County on this important project. Please do not hesitate to contact our proposed project manager, Zane Beall, with any questions regarding this proposal.

Respectfully,

**STANTEC CONSULTING SERVICES INC.**

**Matthew Lieuallen** JD  
Senior Principal  
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**Zane Beall** MPA  
Senior Associate  
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[Zane.Beall@stantec.com](mailto:Zane.Beall@stantec.com)

## About Stantec

Our Stantec Consulting Services Inc (Stantec) Oregon-based Ready and Resilient Communities team will be supporting you on this effort. We're proud of the quality of our work in Oregon and across the Western United States, but we're also proud Oregonians who want to make sure the local communities we support receive consultant perspectives that are rooted in local knowledge and culture. Our local team has supported many of your neighboring jurisdictions in projects varying from EOP development to fuel management planning, and mass care and shelter capability enhancement, to name a few. Our project management team has been there to support you and your partners for a decade, and we look forward to continuing our partnership with this update to your County EOP.

In addition to the benefits of being able to access subject matter experts across Stantec, you will be supported by the broader Stantec community that unites more than 22,000 employees working in over 400 locations across 6 continents. We collaborate across disciplines and industries to bring buildings, energy and resource, and infrastructure projects to life. Our work—professional consulting in planning, engineering, architecture, interior design, landscape architecture, surveying, environmental sciences, project management, and project economics—begins at the intersection of community, creativity, and client relationships.

## Project Understanding

An EOP update is more than an exercise in 'search and replace,' it is about leveraging lessons learned since the last update and continually improving the plan to meet the community's needs during a disaster. Through review of the current version of the Wasco County EOP and discussion with the Wasco County Emergency Manager, Stantec understands the following desired outcomes for this project:

- **Enhance Emergency Support Functions.** Key to an EOP is useful and useable content related to the roles of Emergency Support Functions (ESFs). Through a review of the County's current EOP, we have determined that the updated EOP would benefit from the integration of new guidance and best practices, as well as application of lessons learned from key partners.
- **Integrate with other planning efforts.** Wasco County has developed other plans and procedures that directly support the EOP. The updated EOP will integrate the learnings and operations outlined in recent efforts including the Local Emergency Planning Committee (LEPC) Plan, Natural Hazard Mitigation Plan (NHMP), and the Community Wildfire Protection Plan (CWPP).
- **Validate plan with key stakeholders.** A plan is only as good as your organization's ability to implement it. This means that it must be tested using realistic scenarios and bringing the right partners to the table. At Stantec we recommend including a tabletop exercise as a critical scope element to any successful emergency planning effort.

## Scope of Work for Wasco County EOP Update

The following scope of work outlines Stantec's path to success for update of the Wasco County EOP. This scope is based on our understanding of needs and is supported by a timeline and assumptions. We would welcome the opportunity to further refine this scope against your expectations, anticipated timelines, and resources prior to contract execution.

### 1 Project Kickoff and Scoping Workshop

#### KEY ACTIVITIES

1. Conduct a **Project Initiation Conference Call** with the Wasco County Emergency Manager

to address any outstanding contract issues, pre-plan for the Project Kickoff and Scoping Workshop, and facilitate data gathering.

2. Submit a **Data Request and Partner Capability Survey** to support information gathering from key stakeholders.
3. Conduct a **Project Kickoff and Scoping Workshop** with the Wasco County Emergency Manager and other key stakeholders. Key outcomes for this 2–3-hour workshop will include:
  - a. Introduction of project team
  - b. Validation of project management approach, project schedule, and key deliverables
  - c. Development of key metrics for project success
  - d. In depth review of existing EOP Base Plan to support priorities for the update
  - e. Co-design of an approach for a County-specific EOP annex
  - f. Co-design of an approach for stakeholder engagement to inform plan development
  - g. Confirm data received and any additional data gathering requirements
4. Develop a **scoping workshop summary** to be submitted within one week of the project kickoff and scoping workshop date.

## DELIVERABLES

1. Web-Based Data Request and Partner Capability Survey
2. Draft Workshop Materials including Agenda and PowerPoint Presentation
3. Scoping Workshop Summary

## ASSUMPTIONS

- The Wasco County Emergency Manager will be the primary point of contact for all project activities.

The County will provide electronic and editable versions of all relevant planning documents prior to the Project Kickoff and Scoping Workshop.

•

## 2 EOP Updates

### KEY ACTIVITIES

1. Conduct a **comprehensive update of the Basic Plan** for the Wasco County EOP with targeted updates being made to Emergency Support Function (ESF) annexes based on partner outreach. These updates may include the following:
  - a. Update plan authorities against the most current local, state, and federal authorities and guidance. For example, emergency fuel management should be addressed per the Oregon Fuel Action Plan, and emergency planning for water utilities should be addressed per America's Water Infrastructure Act.
  - b. Revise situational information based on the most recent hazard mitigation plan, capability assessment, and other relevant sources.
  - c. Validate roles and responsibilities against the County's current organization, resources, and capabilities.

- d. Include new mechanisms for communications, information sharing, intelligence gathering, and public information.
  - e. Integrate new plans and procedures developed since the last EOP update.
2. Develop a series of **Emergency Support Function (ESF) update worksheets** to support the Wasco County Emergency Manager in engaging primary and supporting departments. Worksheets will be designed and formatted in a user-friendly manner to support easy gathering of information and incorporation into the EOP.
3. Review, validate and update existing **Incident Annexes** to incorporate recent changes in potential hazards and capabilities to respond to hazard-specific incidents.
4. Travel to The Dalles (or another mutually agreed upon location) for an in-person **Draft Plan Workshop** with the Wasco County Emergency Manager and other key stakeholders. Key outcomes for this full day workshop will include the following:
  - a. Facilitation of a **2-hour Basic Plan work session** including validation of plan content.
  - b. Facilitation of three 1-hour **grouped ESF work sessions** as identified in the table below. These work sessions will be used to confirm information submitted through the ESF worksheets.

Emergency Services	Infrastructure Services	Health and Human Services
ESF 4 – Firefighting ESF 8 – Health and Medical (EMS) ESF 9 – Search and Rescue ESF 10 – Hazardous Materials ESF 16 – Law Enforcement	ESF 1 – Transportation ESF 3 – Public Works ESF 12 – Energy	ESF 6 – Mass Care ESF 8 – Health and Medical (Public Health) ESF 11 – Food and Water ESF 15 – Volunteers and Donations .

5. Update the Wasco County EOP Basic Plan, incorporating the results of the Draft Plan Workshop, and submit a **Draft EOP Basic Plan** for review and comment. This update will include targeted edits to ESF Annexes based on submitted worksheets.
6. Perform a **full technical edit** of the EOP Basic Plan (assuming no more than 100 pages) and submit a **Final Plan** for approval by the Wasco County Emergency Manager.

## DELIVERABLES

1. Draft and Final Wasco County EOP Basic Plan
2. Draft and Final ESF Worksheets (eighteen 2-page worksheets)
3. Draft and Final Incident Annexes
4. Draft Workshop Materials including Agenda and PowerPoint Presentation for work sessions

## ASSUMPTIONS

- The County will provide one consolidated set of comments on the Draft Plan using track changes and comments in Microsoft Word.
- ESF Annexes will be updated based on information provided through ESF worksheets. This will lead to validation of primary agencies, existing resources to support each ESF, and

refinement of any processes that may have changed since the previous update. The scope of work will result in an updated structure and will include technical editing.

- The County EOP will include resources, partners and communities in unincorporated jurisdictions within Wasco County, while the City Annexes will detail the resources, partners, and communities within incorporated jurisdictions.

### 3 City Annex Development

#### KEY ACTIVITIES

1. Based on the results of the Project Kickoff and Plan Scoping Workshop, develop a draft City Annex template that is designed to incorporate city-specific information into the County-level EOP. This template will be designed to support communities with limited resources to develop key elements of their Emergency Management Organization while recognizing their reliance on the County and reducing unnecessary duplication of plan content.
2. Based on information provided by the County and the three Cities, complete a **draft of the City EOP Annex for each of the five (5) incorporated Cities within the County**.
3. Upon finalization of the Draft City EOP Annexes, provide revisions and **final City Annexes**.

#### DELIVERABLES

1. Draft and Final City Annex Template
2. Draft and Final City Annexes (5)

#### ASSUMPTIONS

- The City Annex Template will be no more than 10 pages in length.
- No additional workshops beyond those described in Tasks 1 and 2 are envisioned for this Task. It is recommended that representatives from the selected city participate throughout the planning process.
- Evacuation plans will be incorporated directly into the City Annexes and will be developed in standardized structure across all participating jurisdictions, utilizing existing templates.

### 4 Tabletop Exercise

A Tabletop Exercise (TTX) will be conducted after the Draft Plan Workshop, but prior to submittal of the Final Plan (see Task 2).

#### KEY ACTIVITIES

1. To the extent practical, **exercise planning meetings** will be held concurrently with other EOP workshops as follows:
  - a. Initial Planning Meeting – held concurrently with Project Kickoff and Scoping Workshop
  - b. Mid-Term Planning Meeting – held concurrently with Draft Plan Workshop
  - c. Final Planning Meeting – held via conference call at least one week prior to Tabletop

## Exercise

2. Develop **exercise materials** including Player Handbook, Facilitator/Evaluator Worksheet, and PowerPoint Presentation.
3. The vendor will travel to The Dalles (or another mutually agreed upon location) to **facilitate a four- hour Tabletop Exercise** including brief introductory plan orientation and concluding Hot Wash.
4. Develop a brief **After Action Report and Improvement Plan** to document exercise observations and concrete actions to enhance EOP planning in Wasco County.

## DELIVERABLES

1. Exercise Planning Meeting Summaries
2. Exercise Materials including Sign-In Sheet, Player Handbook, Facilitator/Evaluator Worksheet, and PowerPoint Presentation
3. Draft and Final After-Action Report and Improvement Plan

## ASSUMPTIONS

- Tabletop Exercise will be designed for approximate 30 participants.

**Project Timeline**

We anticipate a project duration of approximately ten (10) months but can be altered to meet the County’s schedule needs. A final schedule will be submitted as part of a formal proposal upon the County’s identification of funding sources.

**Cost Summary**

The tasks described in this proposal will be conducted on a fixed-fee basis for the amount presented in the table below. The total cost for services described in this proposal is \$70,000.

Task Number	Task Name	Total
1	Project Coordination	\$8,286.00
2	County EOP Development	\$30,718.00
3	City Annex Development	\$18,042.00
4	Tabletop Exercise	\$12,954.00
TOTAL		\$70,000.00



Sheridan McClellan &lt;sheridanm@co.wasco.or.us&gt;

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## Wasco County Emergency Operations Plan Revision/rewrite

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**Clifford, Trevor** <Trevor.Clifford@wsp.com>

Mon, Feb 26, 2024 at 2:49 PM

To: Sheridan McClellan &lt;sheridanm@co.wasco.or.us&gt;

Hi Sheridan – thank you for your email. I wish we could support your endeavor but, unfortunately, we do not have the staff capacity at this time and I recommend that you reach out to Stantec.

All the Best,

Trevor

---

**From:** Sheridan McClellan <sheridanm@co.wasco.or.us>

**Sent:** Thursday, February 15, 2024 2:53 PM

**Subject:** Wasco County Emergency Operations Plan Revision/rewrite

Good afternoon,

[Quoted text hidden]

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NOTICE: This communication and any attachments ("this message") may contain information which is privileged, confidential, proprietary or otherwise subject to restricted disclosure under applicable law. This message is for the sole use of the intended recipient(s). Any unauthorized use, disclosure, viewing, copying, alteration, dissemination or distribution of, or reliance on, this message is strictly prohibited. If you have received this message in error, or you are not an authorized or intended recipient, please notify the sender immediately by replying to this message, delete this message and all copies from your e-mail system and destroy any printed copies.

-LAEmHhHzdJzBITWfa4Hgs7pbKI



March 19, 2024

Wasco County Emergency Management  
425 East 7<sup>th</sup> Street, Annex C  
The Dalles, OR 97058

Dear Wasco County Emergency Management,

Fair Winds Consulting is pleased to submit a proposal for the Wasco County Emergency Operations Plan Update. Wasco County hosts a wide variety of communities, environments, jurisdictions and stakeholders, and Fair Winds is excited at the prospect of working on such an exciting project.

Fair Winds Consulting is based in Gilliam County and is able to provide a level of service and personalization that is competitive with larger, more experienced firms. Local knowledge, being a member of the community and emergency management experience from a responder and a planner perspective are Fair Winds Consulting's greatest strengths, as well as 17 years Federal Government experience.

Fair Winds Consulting Business Information:

Fair Winds Consulting, LLC is based in Gilliam County and is a resident bidder company.

Address: Fair Winds Consulting, LLC  
14819 Mikkalo Lane  
Arlington, OR 97812

Tax Identification Numbers:

Employer Identification Number (EIN): 88-3365841

Oregon Business Identification Number (BIN): Fair Winds Consulting, LLC is a sole-member LLC without employees and is not required to have an Oregon BIN number currently.

This proposal may be released in total as public information in accordance with the requirements of the laws covering the same.

This proposal and cost schedule shall be valid and binding for NINETY (90) days.

Thank you for your time and consideration.

*Cori Mikkalo*

Cori Mikkalo  
Owner, Fair Winds Consulting, LLC



## STATEMENT OF UNDERSTANDING

### **Organization:**

Fair Winds Consulting, LLC is an emergency management, planning and consulting limited liability company based in Gilliam County, OR. Fair Winds Consulting is operated as a sole proprietorship and sole member LLC and was founded on July 22, 2022. The company is owned and operated by Cori Mikkalo and is in the process of obtaining a Veteran owned certification and woman owned business certification and hopes to have the process complete by fall 2024.

### **Experience:**

Fair Winds Consulting has experience working with federal and local governments. The owner has 17 years of military experience, and has managed government contracts and drafted multiple plans, ranging from technical to strategic. Currently, Fair Winds Consulting has completed three plans for Gilliam County, and is working with Gilliam, Sherman, and Wheeler County on additional emergency plans. While Active Duty and Reserve Military, the owner wrote and tested multiple plans, as well as conducted drills and exercises using HSEEP principles and methods. Since being founded in July 2022, Fair Winds Consulting has written Community Wildfire Protection Plans, Vegetation Mitigation Plans and Wildfire Hazard Assessments, Strategic Business Plans and Natural Hazard Mitigation Plans.

### **What sets Fair Winds apart:**

The mission of Fair Winds Consulting is to provide high-quality, custom-tailored emergency management services and plans to rural communities in Oregon. Fair Winds' primary goal is to write plans that are straightforward and useful that can be referenced by the entities that have commissioned them repeatedly. A plan does no one any good if it checks all regulation requirements but is not a useful document. We also believe in transparency; all projects are turned in with PDF copies as well as word document copies of plans. This allows clients to easily make updates in the future if situations evolve and small changes are needed. What is most important to Fair Winds is that clients get what they need, and any plans/documents generated remain useful.

Fair Winds Consulting is an active member of the North Central Oregon Community. The owner was born and raised in Gilliam County on a wheat farm. After spending 15 years in the military and traveling around the United States, she has gained a unique perspective into rural and urban lifestyles, allowing for more effective outreach. In addition to emergency management consulting, she is also a partner on her parent's farm and serves as a volunteer firefighter with North and South Gilliam Rural Fire Protection Districts. These experiences allow for a more nuanced planning approach, an understanding of urban and rural concerns, as well as emergency management and emergency responder perspectives.



### **Examples of Advisory Services:**

Fair Winds Consulting provides all-hazard mitigation and emergency planning services, with a focus on rural communities. This includes writing strategic plans, hazard and emergency response plans and recovery plans. Fair Winds Consulting also provides exercise planning and assistance, as well as preparedness support, including continuity of operations planning.

### **Current Relevant Project Experience:**

#### **Project 1:**

Community Wildfire Protection Plan, Gilliam County Oregon  
January 2022-December 2022  
Christina Fitzsimmons, Gilliam County Emergency Manager  
541-351-9530  
Gilliam County Emergency Management  
PO Box 685  
221 S. Oregon St  
Condon, OR 97823

#### **Project 2:**

Port of Arlington Strategic Business Plan  
December 2022-July 2023  
Jed Crowther, Port of Arlington Executive Director  
(541) 454-2868  
Port of Arlington  
100 Port Island Road  
Arlington, OR 97812

#### **Project 3:**

Gilliam County Vegetation Management Plan and Wildfire Hazard Assessment  
March 2023-October 2023  
Casey Zellars, Gilliam County Fire Services Operations Chief  
Arlington Office (541-454-2900)  
Condon Office (541-384-5555)  
Gilliam County Fire Services  
220 Main St.  
Condon, OR 97823

Additional projects and references can be provided upon request.



## **Proposed Approach Outline:**

Below is the proposed timeline to complete the following deliverables:

1. Gap analysis report highlighting weaknesses and areas of improvement in current EOP.
2. Updated Emergency Operations Plan Document reflecting changes, enhancements, and additions.
  - a. Seven printed and bound hard copies of the revised Emergency Operations Plan, one for each city and one copy for the county.
  - b. PDF document copy of EOP
  - c. Word Document copy of EOP
3. Documentation of stakeholder consultations, including feedback received and incorporated into the plan.
4. Training materials and documentation for the education of relevant personnel.
5. Tabletop Exercise to test parts of the EOP.

## **Timeline and Scope of Work:**

**This project will be completed in 12 months, with milestones split into quarters.**

**Quarter One: Project Kick Off, Completed Gap Analysis and Minimum 50% stakeholder consultation completed.**

- Project Kickoff
- Gap analysis
  - A complete review of the current EOP to identify strengths, weaknesses and gaps-report will be turned in by the end of the first quarter.
- Stakeholder outreach and consultations:
  - Document stakeholder consultations, including feedback received; incorporate feedback into the plan. Summaries of stakeholder interviews and meetings held will be provided to the Wasco County Emergency Manager and may or may not be included as an annex to the EOP.
  - Collaborate with key stakeholders, including emergency response teams, relevant authorities, and department heads to gather input and insights.
- Fair Winds Consulting will complete up to the following in person or virtual meetings if requested by Wasco County Emergency Management:
  - City of Mosier Stakeholder Meeting (Two)
  - City of The Dalles Stakeholder Meeting (Three)
  - City of Dufur Stakeholder Meeting (Two)
  - City of Maupin Stakeholder Meeting (Two)
  - City of Shaniko Stakeholder Meeting (one)
  - City of Antelope Stakeholder Meeting (one)
  - Stakeholder Meeting for Unincorporated Communities (One)
- Additionally, phone interviews for individual stakeholders may be conducted.
  - City of Mosier Stakeholders (up to three)
  - City of The Dalles Stakeholders (up to five)
  - City of Dufur Stakeholders (up to four)



- City of Maupin Stakeholders (up to four)
- City of Shaniko Stakeholders (up to three)
- City of Antelope Stakeholders (up to three)
- Additional stakeholder interview (up to ten)
- Begin drafting EOP.

#### **Quarter Two: All Stakeholder Consultations Completed. Initial draft of EOP 50% completed.**

- Continue stakeholder outreach as outlined in Quarter 1, completing all stakeholder consultations prior to the end of quarter 2. Provide summaries of interviews/meetings to Wasco County Emergency Management.
- Continue EOP draft, complete 50% prior to end of quarter two.
  - Research and incorporate industry best practices, regulatory requirements, and technological advancements relevant to emergency management.
  - Include ESF and community lifeline alignment/crosswalk.
  - Ensure alignment with national, state, and local emergency management frameworks
  - Enhance communication strategies within the plan, including internal and external communications protocols.
  - Update the plan to reflect changes in the organization structure personnel and facilities
  - Combine The Dalles EOP and Wasco County EOP Basic Plan into one Wasco County EOP.
  - Use City of The Dalles EOP to draft their annex to the Wasco County EOP.

#### **Quarter 3: Initial Draft of Emergency Operations Plan Completed**

- Draft the following for inclusion in the Wasco County EOP:
  - Mosier (Draft City Specific Annex and Evacuation Plan)
  - The Dalles (Combine existing City EOP with County EOP, and re-write City EOP into city specific annex, include already written Evacuation Plan)
  - Dufur (Draft City Specific Annex and Evacuation Plan)
  - Maupin (Draft City Specific Annex and Evacuation Plan)
  - Shaniko (Draft City Specific Annex and Evacuation Plan)
  - Antelope (Draft City Specific Annex and Evacuation Plan)
  - Unincorporated community annex: include specific information for Wamic, Pine Hollow, Tygh Valley, Pine Grove, Sportsman's Paradise, Rock Creek (Sportsman's Park) and Petersburg.
  - Develop a critical facilities list for each urban area
  - Develop a critical facilities list for Wasco County
- Turn in First draft of Emergency Operations Plan to stakeholders for review.

#### **Quarter 4: Review and Feedback period, develop training materials, conduct tabletop exercise, and turn in completed EOP.**

- Review and Feedback period. Solicit and incorporated feedback from major stakeholders for draft County EOP.
- Develop training materials.
  - Develop and create templates for a training program for relevant personnel.



- Develop job sheets specific for the following ICS positions for incorporation into the Emergency Operations Plan, Incident Commander, Public Information Officer, Safety Officer, Liaison Officer, -
- Operations Section Chief, Planning Section Chief, Logistics Section Chief, Finance Section Chief, Situation Unit Leader, Resource Unit Leader, and Communications Unit Leader.
- Include training program and job sheets as addendums to the Emergency Operations Plans.
- Training sessions/Tabletop Exercise
  - One tabletop exercise with up to 30 participants to be run at a location determined and arranged for by Wasco County.
  - Deliverables will include a power point, situation manual, exercise manual and generic MSEL that can be reused by Wasco County Emergency Management to conduct additional trainings as needed.
- Finalize Emergency Operations Plan.
- Print physical copies of completed EOP.

**Cost estimate for Wasco County Emergency Operations Plan: \$64,500**

The cost schedule for the Wasco County Emergency Operations Plan is Full Project Fee, paid in four installments. The first installment of \$10,750 is due when the project commences, the second installment of \$10,750 is due when the gap analysis is turned in, the third installment of \$21,500 is due when the first draft is turned in, and the fourth and final installment of \$21,500 is due at the completion of the plan. Payment is accepted by check or electronic funds transfer.

Fair Winds Consulting will lead all meetings and provide materials for the meetings. Wasco County Emergency Management will provide access to meeting spaces, all audio-visual equipment for meetings (except for a computer) and assistance in identifying stakeholders and notifying them of work sessions.

This estimate includes the following deliverables:

1. Gap analysis report highlighting weaknesses and areas of improvement in current EOP.
2. Updated Emergency Operations Plan Document reflecting changes, enhancements, and additions.
  - a. Seven printed and bound hard copies of the revised Emergency Operations Plan, one for each city and one copy for the county.
  - b. PDF document copy of EOP
  - c. Word Document copy of EOP
3. Documentation of stakeholder consultations, including feedback received and incorporated into the plan.
4. Training materials and documentation for the education of relevant personnel.
5. Tabletop Exercise to test parts of the EOP.

This estimate includes the following in-person or virtual meetings:

- City of Mosier Stakeholder Meeting (Two)
- City of The Dalles Stakeholder Meeting (Three)
- City of Dufur Stakeholder Meeting (Two)
- City of Maupin Stakeholder Meeting (Two)
- City of Shaniko Stakeholder Meeting (one)
- City of Antelope Stakeholder Meeting (one)
- Unincorporated Communities Stakeholder Meeting (one)



Additionally, phone interviews for individual stakeholders may be conducted:

- City of Mosier Stakeholders (up to 3)
- City of The Dalles Stakeholders (up to 5)
- City of Dufur Stakeholders (up to 4)
- City of Maupin Stakeholders (up to 4)
- City of Shaniko Stakeholders (up to 3)
- City of Antelope Stakeholders (up to 3)
- Unincorporated community Stakeholders (up to 7)
- Additional stakeholder interview (up to 10)



## SHERIFF'S OFFICE

511 Washington St., Ste.102 • The Dalles, OR 97058  
p: [541] 506-2580 • f: [541] 506-2581 • [www.co.wasco.or.us](http://www.co.wasco.or.us)

*Pioneering pathways to prosperity.*

3/25/2024

Re: Resilience Hubs and Networks Grant Application

To whom it may concern:

As the Wasco County Sheriff I'm writing this letter for the support for the Wasco County Emergency Operations Plan (EOP). The current EOP is out of date and needs a significant revision.

An important part of this project is to include all the incorporated cities into the plan, as the current plan has no placeholders for these entities. Furthermore there are large gaps related to the unincorporated communities of Wasco County. These areas face real threats from natural disasters and other events potentially impacting our citizens. An updated plan will give public safety the tools needed to provide the services during an emergency.

Furthermore, Wasco County encompasses parts of the Columbia River Gorge National Scenic Area, Mt. Hood National Forest, Bureau of Land Management and the Deschutes River Corridor. All of these locations require public safety resources related to wildfires, search and rescue and other natural and manmade threats to not only assist the local population, but our visitors as well.

In conclusion, as the Wasco County Sheriff, I strongly encourage the review committee support this grant request for the improvement of public safety services and resources for our citizens and visitors.

Sincerely,

Lane Magill  
Wasco County Sheriff



# Oregon

Tina Kotek, Governor

Oregon State Police  
The Dalles Area Command  
3313 Bret Clodfelter Way  
The Dalles, Oregon 97058  
541-296-9646  
541-296-8126 Fax

3/25/2024

Re: Resilience Hubs and Networks Grant Application

To whom it may concern:

As the Lieutenant for The Dalles Area Command I am writing this letter for the support for the Wasco County Emergency Operations Plan (EOP). The current EOP is out of date and needs a significant revision.

An important part of this project is to include all the incorporated cities into the plan, as the current plan has no placeholders for these entities. Furthermore, there are large gaps related to the unincorporated communities of Wasco County. These areas face real threats from natural disasters and other events potentially impacting our citizens. An updated plan will give public safety the tools needed to provide the services during an emergency.

Furthermore, Wasco County encompasses parts of the Columbia River Gorge National Scenic Area, Mt. Hood National Forest, Bureau of Land Management, and the Deschutes River Corridor. All these locations require public safety resources related to wildfires, search and rescue and other natural and manmade threats to not only assist the local population, but our visitors as well.

In conclusion, as the Lieutenant for The Dalles Area Command, I strongly encourage the review committee support this grant request for the improvement of public safety services and resources for our citizens and visitors.

Respectfully,

Jason Calloway  
Field Operations Bureau Lieutenant  
Oregon State Police  
The Dalles Area Command

## Memorandum

**To:** MCEDD Brownfield Assessment Coalition Partners  
**From:** Carrie Pipinich, MCEDD Deputy Director of Economic Development and  
Lindsay McClure, MCEDD Energy & Project Manager  
**Date:** February 20, 2024  
**Re:** EPA Memorandum of Agreement for MCEDD Brownfield Coalition Grant

---

### Purpose

This memorandum accompanies the Memorandum of Agreement (MOA) that documents the roles and responsibilities of various parties involved in the Brownfield Assessment Coalition with regard to Environmental Protection Agency (EPA) Cooperative Agreement No: [4B-02J51801-0]. The grant period is October 1, 2023, through September 30, 2027.

### Background

In the fall of 2022 MCEDD applied for a Brownfield Coalition Assessment Grant and reached out to local partners to form a coalition to increase availability of resources to address brownfield challenges in the region. The following entities agreed to participate as coalition partners with MCEDD:

- Columbia Cascade Housing Corporation, regional service territory
- Sherman County, Oregon
- Wasco County, Oregon
- Klickitat County, Washington

This grant will fund a consultant to complete activities that fall into the categories below:

- **Phase I Environmental Site Assessments** to study of the past and present uses of a property to evaluate whether contamination may have occurred.
- **Phase II Environmental Site Assessments** to study the environmental condition of a property by collecting and analyzing samples such as soil, groundwater, soil gas, or building materials suspected to contain lead or asbestos.
- **Building material surveys** to evaluate asbestos and lead paint.
- **Cleanup planning** to define the scope and cost of required cleanup.
- **Re-use planning** to evaluate redevelopment potential and address constraints.

MCEDD has hired Stantec through a competitive process to support completing this work for public and private entities in the five-county region during the grant period. Property owners are able to submit an interest form and receive the types of technical assistance noted above from Stantec after they work through the approval process with MCEDD staff and the formed Brownfield Advisory Committee that has representatives of the Coalition members and additional regional partners.

### Roles and Responsibilities

The MOA outlines the roles and responsibilities of the Coalition Partners for implementation of the grant.

Most relevant to the partner entities, Section 6 of the MOA states the following:

*Upon designation of the specific sites, it will be the responsibility of GRANTEE [MCEDD] to work with the COALITION PARTNER in whose geographic area the site is located to finalize the scope of work for the consultant or contractor. It will be the responsibility of this COALITION PARTNER to obtain all required permits, easements, and/or access agreements as may be necessary to undertake assessments at the selected site. If this member does not have the capacity to perform these activities GRANTEE may assist in securing necessary site access agreements and permits.*

MCEDD will take the lead on finalizing scopes of work for the contractor (Stantec) and on securing necessary permits, easements, and/or access agreements. Coalition Partners will be kept up to date and will receive occasional requests for coordination when appropriate or needed to keep projects moving forward.

**What is a brownfield?**

EPA defines brownfields as follows: any real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

**Requests:**

**Wasco County Participation:** MCEDD's Wasco County EDC staff can continue to support Wasco County in serving as its representative for regular Coalition grant activities. The MOA is written to reflect this but if the County would like different representation, staff will revise as needed.

**Signature:** Please sign the attached Memorandum of Understanding, which is an EPA requirement for us to begin work.

**BROWNFIELDS ASSESSMENT COALITION**  
**MEMORANDUM OF AGREEMENT**  
**BETWEEN THE FOLLOWING PARTIES:**  
**MID-COLUMBIA ECONOMIC DEVELOPMENT DISTRICT (GRANTEE),**  
**COLUMBIA CASCADE HOUSING CORPORATION (COALITION**  
**PARTNER),**  
**SHERMAN COUNTY (COALITION PARTNER),**  
**WASCO COUNTY (COALITION PARTNER), AND**  
**Klickitat County (COALITION PARTNER).**

This Memorandum of Agreement documents the roles and responsibilities of the various parties involved in the Brownfield Assessment Coalition with regard to Environmental Protection Agency (EPA) Cooperative Agreement No: [4B-02J51801-0].

1. On February 5, 2024, EPA awarded the Cooperative Agreement to GRANTEE. The grant period is October 1, 2023, through September 30, 2027. GRANTEE is responsible to EPA for management of the Cooperative Agreement and compliance with the statutes, regulations, and terms and conditions of the award and ensuring that all COALITION PARTNERS comply with the terms and conditions.
2. It is the responsibility of GRANTEE to provide timely information to the other Coalition Partners regarding the management of the cooperative agreement and any changes that may be made to the Cooperative Agreement over the period of performance.
3. Coalition Partner contact information is as follows:

MCEDD

Lindsay McClure, MCEDD Energy &  
Project Manager  
802 Chenoweth Loop Road  
The Dalles, OR 97058  
(541) 296-2266  
[lindsay@mcedd.org](mailto:lindsay@mcedd.org)

Columbia Cascade Housing Corporation

Joel Madsen, CCHC Executive Director  
500 E. 2<sup>nd</sup> St.  
The Dalles, OR 97058  
(541) 296-5462 x 116  
[joelm@mid-columbiahousingauthority.org](mailto:joelm@mid-columbiahousingauthority.org)

Sherman County

Joe Dabulskis, Sherman County Judge  
500 Court Street  
P.O. Box 365  
Moro, OR 97039  
[jdabulskis@co.sherman.or.us](mailto:jdabulskis@co.sherman.or.us)

Wasco County

Carrie Pipinich, MCEDD Deputy  
Director of Economic Development  
802 Chenoweth Loop Road  
The Dalles, OR 97058  
(541) 296-2266  
[carrie@mcedd.org](mailto:carrie@mcedd.org)

Klickitat County

Richard Foster, Director of  
Economic Development  
115 W. Court Street, Room 204  
Goldendale, WA 98620  
(509) 773-7060  
[richardf@klickitatcounty.org](mailto:richardf@klickitatcounty.org)

4. Activities funded through the Cooperative Agreement may include inventory preparation, site selection criteria development, assessments, planning (including cleanup planning) relating to brownfield sites, and outreach materials and implementation, and other eligible activities. GRANTEE retained a consultant (Stantec Consulting Services Inc.) under 2 CFR 200.317-326 to undertake

various activities funded through the cooperative agreement.

5. The GRANTEE, in consultation with the COALITION PARTNERS, will develop a site selection process based on the agreed upon coalition priorities and will ensure that a minimum of five sites are assessed over the life of the Cooperative Agreement. Selected sites will be submitted to EPA for prior approval to ensure eligibility.
6. Upon designation of the specific sites, it will be the responsibility of GRANTEE to work with the COALITION PARTNER in whose geographic area the site is located to finalize the scope of work for the consultant or contractor. It will be the responsibility of this COALITION PARTNER to obtain all required permits, easements, and/or access agreements as may be necessary to undertake assessments at the selected site. If this member does not have the capacity to perform these activities GRANTEE may assist in securing necessary site access agreements and permits.
7. The GRANTEE is responsible for ensuring that other activities as negotiated in the workplan, such as community outreach and involvement, are implemented in accordance with a schedule agreed upon by GRANTEE and the coalition member in whose geographic area the site to be assessed is located.

Agreed:

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Mid-Columbia Economic Development District

Date

---

Columbia Cascade Housing Corporation

Date

---

Wasco County

Date

---


Sherman County

Date

---

Klickitat County

Date

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Cooperative Agreement</b>	<b>GRANT NUMBER (FAIN):</b> 02J51801 <b>MODIFICATION NUMBER:</b> 0 <b>PROGRAM CODE:</b> 4B		<b>DATE OF AWARD</b> 02/05/2024
		<b>TYPE OF ACTION</b> New		<b>MAILING DATE</b> 02/08/2024
		<b>PAYMENT METHOD:</b> ASAP		<b>ACH#</b> PEND
		<b>RECIPIENT TYPE:</b> Other		
<b>RECIPIENT:</b> Mid-Columbia Economic Development District 802 Chenowith Loop Rd The Dalles, OR 97058-4439 <b>EIN:</b> 93-0586118		<b>PAYEE:</b> Mid-Columbia Economic Development District 802 Chenowith Loop Road The Dalles, OR 97058-4439		
<b>PROJECT MANAGER</b> Jacque Schei 802 Chenowith Loop Road The Dalles, OR 97058-4439 <b>Email:</b> jacque@mcedd.org <b>Phone:</b> 541-296-2266		<b>EPA PROJECT OFFICER</b> Sarah Frederick 1200 6th Ave., Suite 155 Seattle, WA 98101 <b>Email:</b> frederick.sarah@epa.gov <b>Phone:</b> 206-553-1601		<b>EPA GRANT SPECIALIST</b> Lacey Davidson 1200 6th Ave., Suite 155 Seattle, WA 98101-3144 <b>Email:</b> davidson.lacey@epa.gov <b>Phone:</b> 206-553-0758
<b>PROJECT TITLE AND DESCRIPTION</b> Mid-Columbia Economic Development District FY2023 Brownfields Coalition Assessment Cooperative Agreement See Attachment 1 for project description.				
<b>BUDGET PERIOD</b> 10/01/2023 - 09/30/2027	<b>PROJECT PERIOD</b> 10/01/2023 - 09/30/2027	<b>TOTAL BUDGET PERIOD COST</b> \$ 1,000,000.00	<b>TOTAL PROJECT PERIOD COST</b> \$ 1,000,000.00	
<h3 style="text-align: center;">NOTICE OF AWARD</h3> <p>Based on your Application dated 11/22/2022 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$ 1,000,000.00. EPA agrees to cost-share <u>100.00%</u> of all approved budget period costs incurred, up to and not exceeding total federal funding of \$ 1,000,000.00. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.</p>				
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>		<b>AWARD APPROVAL OFFICE</b>		
<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 10, EPA Region 10 Mail Code: 17-C04, 1200 Sixth Avenue, Suite 155 Seattle, WA 98101		<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 10, MSD R10 - Region 10 1200 6th Ave., Suite 155 Seattle, WA 98101-3144		
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>				
<b>Digital signature applied by EPA Award Official</b> PeggyD Johnson - Chief, Grants and Interagency Agreements Branch				<b>DATE</b> 02/05/2024

## EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$ 0	\$ 1,000,000	\$ 1,000,000
EPA In-Kind Amount	\$ 0	\$ 0	\$ 0
Unexpended Prior Year Balance	\$ 0	\$ 0	\$ 0
Other Federal Funds	\$ 0	\$ 0	\$ 0
Recipient Contribution	\$ 0	\$ 0	\$ 0
State Contribution	\$ 0	\$ 0	\$ 0
Local Contribution	\$ 0	\$ 0	\$ 0
Other Contribution	\$ 0	\$ 0	\$ 0
Allowable Project Cost	\$ 0	\$ 1,000,000	\$ 1,000,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Multipurpose, Assessment, Revolving Loan Fund, and Cleanup Cooperative Agreements	CERCLA: Secs. 104(k)(2) and 104(k)(5)(e) and Infrastructure Investment and Jobs Act (IIJA) (PL 117-58)	2 CFR 200, 2 CFR 1500 and 40 CFR 33

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	2310IIG087	23	E4SD	10L3AG7	000D79X89	4114	-	-	\$ 1,000,000
									\$ 1,000,000

## Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$ 65,267
2. Fringe Benefits	\$ 23,733
3. Travel	\$ 4,400
4. Equipment	\$ 0
5. Supplies	\$ 0
6. Contractual	\$ 862,500
7. Construction	\$ 0
8. Other	\$ 31,600
9. Total Direct Charges	\$ 987,500
10. Indirect Costs: 0.00 % Base	\$ 12,500
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %)	\$ 1,000,000
12. Total Approved Assistance Amount	\$ 1,000,000
13. Program Income	\$ 0
14. Total EPA Amount Awarded This Action	\$ 1,000,000
15. Total EPA Amount Awarded To Date	\$ 1,000,000

## Attachment 1 - Project Description

Brownfields are real property, the expansion, development or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. This agreement will provide funding under the Infrastructure Investment and Jobs Act (IIJA) for the Mid-Columbia Economic Development District to conduct eligible assessment-related activities as authorized by CERLCA 104(k) (2) in the Oregon and Washington Mid-Columbia Region.

Specifically, this agreement will provide funding to the recipient to inventory, characterize, assess, and conduct cleanup planning and community involvement related activities. Additionally, the recipient will competitively procure (as needed) and direct a Qualified Environmental Professional to conduct environmental site activities. Also, the recipient will report on interim progress and final accomplishments by completing and submitting relevant portions of the Property Profile Form using EPA's Assessment, Cleanup and Redevelopment Exchange System (ACRES). Further, the recipient anticipates conducting 46 Phase I and Phase II environmental site assessments, holding community meetings, developing site-specific cleanup plans/Analysis of Brownfield Cleanup Alternatives, developing planning documents to initiate brownfields revitalization, and submitting 12 quarterly reports. Work conducted under this agreement will benefit the residents, business owners, and stakeholders in and near the Oregon and Washington Mid-Columbia Region. No subawards are included in this assistance agreement.

## Administrative Conditions

### General Terms and Conditions

The recipient agrees to comply with the current EPA general terms and conditions available at: <https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2023-or-later>.

These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award.

The EPA repository for the general terms and conditions by year can be found at: <https://www.epa.gov/grants/grant-terms-and-conditions#general>.

### A. Correspondence Condition

The terms and conditions of this agreement require the submittal of reports, specific requests for approval, or notifications to EPA. Unless otherwise noted, all such correspondence should be sent to the following email addresses:

- Federal Financial Reports (SF-425): [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov)
- MBE/WBE reports (EPA Form 5700-52A): [davidson.lacey@epa.gov](mailto:davidson.lacey@epa.gov)
- All other forms/certifications/assurances, Indirect Cost Rate Agreements, Requests for Extensions of the Budget and Project Period, Amendment Requests, Requests for other Prior Approvals, updates to recipient information (including email addresses, changes in contact information or changes in authorized representatives) and other notifications: [herrick.david@epa.gov](mailto:herrick.david@epa.gov)
- Requests for Extensions of the Budget and Project Period, Quality Assurance documents, workplan revisions, equipment lists, programmatic reports and deliverables, Amendment Requests, Requests for other Prior Approvals: [fredrick.sarah@epa.gov](mailto:fredrick.sarah@epa.gov)
- Administrative questions and issues: [davidson.lacey@epa.gov](mailto:davidson.lacey@epa.gov)

### B. PRE-AWARD COSTS

In accordance with 2 CFR 1500.9, the recipient may charge otherwise allowable pre-award costs (both Federal and non-Federal matching shares) incurred from **October 1, 2023** to the actual award date provided that such costs were contained in the approved application and all costs are incurred within the approved budget period.

### C. EXPIRED INDIRECT COST RATE AGREEMENT (ALSO LISTED IN GENERAL TERMS AND CONDITIONS)

The indirect cost rate agreement on file with EPA expired **06/30/2022**. In order to charge for indirect costs beyond that date, EPA must have a copy of a current approved agreement. Please note that funds may not be drawn down for indirect cost without a current, approved rate in place.

Please send the indirect cost rate documentation via email to [herrick.david@epa.gov](mailto:herrick.david@epa.gov) or by mail to EPA Region 10, Grants Unit, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101.

# Programmatic Conditions

## FY2023 Brownfields Assessment Coalition Cooperative Agreement

### Infrastructure Investment and Jobs Act Funds

### Terms and Conditions

### US EPA Region 10

Please note that these Terms and Conditions (T&Cs) apply to Brownfield Assessment Cooperative Agreements awarded under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k) and the Infrastructure Investment and Jobs Act (IIJA).

## I. GENERAL FEDERAL REQUIREMENTS

**NOTE:** For the purposes of these Terms and Conditions, the term “assessment” includes eligible activities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k)(2)(A)(i) such as activities involving the inventory, characterization, assessment, and planning relating to brownfield sites as described in the EPA-approved workplan.

### A. Federal Policy and Guidance

1. Cooperative Agreement Recipients: By awarding this cooperative agreement, the Environmental Protection Agency (EPA) has approved the application for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2023 competition for Brownfield Assessment cooperative agreements.
2. In implementing this agreement, the CAR shall ensure that work done with cooperative agreement funds complies with the requirements of CERCLA § 104(k). The CAR shall also ensure that assessment activities supported with cooperative agreement funding comply with all applicable federal and state laws and regulations.
3. A term and condition or other legally binding provision shall be included in all subawards entered into with the funds awarded under this agreement, or when funds awarded under this agreement are used in combination with non-federal sources of funds, to ensure that the CAR complies with all applicable federal and state laws and requirements. In addition to CERCLA § 104(k), applicable federal laws and requirements include 2 CFR Part 200.
4. The CAR must comply with federal cross-cutting requirements. These requirements include, but are not limited to, DBE requirements found at 40 CFR Part 33; OSHA Worker Health & Safety Standard 29 CFR § 1910.120; Uniform Relocation Act (40 USC § 61); National Historic Preservation Act (16 USC § 470); Endangered Species Act (P.L. 93-205); Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR § 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC §§ 327-333); the Anti-Kickback Act (40 USC § 3145); and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250. For additional information on cross-cutting requirements visit <https://www.epa.gov/grants/epa-subaward-cross-cutter-requirements>.
5. The CAR must comply with Davis-Bacon Act prevailing wage requirements and associated U.S. Department of Labor (DOL) regulations for all construction, alteration, and repair contracts and subcontracts awarded with funds provided under this agreement by operation of CERCLA § 104(g). Assessment activities generally do not involve construction, alteration, and repair within the meaning of the Davis-Bacon Act. However, the recipient must contact the EPA Project Officer if there are unique circumstances (e.g., removal of an underground storage tank or another structure and restoration of the site) that indicate that the Davis-Bacon Act applies to an activity the CAR intends to carry out with funds provided under this agreement. EPA will provide guidance on Davis-Bacon Act compliance if necessary.
6. The recipient agrees to have financial management and programmatic management systems in place to:
  - a. Track and report on expenditures of IIJA funds.

- b. Track and report outputs and outcomes achieved with IIJA funds.

## II. SITE ELIGIBILITY REQUIREMENTS

**All brownfield sites that will be addressed using funds from the cooperative agreement must be located within the geographic boundary described in the scope of work for this cooperative agreement (i.e., the EPA-approved workplan).**

### A. Eligible Brownfield Site Determinations

1. Prior to performing site work, the CAR must provide information to the EPA Project Officer about each site that will be addressed under this cooperative agreement. The CAR may use cooperative agreement funds to prepare information that is provided to the EPA Project Officer. The information that must be provided includes whether the site meets the definition of a brownfield site as defined in CERCLA § 101(39), and whether the CAR is the potentially responsible party under CERCLA § 107, is exempt from CERCLA liability, and/or has defenses to CERCLA liability.
2. If the site is excluded from the general definition of a brownfield, but is eligible for a property-specific funding determination, then the CAR may request a property-specific funding determination from the EPA Project Officer. In its request, the CAR must provide information sufficient for EPA to make a property-specific funding determination on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for assessing sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that EPA has determined that the property is eligible.
3. Brownfield Sites Contaminated with Petroleum
  - a. For any petroleum-contaminated brownfield site that is not included in the CAR's EPA-approved workplan, the CAR shall provide sufficient documentation to EPA prior to incurring costs under this cooperative agreement which documents that:
    - i. the State determines there is “no viable responsible party” for the site;
    - ii. the State determines that the person assessing or investigating the site is a      person who is not potentially liable for cleaning up the site; and
    - iii. the site is not subject to any order issued under Section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State, following contact and discussion with the appropriate state petroleum program official. Please contact the EPA Project Officer for additional information.

- b. Documentation must include:

- i. the identity of the State program official contacted;
- ii. the State official's telephone number;
- iii. the date of the contact; and
- iv. a summary of the discussion relating to the State's determination that there is no viable responsible party and that the person assessing or investigating the site is not potentially liable for cleaning up the site.

Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.

- c. If the State chooses not to make the determinations described in Section II.A.3. above, the CAR must contact the

EPA Project Officer and provide the necessary information for EPA to make the requisite determinations.

d. EPA will make all determinations on the eligibility of petroleum-contaminated brownfield sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. § 1151). Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the necessary information for EPA to make the determinations.

### III. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

#### A. Sufficient Progress

1. This condition supplements the requirements of the Termination and Sufficient Progress Conditions in the General Terms and Conditions.

The EPA Project Officer will assess whether the recipient is making sufficient progress in implementing its cooperative agreement 18 months and 30 months from the date of award. If EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the CAR, if directed to do so, must implement a corrective action plan concurred on by the EPA Project Officer and approved by the Grants Management Officer or Award Official. Alternatively, EPA may terminate this agreement under 2 CFR § 200.340 for material non-compliance with its terms, or with the consent of the CAR as provided at 2 CFR § 200.340, depending on the circumstances.

Sufficient progress at 18 months is indicated when:

- at least 25% of funds have been drawn down and disbursed for eligible activities;
- a Memorandum of Agreement is in place;
- a Qualified Environmental Professional(s) has been procured;
- sites are prioritized or an inventory has been initiated (unless site prioritization or an inventory was completed prior to award);
- community engagement activities have been initiated; and/or
- other documented activities have occurred that demonstrate to EPA's satisfaction that the CAR will successfully perform the cooperative agreement.

Sufficient progress at 30 months is indicated when:

- at least 45% of funds have been drawn down and disbursed for eligible activities;
- assessments on at least three sites have been initiated; and/or
- other documented activities have occurred that demonstrate to EPA's satisfaction that the CAR will successfully perform the cooperative agreement.

#### B. Substantial Involvement

1. The EPA Project Officer will be substantially involved in overseeing and monitoring this cooperative agreement. Substantial involvement includes, but is not limited to:

- a. Close monitoring of the CAR's performance to verify compliance with the EPA-approved workplan and achievement of environmental results.
- b. Participation in periodic telephone conference calls to share ideas, project successes and challenges, etc., with EPA.

- c. Reviewing and commenting on quarterly and annual reports prepared under the cooperative agreement (the final decision on the content of reports rests with the recipient or subrecipients receiving pass-through awards).
- d. Verifying sites meet applicable site eligibility criteria (including property-specific funding determinations described in Section II.A.2.) and when the CAR awards a subaward for site assessment. The CAR must obtain technical assistance from the EPA Project Officer, or his/her designee, on which sites qualify as a brownfield site and determine whether the statutory prohibitions found in CERCLA § 104(k)(5)(B)(i)-(iv) apply. (Note, the prohibition does not allow a subrecipient to use EPA cooperative agreement funds to assess a site for which the subrecipient is potentially liable under CERCLA § 107.)
- e. Reviewing and approving Quality Assurance Project Plans and related documents or verifying that appropriate Quality Assurance requirements have been met where quality assurance activities are being conducted pursuant to an EPA-approved Quality Assurance Management Plan.

Substantial involvement may also include, depending on the direction of the EPA Project Officer:

- f. Collaboration during the performance of the scope of work including participation in project activities, to the extent permissible under EPA policies. Examples of collaboration include:
  - i. Consultation between EPA staff and the CAR on effective methods of carrying out the scope of work provided the CAR makes the final decision on how to perform authorized activities.
  - ii. Advice from EPA staff on how to access publicly available information on EPA or other federal agency websites.
  - iii. With the consent of the CAR, EPA staff may provide technical advice to the CAR's contractors or subrecipients provided the CAR approves any expenditures of funds necessary to follow advice from EPA staff. (The CAR remains accountable for performing contract and subaward management as specified in 2 CFR § 200.318 and 2 CFR § 200.332 as well as the terms of the EPA cooperative agreement.)
  - iv. EPA staff participation in meetings, webinars, and similar events upon the request of the CAR or in connection with a co-sponsorship agreement.
- g. Reviewing and approving that the Analysis of Brownfield Cleanup Alternatives (ABCA), or equivalent state Brownfields program document, meets the Brownfields Program's requirements for an ABCA.
- h. Reviewing proposed procurements in accordance with 2 CFR § 200.325, as well as the substantive terms of proposed contracts or subawards as appropriate. This may include reviewing requests for proposals, invitations for bid, scopes of work and/or plans and specifications for contracts over \$250,000 prior to advertising for bids.
- i. Reviewing the qualifications of key personnel. (EPA does not have the authority to select employees or contractors, including consultants, employed by the CAR or subrecipients receiving pass-through awards.)
- j. Reviewing information in performance reports to ensure all costs incurred by the CAR and/or its contractor(s) if needed to ensure appropriate expenditure of grant funds.

EPA may waive any of the provisions in Section III.B.1., except for property-specific funding determinations. The EPA Project Officer will provide waivers to provisions a. – e. in Section III.B.1 in writing.

## 2. Effects of EPA's substantial involvement include:

- a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement will not have any effect upon CERCLA § 128 *Eligible Response Site* determinations or rights, authorities, and actions under CERCLA or any federal statute.

- b. The CAR remains responsible for ensuring that all assessments are protective of human health and the environment and comply with all applicable federal and state laws.
- c. The CAR and its subrecipients remain responsible for ensuring costs are allowable under 2 CFR Part 200, Subpart E.

### C. Cooperative Agreement Recipient Roles and Responsibilities

1. The **CAR is the lead of the Assessment Coalition** and is accountable to EPA for proper expenditure of the funds and is the point of contact for other coalition members.

- a. A Memorandum of Agreement documenting the coalition's site selection process must be in place prior to the expenditure of any funds that are awarded under this agreement.
- b. The CAR shall assess a minimum of two sites in each member's (i.e., the lead member's and non-lead members') geographic boundary.

The CAR shall not add or remove coalition members without prior approval from the EPA Grants Management Officer or Award Official and must continue the partnerships with the coalition members identified in the application that was selected for funding. EPA will only approve changes to the composition of the coalition in extraordinary circumstances that substantially impair performance of the cooperative agreement.

2. All **additional sites** selected for eligible activities throughout the period of performance (i.e., sites that were not identified in the workplan) must be located within the geographic boundary(ies) identified by the CAR in the workplan.

Consistent with the FY23 Assessment Coalition Grant Guidelines, criteria for selecting additional sites must at least consider whether the site is located within an underserved community<sup>[1]</sup> in addition to considering the prioritization criteria identified in the FY23 application, the workplan, or developed during implementation of the workplan. Note, criteria developed during the implementation of the workplan must lead to the CAR addressing sites in areas with similar characteristics as the areas discussed in the FY23 application.

[1] When EPA uses the term “underserved communities” it has the meaning defined in Executive Order 13985: *Advancing Racial Equity And Support For Underserved Communities Through The Federal Government*, which defines “underserved communities” as “populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life....”. As described in the Executive Order, “underserved communities” may include communities denied the consistent, fair, just, and impartial treatment of all individuals such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. It also includes “communities environmentally overburdened,” that is, a community adversely and disproportionately affected by environmental and human health harms or risks, and “disadvantaged, communities” as referenced in Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*, and defined in Office of Management and Budget's Memo M-21-28: Interim Implementation Guidance for the Justice40 Initiative.

3. If the CAR's workplan includes **eligible planning activities** to prepare a brownfield site for reuse (see <https://www.epa.gov/brownfields/information-eligible-planning-activities> for eligible planning activities), the CAR must demonstrate meaningful community engagement in the reuse planning of brownfields assessed under the grant. Meaningful community engagement is demonstrated by actively including local nonprofit organizations, citizen leaders, or similar local groups/entities in brownfield reuse planning.

4. CARs, other than state entities, that **procure a contractor(s)** (including consultants) where the contract will be more than the micro-purchase threshold in 2 CFR § 200.320(a)(1) (\$10,000 for most CARs) must select the contractor(s) in compliance with the fair and open competition requirements in 2 CFR Part 200 and 2 CFR Part 1500. This requirement also applies to procurement processes that were completed before the award of this cooperative agreement. See the [Brownfields Grants: Guidance on Competitively Procuring a Contractor](#) for additional information.

CARs may procure multiple contractors to ensure the appropriate expertise is in place to perform work under the agreement (e.g., expertise to conduct site assessment activities vs. planning activities) and to allow the ability for work be performed concurrently at multiple sites within the defined and approved geographic boundary.

5. The CAR must acquire the services of a Qualified Environmental Professional(s) as defined in 40 CFR § 312.10, if it does not have such a professional on staff to coordinate, direct, and oversee the brownfield site assessment activities at a given site.

6. **[If subawards are approved for this agreement]** *Subawards* are defined at 2 CFR § 200.1. The CAR shall not subaward to for-profit organizations or individual consultants. The CAR must obtain commercial services and products necessary to carry out this agreement under competitive procurement procedures as described in 2 CFR §§ 200.317 through 200.327. The CAR must obtain written approval from the EPA Award Official for any subawards that are not described in the approved work plan in accordance with 2 CFR § 200.308.

In addition, EPA policy encourages awarding subawards competitively and the CAR must consider awarding subawards through competition. Recipients may consult EPA's [Subaward Policy](#) and [Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#) for additional guidance. The Best Practice Guide provides information on distinguishing between subawards and procurement contracts.

7. **[If the application includes leveraged resources that will materialize during the period of performance]** *Leveraged Resources* – The CAR agrees to provide the proposed leveraged funding, including any voluntary cost-share contribution or overmatch, that is described in its workplan. If the proposed leveraging does not materialize during the period of award performance, and the CAR does not provide a satisfactory explanation, EPA may consider this factor in evaluating future applications from the CAR. In addition, if the proposed leveraging does not materialize during the period of award performance, then EPA may reconsider the legitimacy of the award. If EPA determines that the CAR knowingly or recklessly provided inaccurate information regarding the leveraged funding in its FY23 application, EPA may take action as authorized by 2 CFR Parts 200 and 1500, and/or 2 CFR Part 180 as applicable.

8. **Cybersecurity** – The recipient agrees that when collecting and managing environmental data under this cooperative agreement, it will protect the data by following all applicable State law or Tribal law and policy cybersecurity requirements.

a. EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement are secure. For purposes of this section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer no later than 90 days after the date of this award and work with the designated Regional/ Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

b. The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in Cybersecurity Section a. above if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR § 200.332(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

9. **Geospatial Data** - All **geospatial data** created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at [www.fgdc.gov](http://www.fgdc.gov).

#### D. Quarterly Performance Reports

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.329, *Monitoring and Reporting Program Performance*), the CAR agrees to submit quarterly performance reports to the EPA Project Officer within 30 days after each reporting period. The reporting periods are October 1 – December 31 (1<sup>st</sup> quarter); January 1 – March 31 (2<sup>nd</sup> quarter); April 1 – June 30 (3<sup>rd</sup> quarter); and July 1 – September 30 (4<sup>th</sup> quarter).

These reports shall cover work status, work progress, difficulties encountered, preliminary data results and a statement of activity anticipated during the subsequent reporting period, including a description of equipment, techniques, and materials to be used or evaluated. A discussion of expenditures and financial status for each workplan task, along with a comparison of the percentage of the project completed to the project schedule and an explanation of significant discrepancies from the EPA-approved workplan and budget shall be included in the report. The report shall also include any changes of key personnel concerned with the project that were approved by the EPA Grants Management Officer or Award Official. (Note, as provided at 2 CFR § 200.308, *Revision of budget and program*, the CAR must seek prior approval from the EPA Grants Management Officer or Award Official for a change in a key person.)

The CAR shall refer to and utilize the Quarterly Reporting function within the Assessment, Cleanup and Redevelopment Exchange System (ACRES) to submit quarterly reports unless approval is obtained from the EPA Project Officer to use an alternate format for reports.

2. The CAR must submit performance reports on a quarterly basis in ACRES using the Assessment Quarterly Report function or to the EPA Project Officer. Quarterly performance reports must include:

- a. A summary that clearly differentiates between activities completed with EPA funds provided under the Brownfield Assessment cooperative agreement and related activities completed with other sources of leveraged funding.
- b. A summary and status of approved activities performed during the reporting quarter; a summary of the performance outputs/outcomes achieved during the reporting quarter; and a description of problems encountered during the reporting quarter that may affect the project schedule.
- c. A comparison of actual accomplishments to the anticipated outputs/outcomes specified in the EPA-approved workplan and reasons why anticipated outputs/outcomes were not met.
- d. An update on the project schedule and milestones, including an explanation of any discrepancies from the EPA-approved workplan.
- e. A list of the properties where assessment and/or planning activities were performed and/or completed during the reporting quarter.
- f. A budget summary table with the following information: current approved project budget; EPA funds drawn down during the reporting quarter; costs drawn down to date (cumulative expenditures); program income generated and used (if applicable) (i.e., program income received and disbursed during the reporting quarter and during the entire cooperative agreement, and the amount of program income remaining); and total remaining funds. The budget summary table must include costs that are charged to the "other" budget object class category (e.g., participant support costs, subawards, etc.).

The CAR shall include an explanation of any discrepancies in the budget from the EPA-approved workplan, cost overruns or high unit costs, and other pertinent information. The CAR shall include a statement on funding transfers [2] among direct budget categories or programs, functions and activities that occurred during the quarter and cumulatively during the period of performance.

2 Per EPA's General Term and Condition, the CAR must obtain prior approval from the EPA Grants Management Officer or Award Official for cumulative transfers of funds in excess of 10% of the total budget.

- g. **[Local governments only]** For local governments that are using cooperative agreement funds for health monitoring, the quarterly report must also include the specific budget, the quarterly expenditure, and cumulative expenditures to demonstrate that 10% of federal funding is not exceeded.

Note: Each property where assessment activities were performed and/or completed must have its corresponding information updated in ACRES (or via the Property Profile Form with prior approval from the EPA Project Officer) prior to submitting the quarterly performance report (see Section III.E. below).

3. **[If subawards are approved for this agreement]** Because the workplan and budget for this agreement include subawards, the CAR is a pass-through entity under the “Establishing and Managing Subaward” General Term and Condition of this agreement. As the pass-through entity, the CAR must report to EPA on its subaward monitoring activities under [2 CFR § 200.332\(d\)](#), including the following information on subawards as part of the CAR's quarterly performance reporting:

- a. Summaries of results of reviews of financial and programmatic reports;
- b. Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance;
- c. Environmental results the subrecipient achieved;
- d. Summaries of audit findings and related pass-through entity management decisions, if any; and
- e. Actions the pass-through entity has taken to correct any deficiencies such as those specified at [2 CFR § 200.332\(e\)](#), [2 CFR § 200.208, Specific conditions](#), and [2 CFR § 200.339, Remedies for Noncompliance](#).

4. The CAR must maintain records that will enable it to report to EPA on the amount of funds disbursed by the CAR to assess the specific properties under this cooperative agreement.

5. In accordance with 2 CFR § 200.329(e)(1), the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the EPA-approved workplan.

#### **E. Property Profile Submission**

1. The CAR must report on interim progress (e.g., assessments started, reuse planning activities started) and any final accomplishments (e.g., assessments completed, clean up required, contaminants found, institutional controls required, engineering controls required) by completing and submitting relevant portions of the electronic Property Profile Form using the Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or within 30 days after the end of each reporting quarter. The CAR must enter any new data into ACRES prior to submitting the quarterly performance report to the EPA Project Officer. The CAR must utilize the electronic version of the Property Profile Form in ACRES unless approval is obtained from the EPA Project Officer to use the hardcopy version of the Property Profile Form or its use is included in the approved workplan.

#### **F. Final Cooperative Agreement Performance Report with Environmental Results**

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.329, *Monitoring and Reporting Program Performance* and 2 CFR § 200.344(a), *Closeout*), the CAR agrees to submit to the EPA Project Officer within 120 days after the expiration or termination of the approved project period a final performance report on the cooperative agreement via email; unless the EPA Project Officer agrees to accept a paper copy of the report. The final performance report shall document and summarize the elements listed in Section III.D.2., as appropriate, for activities that occurred over the entire project period.

### **IV. FINANCIAL ADMINISTRATION REQUIREMENTS**

#### **A. Eligible Uses of the Funds for the Cooperative Agreement Recipient**

1. To the extent allowable under the EPA-approved workplan, cooperative agreement funds may be used for eligible programmatic expenses to inventory, characterize, assess sites; conduct site-specific planning, general brownfield-related planning activities around one or more brownfield sites; conduct outreach and community engagement; and for reasonable participant support costs associated with one community liaison per target area identified in the selected FY23 application. Eligible programmatic expenses include activities described in Section V. of these Terms and Conditions. In addition, eligible

programmatic expenses may include:

- a. Determining whether assessment activities at a particular site are authorized by CERCLA § 104(k).
- b. Ensuring that an assessment complies with applicable requirements under federal and state laws, as required by CERCLA § 104(k).
- c. Preparing and updating an Analysis of Brownfield Cleanup Alternatives (ABCA) which will include information about the site and contamination issues, cleanup standards, applicable laws, alternatives considered, and the proposed cleanup.
- d. Preparing a Community Involvement Plan which includes reasonable notice, opportunity for public involvement and comment on the proposed cleanup, and response to comments.
- e. Developing a Quality Assurance Project Plan (QAPP) as required by 2 CFR § 1500.12. The specific requirement for a QAPP is outlined in *Implementation of Quality Assurance Requirements for Organizations Receiving EPA Financial Assistance* available at <https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial>.
- f. Using a portion of the cooperative agreement funds to purchase environmental insurance for the characterization or assessment of the site. [Funds shall not be used to purchase insurance intended to provide coverage for any of the ineligible uses under Section IV., *Ineligible Uses of the Funds for the Cooperative Agreement Recipient*.]
- g. Any other eligible programmatic costs, including direct costs incurred by the recipient in reporting to EPA; procuring and managing contracts; awarding, monitoring, and managing subawards to the extent required to comply with 2 CFR § 200.332 and the “Establishing and Managing Subawards” General Term and Condition; and carrying out community engagement pertaining to the assessment activities.

2. **[Local Governments Only]** If authorized in the EPA-approved workplan and budget narrative, up to 10% of the funds awarded by this agreement may be used by the CAR itself as a programmatic cost for Brownfield Program development and implementation of monitoring health conditions and institutional controls. The health monitoring activities must be associated with brownfield sites at which at least a Phase II environmental site assessment is conducted and is contaminated with hazardous substances. The CAR must maintain records on funds that will be used to carry out this task to ensure compliance with this requirement.

3. **[Administrative Costs]** - Under CERCLA § 104(k)(5)(E), CARs and subrecipients may use up to 5% of the amount of federal funding for this cooperative agreement for administrative costs, including indirect costs under 2 CFR § 200.414 [if authorized in the EPA approved scope of work and budget narrative]. **The limit on administrative costs for the CAR under this agreement is \$50,000.** The total amount of indirect costs and any direct costs for cooperative agreement administration by the CAR paid for by EPA under the cooperative agreement shall not exceed this amount. Subrecipients may use up to 5% of the amount of Federal funds in their subawards for administrative costs. As required by 2 CFR § 200.403(d), the CAR and subrecipients must classify administrative costs as direct or indirect consistently and shall not classify the same types of costs in both categories. The term “administrative costs” does not include:

- a. Investigation and identification of the extent of contamination of a brownfield site;
- b. design and performance of a response action; or
- c. monitoring of a natural resource.

Eligible cooperative agreement and subaward administrative costs subject to the 5% limitation include direct costs for:

- a. Costs incurred to comply with the following provisions of the *Uniform Administrative Requirements for Cost Principles and Audit Requirements for Federal Awards* at 2 CFR Parts 200 and 1500 other than those identified as

programmatic.

- i. Record-keeping associated with equipment purchases required under 2 CFR § 200.313;
- ii. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 2 CFR § 200.308;
- iii. Maintaining and operating financial management systems required under 2 CFR § 200.302;
- iv. Preparing payment requests and handling payments under 2 CFR § 200.305;
- v. Financial reporting under 2 CFR § 200.328;
- vi. Non-federal audits required under 2 CFR Part 200, Subpart F; and
- vii. Closeout under 2 CFR § 200.344 with the exception of preparing the recipient's final performance report. Costs for preparing this report are programmatic and are not subject to the 5% limitation on direct administrative costs.

b. Pre-award costs for preparation of the proposal and application for this cooperative agreement (including the final workplan) or applications for subawards are not allowable as direct costs but may be included in the CAR's or subrecipient's indirect cost pool to the extent authorized by 2 CFR § 200.460.

**4. [Participant Support Costs for Community Liaison]** - If authorized in the EPA approved scope of work and budget narrative, the CAR may use a portion of the Assessment Grant for eligible participant support costs associated with one community liaison per target area who is not an employee of the CAR or the CAR's contractor(s) or subrecipient(s). Additional target areas cannot be added to the project for the purpose of using participant support costs to fund additional community liaisons. Eligible participant support costs may include reasonable stipends to compensate an individual community member's time and travel costs for participating in project-related meetings (e.g., meetings with the community, meetings held by a brownfields advisory board, etc.) and time associated with other specific tasks that are directly tied to related community engagement efforts. Stipends may only be paid for actual time spent working on tasks associated with the project and must not duplicate support provided through other Federal, state, tribal, or local programs.

A CAR that uses participant support costs must follow the process described in their EPA-approved workplan (or in a separate process approved by EPA post-award) for determining the amounts of allowable stipend(s), procedures for accounting for participant support cost payments (including receipts), and documenting that the costs are allowable and do not duplicate other support for the individual(s). Additional information on these requirements for the use of participant support costs is available in [EPA's Guidance on Participant Support Costs](#).

## **B. Ineligible Uses of the Funds for the Cooperative Agreement Recipient**

1. Cooperative agreement funds shall not be used by the CAR for any of the following activities:

- a. Cleanup activities;
- b. Site development activities that are not brownfield site assessment activities (e.g., marketing of property (activities or products created specifically to attract buyers or investors) or construction of a new facility);
- c. General community visioning, area-wide zoning updates, design guideline development, master planning, green infrastructure, infrastructure service delivery, and city-wide or comprehensive planning/plan updates – these activities are all ineligible uses of grant funds if unrelated to advancing cleanup and reuse of brownfield sites or sites to be assessed. Note: for these types of activities to be an eligible use of grant funds, there must be a specific nexus between the activity and how it will help further cleanup and reuse of the priority brownfield site(s). This nexus must be clearly described in the workplan for the project;
- d. Job training activities unrelated to performing a specific assessment at a site covered by the cooperative

agreement;

e. To pay for a penalty or fine;

f. To pay a federal cost share requirement (e.g., a cost share required by another federal grant) unless there is specific statutory authority;

g. To pay for a response cost at a brownfield site for which the CAR or subaward recipient is potentially liable under CERCLA § 107;

h. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the assessment; and

i. Unallowable costs (e.g., lobbying and purchases of alcoholic beverages) under 2 CFR Part 200, Subpart E.

2. Cooperative agreement funds shall not be used for any of the following properties:

a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);

b. Facilities subject to unilateral administrative orders, court orders, and administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;

c. Facilities that are subject to the jurisdiction, custody or control of the United States government except for land held in trust by the United States government for an Indian tribe; or

d. A site excluded from the definition of a brownfield site for which EPA has not made a property-specific funding determination.

### C. Interest-Bearing Accounts and Program Income

1. In accordance with 2 CFR § 1500.8(b), during the performance period of the cooperative agreement, the CAR is authorized to add program income to the funds awarded by EPA and use the program income under the same terms and conditions of this agreement.

2. Program income for the CAR shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income includes, but is not limited to, fees charged for conducting assessment, site characterizations, cleanup planning, or other activities when the costs for the activities are charged to this agreement.

3. The CAR must deposit advances of cooperative agreement funds and program income (i.e., fees) in an interest-bearing account.

a. For interest earned on advances, CARs are subject to the provisions of 2 CFR § 200.305(b)(7)(ii) relating to remitting interest on advances to EPA on a quarterly basis.

b. Any program income earned by the CAR will be added to the funds EPA has committed to this agreement and used only for eligible and allowable costs under the agreement as provided in 2 CFR § 200.307 and 2 CFR § 1500.8, as applicable.

c. Interest earned on program income is considered additional program income.

d. The CAR must disburse program income (including interest earned on program income) before requesting additional payments from EPA as required by 2 CFR § 200.305(b)(5).

4. As required by 2 CFR § 200.302, the CAR must maintain accounting records documenting the receipt and disbursement of program income.

5. The recipient must provide as part of its quarterly performance report and final technical report a description of how program income is being used. Further, a report on the amount of program income earned during the award period must be submitted with the quarterly performance report, final technical report, and Federal Financial Report (Standard Form 425).

## V. ASSESSMENT REQUIREMENTS

### A. Authorized Assessment Activities

1. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling), the CAR shall consult with the EPA Project Officer regarding potential applicability of the National Historic Preservation Act (NHPA) (16 USC § 470) and, if applicable, shall assist EPA in complying with any requirements of the NHPA and implementing regulations.
2. If funds from this cooperative agreement are used to prepare an Analysis of Brownfield Cleanup Alternatives (ABCA), or equivalent state Brownfields program document, the CAR must include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, ability to implement, and the cost of the response proposed. The evaluation of alternatives must also consider the resilience of the remedial options to address potential adverse impacts caused by extreme weather events (e.g., sea level rise, increased frequency and intensity of flooding, etc.). The alternatives may additionally consider the degree to which they reduce greenhouse gas discharges, reduce energy use or employ alternative energy sources, reduce volume of wastewater generated/disposed of, reduce volume of materials taken to landfills, and recycle and re-use materials generated during the cleanup process to the maximum extent practicable. The evaluation will include an analysis of reasonable alternatives including no action. The cleanup method chosen must be based on this analysis.

### B. Quality Assurance (QA) Requirements

1. When environmental data are collected as part of the brownfield assessment, the CAR shall comply with [2 CFR § 1500.12](#) requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements.
2. Recipients implementing environmental programs within the scope of the assistance agreement must submit to the EPA Project Officer an approvable Quality Assurance Project Plan (QAPP) at least 60 days prior to the initiating of data collection or data compilation. The Quality Assurance Project Plan (QAPP) is the document that provides comprehensive details about the quality assurance, quality control, and technical activities that must be implemented to ensure that project objectives are met. Environmental programs include direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology.

The QAPP should be prepared in accordance with the [EPA Quality Assurance Project Plan Standard \(https://www.epa.gov/system/files/documents/2023-07/quality\\_assurance\\_project\\_plan\\_standard.pdf\)](https://www.epa.gov/system/files/documents/2023-07/quality_assurance_project_plan_standard.pdf). No environmental data collection or data compilation may occur until the QAPP is approved by the EPA Project Officer and Quality Assurance Regional Manager. Additional information on the requirements can be found at the EPA Office of Grants and Debarment website at <https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial>.

3. The recipient shall notify the EPA Project Officer and the EPA Quality Assurance Manager or designee (hereafter referred to as QAM) when substantive changes are needed to the QAPP. EPA may require the QAPP be updated and re-submitted for approval.
4. The recipient must review their approved QAPP at least annually. The results of the QAPP review and any revisions must be submitted to the EPA Project Officer and the QAM at least annually and may also be submitted when changes occur (the QAM or EPA Project Officer may add additional specifications).

5. **Competency of Organizations Generating Environmental Measurement Data:** In accordance with Agency Policy Directive Number FEM-2012-02, *Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements*, the CAR agrees, by entering into this agreement, that it has demonstrated

competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable, the CAR agrees to demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data. The CAR shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy is available online at [http://www.epa.gov/fem/lab\\_comp.htm](http://www.epa.gov/fem/lab_comp.htm) or a copy may also be requested by contacting the EPA Project Officer for this award.

### C. Public Awareness

1. The CAR agrees to clearly reference EPA investments in the project during all phases of community outreach outlined in the EPA-approved workplan which may include the development of any post-project summary or success materials that highlight achievements to which this project contributed.

a. If any documents, fact sheets, and/or web materials are developed as part of this cooperative agreement, then they shall comply with the *Acknowledgement Requirements for Non-ORD Assistance Agreements* in the General Terms and Conditions of this agreement.

b. If the EPA logo is displayed along with logos from other participating entities on websites, outreach materials, or reports, it must **not** be prominently displayed to imply that any of the recipient or subrecipient's activities are being conducted by the EPA. Instead, the EPA logo should be accompanied with a statement indicating that the CAR or subrecipient received financial support from the EPA under an Assistance Agreement per the term and condition described in Section V.C.1.a. above. More information is available at <https://www.epa.gov/stylebook/using-epa-seal-and-logo>.

c. Investing in America Emblem: The recipient will ensure that a sign is placed at construction sites supported in whole or in part by this award displaying the official Investing in America emblem and must identify the project as a "project funded by President Biden's Bipartisan Infrastructure Law." The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

The recipient will ensure compliance with the guidelines and design specifications provided by EPA for using the official Investing in America emblem available at <https://www.epa.gov/invest/investing-america-signage>.

d. Procuring Signs: Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, recipients are encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language on signs (excluding the official Investing in America emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

2. The CAR agrees to notify the EPA Project Officer listed in this award document of public or media events publicizing the accomplishment of significant events related to construction and/or site reuse projects as a result of this agreement, and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.

3. To increase public awareness of projects serving communities where English is not the predominant language, CARs are encouraged to include in their outreach strategies communication in non-English languages. Translation costs for this purpose are allowable, provided the costs are reasonable.

4. All public awareness activities conducted with EPA funding are subject to the provisions in the General Terms and Conditions on compliance with section 504 of the Americans with Disabilities Act.

### D. All Appropriate Inquiry

1. As required by CERCLA § 104(k)(2)(B)(ii) and CERCLA § 101(35)(B), the CAR shall ensure that a Phase I site characterization and assessment carried out under this agreement will be performed in accordance with EPA's all appropriate

inquiries regulation (AAI). The CAR shall utilize the practices in ASTM standard E1527-21 *“Standard Practices for Environmental Site Assessment: Phase I Environmental Site Assessment Process”* (or the latest recognized ASTM standard at the time the assessment is performed), or EPA's All Appropriate Inquiries Final Rule (40 CFR Part 312). A suggested outline for an AAI final report is provided in *“All Appropriate Inquiries Rule: Reporting Requirements and Suggestions on Report Content”* (Publication Number: EPA 560-F-23-004 (or the latest available publication)). This does not preclude the use of cooperative agreement funds for additional site characterization and assessment activities that may be necessary to characterize the environmental impacts at the site or to comply with applicable state standards.

2. AAI final reports produced with funding from this agreement must comply with 40 CFR Part 312 and must, at a minimum, include the information below. All AAI reports submitted to the EPA Project Officer as deliverables under this agreement must be accompanied by a completed *“All Appropriate Inquiries: Reporting Requirements Checklist for Assessment Grant Recipients”* (Publication Number: EPA 560-F-23-017 (or the latest available publication)) that the EPA Project Officer will provide to the recipient. The checklist is available to CARs on EPA's website at <https://www.epa.gov/brownfields/all-appropriate-inquiries-reporting-requirements-checklist-assessment-grant-recipients>. The completed checklist must include:

- a. An **opinion** as to whether the inquiry has identified conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property.
- b. An identification of **“significant” data gaps** (as defined in 40 CFR § 312.10), if any, in the information collected for the inquiry. Significant data gaps include missing or unattainable information that affects the ability of the environmental professional to identify conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property. The documentation of significant data gaps must include information regarding the significance of these data gaps.
- c. **Qualifications and signature** of the environmental professional(s). The environmental professional must place the following statements in the document and sign the document:
  - “[I, We] declare that, to the best of [my, our] professional knowledge and belief, [I, we] meet the definition of Environmental Professional as defined in 40 CFR § 312.10 of this part.”
  - “[I, We] have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. [I, We] have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312.”

**Note: Please use either “I/my” or “We/our.”**

- d. In compliance with 40 CFR § 312.31(b), the environmental professional must include in the final report an **opinion regarding additional appropriate investigation**, if the environmental professional has such an opinion.

3. EPA may review checklists and AAI final reports for compliance with the AAI regulation documentation requirements at 40 CFR Part 312 (or comparable requirements for those using ASTM Standard 1527-21 or the latest recognized ASTM standard at the time the assessment is performed). Any deficiencies identified during an EPA review of these documents must be corrected by the recipient within 30 days of notification. Failure to correct any identified deficiencies may result in EPA disallowing the costs for the entire AAI report as authorized by 2 CFR § 200.339. If a recipient willfully fails to correct the deficiencies EPA may consider other available remedies under 2 CFR § 200.339 and 2 CFR § 200.340.

## E. Completion of Assessment Activities

1. The CAR shall properly document the completion of all activities described in the EPA- approved workplan. This must be done through a final report or letter from a Qualified Environmental Professional, or other documentation provided by a State or Tribe that shows assessments are complete.

## F. Inclusion of Additional Terms and Conditions

1. In accordance with 2 CFR § 200.334, the CAR shall maintain records pertaining to the cooperative agreement for a minimum of three (3) years following submission of the final financial report unless one or more of the conditions described in the regulation applies. The CAR shall provide access to records relating to assessments supported with Assessment cooperative agreement funds to authorized representatives of the Federal government as required by 2 CFR § 200.337.
2. The CAR has an ongoing obligation to advise EPA if it assessed any penalties resulting from environmental non-compliance at sites subject to this agreement.

## **VI. PAYMENT AND CLOSEOUT**

For the purposes of these Terms and Conditions, the following definitions apply: “payment” is EPA’s transfer of funds to the CAR; “closeout” refers to the process EPA follows to ensure that all administrative actions and work required under the cooperative agreement have been completed.

### **A. Payment Schedule**

1. The CAR may request advance payment from EPA pursuant to 2 CFR § 200.305(b)(1) and the prompt disbursement requirements of the General Terms and Conditions of this agreement.

This requirement does not apply to states which are subject to 2 CFR § 200.305(a).

### **B. Schedule for Closeout**

1. Closeout will be conducted in accordance with 2 CFR § 200.344. EPA will close out the award when it determines that all applicable administrative actions and all required work under the cooperative agreement have been completed.
2. The CAR, within 120 days after the expiration or termination of the cooperative agreement, must submit all financial, performance, and other reports required as a condition of the cooperative agreement.
  - a. The CAR must submit the following documentation:
    - i. The Final Cooperative Agreement Performance Report as described in Section III.F. of these Terms and Conditions.
    - ii. Administrative and Financial Reports as described in the General Terms and Conditions of this agreement.
  - b. The CAR must ensure that all appropriate data have been entered into ACRES or all hardcopy Property Profile Forms are submitted to the EPA Project Officer.
  - c. As required by 2 CFR § 200.344, the CAR must immediately refund to EPA any balance of unobligated (unencumbered) advanced cash or accrued program income that is not authorized to be retained for use on other cooperative agreements.

## **Davis-Bacon Terms and Conditions For Cooperative Agreements to Nonprofits**

### **DAVIS-BACON PREVAILING WAGE TERM AND CONDITION**

The following terms and conditions specify how Cooperative Agreement Recipients (CARs) will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under CERCLA 104(g) and any other statute which makes DB applicable to EPA financial assistance. If a CAR has questions regarding when DB applies, obtaining the correct DB wage determinations, DB contract provisions, or DB compliance monitoring, they should contact the regional Brownfields Coordinator or Project Officer for guidance.

#### **1. Applicability of the Davis-Bacon Prevailing Wage Requirements**

After consultation with DOL, EPA has determined that for Brownfields Grants for remediation of sites contaminated with hazardous substances and petroleum, DB prevailing wage requirements apply when the project includes the following activities.

Hazardous substances contamination:

(a) All construction, alteration and repair activity involving the remediation of hazardous substances, including excavation and removal of hazardous substances, construction of caps, barriers, structures which house treatment equipment, and abatement of contamination in buildings.

Petroleum contamination:

(a) Installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping due to groundwater contamination,

(b) Soil excavation/replacement when undertaken in conjunction with the installation of public water lines/wells described above, or

(c) Soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement.

In the above circumstances, all the laborers and mechanics employed by contractors and subcontractors will be covered by the DB requirements for all construction work performed on the site. Other petroleum site cleanup activities such as in situ remediation, and soil excavation/replacement and tank removal when not in conjunction with paving or concrete replacement, will not normally trigger DB requirements.

If the CAR encounters a unique situation at a site (e.g., unusually extensive excavation, construction of permanent facilities to house in situ remediation systems, reconstruction of roadways) that presents uncertainties regarding DB applicability, the CAR must discuss the situation with EPA before authorizing work on that site.

## 2. Obtaining Wage Determinations

(a) Unless otherwise instructed by EPA on a project specific basis, the CAR shall use the following DOL General Wage Classifications for the locality in which the construction activity subject to DB will take place. CARs must obtain proposed wage determinations for specific localities at <https://sam.gov/>. After the CAR obtains its proposed wage determination, it must submit the wage determination to your Brownfields Project Officer for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by EPA's Award Official).

(i) When soliciting competitive contracts, awarding new contracts or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments), the CAR shall use the "Heavy Construction" classification for the following activities:

Hazardous substances contamination: excavation and removal of hazardous substances, construction of caps, barriers, and similar activities that do not involve construction of buildings.

Petroleum contamination: installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping, including soil excavation/replacement.

(ii) When soliciting competitive contracts, awarding new contracts, or issuing ordering instruments, the CAR shall use the "Building Construction" classification for the following activities:

Hazardous substances contamination: construction of structures which house treatment

equipment, and abatement of contamination in buildings (other than residential structures less than 4 stories in height).

Petroleum contamination: soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at current or former service station sites, hospitals, fire stations, industrial or freight terminal facilities, or other sites that are associated with a facility that is not used solely for the underground storage of fuel or other contaminant.

(iii) When soliciting competitive contracts, awarding new contracts or issuing ordering instruments for soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at a facility that is used solely for the underground storage of fuel or other contaminant the CAR shall use the "Heavy Construction" classification. (Only applies to petroleum contamination.)

(iv) When soliciting competitive contracts, awarding new contracts or issuing ordering instruments for the abatement of contamination in residential structures less than 4 stories in height the CAR shall use "Residential Construction" classification. (Only applies to hazardous substances contamination.)

Note: CARs must discuss unique situations that may not be covered by the General Wage Classifications described above with EPA. If, based on discussions with a CAR, EPA determines that DB applies to a unique situation (e.g., unusually extensive excavation) the Agency will advise the CAR which General Wage Classification to use based on the nature of the construction activity at the site.

(b) CARs shall obtain the wage determination for the locality in which a Brownfields cleanup activity subject to DB will take place *prior* to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the CAR shall monitor <https://sam.gov/> on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The CAR shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e., bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the CAR may request a finding from EPA that there is not a reasonable time to notify interested contractors of the modification of the wage determination. EPA will provide a report of the Agency's finding to the CAR.

(ii) If the CAR does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless EPA, at the request of the CAR, obtains an extension of the 90-day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The CAR shall monitor <https://sam.gov/> on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(iii) If the CAR carries out Brownfields cleanup activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the CAR shall insert the appropriate DOL wage determination from <https://sam.gov/> into the ordering instrument.

(c) CARs shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a CAR's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the CAR has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the CAR shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by

change order. The CAR's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

### 3. Contract and Subcontract Provisions

(a) The CAR shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to DB, the following labor standards provisions.

#### (1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the applicable wage determination of the Secretary of Labor which the CAR obtained under the procedures specified in Item 2, above, and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. CARs shall require that the contractor and subcontractors include the name of the CAR employee or official responsible for monitoring compliance with DB on the poster.

(ii)(A) The CAR, on behalf of EPA, shall require that contracts and subcontracts entered into under this agreement provide that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA Award Official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(ii)(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the CAR agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the CAR to the EPA Award Official. The Award Official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Award Official or will notify the Award Official within the 30-day period that additional time is necessary.

(ii)(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the CAR do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Award Official shall refer the questions, including the views of all interested parties and the recommendation of the award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the Award Official within the 30-day period that additional time is necessary.

(ii)(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## (2) Withholding.

The CAR, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause to withhold from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, EPA may, after written notice to the contractor, or CAR take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## (3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the CAR who will maintain the records on behalf of EPA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-

347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/whd/forms/wh347.pdf> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the CAR for transmission to the EPA, if requested by EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the CAR.

(ii)(B) Each payroll submitted to the CAR shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR Part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR Part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(ii)(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(ii)(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, EPA may, after written notice to the contractor, CAR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the

journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this term and condition.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors), the CAR, borrower or subrecipient and EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### 4. Contract Provisions for Contracts in Excess of \$100,000

(a) Contract Work Hours and Safety Standards Act. The **CAR** shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The **CAR**, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause to withhold from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the CAR shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the CAR shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

#### 5. Compliance Verification

- (a) The CAR shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The CAR must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.
- (b) The CAR shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the CAR must conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. CARs must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. CARs shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.
- (c) The CAR shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The CAR shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the CAR must spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. CARs must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the CAR shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.
- (d) The CAR shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.
- (e) CARs must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <https://www.dol.gov/whd/america2.htm>.

**END OF DOCUMENT**



## MOTION

**SUBJECT:** Brownfields MOA

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I move to approve the Brownfield Assessment Collation Memorandum of Agreement for EPA Cooperative Agreement 4B-02J51801-0 between Mid-Columbia Economic Development District, Columbia Cascade Housing Corporation, Sherman, Wasco, and Klickitat Counties. I further move to authorize Wasco County's Administrative Officer to sign future agreements related to the Brownfield Assessment Coalition pending legal review.