



Council Business Meeting

March 21, 2023

Agenda Item	Union Pacific Railroad Restrictive Covenant amendment request		
From	Brandon Goldman	Interim Community Development Director	
Contact	Brandon.goldman@ashland.or.us		
Item Type	Requested by Council <input type="checkbox"/> Update <input checked="" type="checkbox"/> Request for Direction <input checked="" type="checkbox"/> Presentation <input type="checkbox"/>		

SUMMARY

Before the Council is a request to modify a 2016 deed restriction (Restrictive Covenant) on the Union Pacific Railroad (“UPRR”) rail yard property in Ashland. After completion of full-site remediation to DEQ’s cleanup standards, the proposed revised deed restriction would allow subdivision and development of individual parcels upon further remediation in conformance with the DEQ risk standards applicable to the proposed actual uses of the parcels and the parcel-specific risks posed by the actual contaminants on them.

POLICIES, PLANS & GOALS SUPPORTED

Comprehensive Plan – Economy Element

Goal 7.07.03 To ensure that the local economy increases in its health, and diversifies in the number, type, and size of businesses consistent with the local social needs, public service capabilities, and the retention of a high quality environment.

Policy 1) The City shall zone and designate within the Plan Map sufficient quantity of lands for commercial and industrial uses to provide for the employment needs of its residents and a portion of rural residents consistent with the population projection for the urban area.

Policy 4) ... the City shall take such actions as are necessary to ensure that economic development can occur in a timely and efficient manner...

BACKGROUND AND ADDITIONAL INFORMATION

In November 1999, the City placed a deed restriction on the Union Pacific Railroad (“UPRR”) rail yard property in Ashland. The deed restriction required that the entire property be remediated to DEQ’s “Residential” standards before any further development or subdivision could take place, even if the subdivided parcels might be used for purposes like asphalt-capped streets, parking areas, or light industrial or commercial activities. However, the legal language of the originally recorded restriction resulted in years of no progress towards putting the rail yard to beneficial use. The cost of making every possible future subdivided parcel meet the strictest Residential remediation standards, regardless of potential uses, made the property unmarketable and diminished UPRR’s incentive to undertake voluntary full-site cleanup.

In April 2015, UPRR proposed remediation of a limited portion of the site containing most of the high concentrations of contaminants, using trucks for transporting outgoing contaminated soil and incoming clean fill. City Council members countered with a request that UPRR conduct a full-site remediation





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using rail cars for taking contaminated soils away. UPRR asked the City to consider relaxing the deed restriction. At the January 5, 2016 Council business meeting, Council approved a motion directing staff to initiate the planning process to modify the 1999 deed restriction. Another part of the motion directed staff to try to get agreement from UPRR to clean up the full site as soon as possible and to use rail cars for transporting contaminated soils from the site. Unstated but implicit in the approved motion was the necessity of reaching agreement among the City, UPRR, and DEQ on the wording of the modified deed restriction. The three parties agreed upon revisions to the prior deed restriction, and it was modified in December of 2016 with the following language:

Parcel 7 is restricted from further development or land division until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to a single residential property. Thereafter, development of or any subdivided parcel cannot occur until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to the use proposed for the subdivided parcel. Grantor will provide written document from the Department of Environmental Quality demonstrating compliance with these standards to the City.

Upon review of this amendment, the City, DEQ, and UPRR are concerned that the use of the term “single residential property” to clarify the applicable cleanup standards is inconsistent with the intended future development of the property. Specifically, the City’s E-1 (employment zoning) does not permit single-family residential uses. The allowable uses in the E-1 zone would include commercial, employment, and mixed-use development, or potentially under a future Climate Friendly Area designation, apartment uses may be permissible under state rules. In each of these cases, the DEQ cleanup standards for “Urban Residential” would allow for such future development. Therefore, staff finds that modifying the condition and corresponding restrictive covenant as proposed below would allow for development of the property consistent with the comprehensive plan designation for the property.

Parcel 7 is restricted from further development or land division until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards consistent with the current and likely future land use zoning for the property. These land uses correspond with the Department of Environmental Quality Urban Residential and/or Occupational exposure scenarios. Thereafter, development of or any subdivided parcel cannot occur until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to the use proposed for the subdivided parcel. This covenant will be removed from the property, and/or any subdivided parcel(s), upon the grantor providing the City written documentation from the Department of Environmental Quality demonstrating compliance with these standards to the City.

Next Steps

Should the Council authorize staff to seek planning approval to modify the deed restriction to meet “Urban Residential” standards, the anticipated next steps towards realization of full-site remediation include DEQ approval of a cleanup process. Specifically, the cleanup process will include UPRR and DEQ proceeding with the scheduling of a public meeting and presentation to Council regarding the proposed Remediation Plan. Following a public comment period DEQ will render a decision on the proposed remedial actions and enter into a voluntary agreement with UPRR to carry out the cleanup workplan.



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The immediate next step should Council be amenable to modifying the restrictive covenant language will be for the City staff to submit to the Planning Commission a request for Major Amendment to modify the existing Planning Action (PA-2016-00684) condition of approval concerning the rail yard's DEQ clearance requirement prior to further subdivision or development. This is the same process that was undertaken in 2016 to amend the 1999 Planning Action (PA-99-048) condition of approval relating to the original subdivision of the property.

FISCAL IMPACTS

There are no noteworthy near-term fiscal impacts. Future development of the railyard site following completion of a DEQ approved remediation plan could yield significant economic activity and City tax revenues.

STAFF RECOMMENDATION

Staff recommends the Council direct the Planning Commission to consider an application for modification of the prior planning condition, and upon approval of such modification that Staff and UPRR execute an amended Restrictive Covenant.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

I move to direct staff to prepare, file, and seek approval of an application for a Major Amendment to replace the condition of approval in PA2016-00684 with the modified condition of approval presented in the April 5, 2016, Council Communication and to continue working with Union Pacific Railroad and DEQ to achieve remediation of the rail yard site to applicable DEQ standards.

DISCUSSION QUESTIONS

Does the Council have any questions about the proposed amendment to the restrictive covenant or process moving forward?

SUGGESTED NEXT STEPS

Next steps include scheduling a public hearing before the Planning Commission to amend the condition of approval as set forth in planning action PA-2016-00684.

REFERENCES & ATTACHMENTS

Attachment #1: UPRR/Jacobs Request for Amendment 03092023

Attachment #2: 2016 UPRR Restrictive Covenant (existing)

Attachment #3: DEQ Response To City Comments dated 03102023

March 9, 2023

Ashland City Council
51 Winburn Way
Ashland, OR 97520

**Subject: Modification of Covenant for
Union Pacific Railroad, Ashland Railyard**

Dear Ashland City Council,

On behalf of the Union Pacific Railroad Company (UPRR), Jacobs is submitting this request for a hearing before the Ashland City Council. The intent of the hearing is to initiate a subsequent Type II public hearing before the Planning Commission regarding modification of an existing covenant on the UPRR Ashland railyard property (site), which is referenced as Parcel 7 of Partition Plan No. P-32-3000. The existing covenant specifies that the remedial action will achieve cleanup standards applicable to a single residential property, which is inconsistent with the current land use zoning for the site. Modification of the covenant is necessary for consistency with the current zoning and the approved cleanup plan with the Oregon Department of Environmental Quality (ODEQ) for the site.

UPRR is committed to a cleanup agreement for the site with ODEQ through the Voluntary Cleanup Program (VCP). As part of the VCP, a Record of Decision (ROD) for the site was issued by ODEQ in 2001. An updated remediation plan was approved by ODEQ in 2022, which represents a cleanup approach that is based on current data and updated ODEQ guidance. The 2001 ROD specified that the site would be cleaned up to single-family residential standards, which is inconsistent with the current zoning for the property which allows for mixed use commercial and high-density urban residential development (i.e., E-1 with residential overlay).

Due to the potential ambiguity related to the exposure area assumptions used for the single-family residential cleanup calculations, the original covenant on the property from 1999 (Condition 9 of PA 99-048) was amended in 2016 as per PA 2016-00684 to read as follows (with underlining added for emphasis):

Parcel 7 is restricted from further development or land division until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to a single residential property. Thereafter, development of or any subdivided parcel cannot occur until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to the use proposed for the subdivided parcel. Grantor will provide written document from the Department of Environmental Quality demonstrating compliance with these standards to the City.

Because the updated remediation plan is based on current guidance, cleanup levels, and land zoning, an updated ROD for the site will be issued by ODEQ before the cleanup can begin. Before the initiation of the process for issuing a new ROD can begin, the language of the existing covenant must be amended to be consistent with the cleanup approach and the City of Ashland's current land use zoning. UPRR's proposed modifications to PA 2016-00684 are shown below:

Parcel 7 is restricted from further development or land division until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards consistent with the current and likely future land use zoning for the property (i.e., E-1 with residential overlay)~~applicable to a single residential property~~. These land uses correspond with the Department of Environmental Quality Urban Residential and/or Occupational exposure scenarios. Thereafter, development of or any subdivided parcel cannot occur until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to the use proposed for the subdivided parcel. This covenant will be removed from the property, and/or any subdivided parcel(s), upon the Grantor will provide-providing the City written documentation from the Department of Environmental Quality demonstrating compliance with these standards to the City.

In conclusion, UPRR is requesting the Ashland City Council recommend that the Planning Commission modify the existing covenant on the property. Modification of the covenant is necessary before a new ROD for the site can be

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issued, and the site cleanup can move forward. It is our understanding that the City Manager has added this item to the Council's look-ahead calendar on March 21, 2023, as "Union Pacific - Amendment to Restrictive Covenant for Railroad Yard Property". I am planning to attend the hearing in person, on behalf of UPRR, and will be happy to answer any questions pertaining to the amendments needed to the covenant on the property.

Sincerely,
Jacobs



Michael Niemet
Project Manager
541-602-4760
michael.niemet@jacobs.com

Electronic copy only:

John DeJong/Union Pacific Railroad
Robert Bylsma/Union Pacific Railroad
Margaret Oscilia/ODEQ
Jeff Paik/Jacobs

Return Document to:

Barbara Christensen,
City Recorder,
20 East Main,
Ashland, OR 97520

**CITY OF ASHLAND
AMENDMENT TO CLEANUP RESTRICTION COVENANT**

Owner: Union Pacific Railroad	Property Address: Not Applicable Property Description: Parcel 7 of Partition Plat No. P-32-2000 Index Volume 11 Page 32 in the Record of Partition Plats in Jackson County, Oregon, Jackson County Survey File No. 16528
Planning Action: 2016-00684	Consideration: \$Zero, but relief from restrictions of use of the property, the sufficiency of which the Owner deems sufficient.
Name of Development: City of Ashland Planning Action 99-048	

As Owner of the property listed above, Owner hereby consents to the following restrictive covenant as required by the City of Ashland by ordinance in order to permit land use activities on the Subject Property that affect legal rights landowners have in their land. This restrictive covenant is to be binding upon Owner, its heir(s), executors, and assigns, and it is Owner's express intention that this restrictive covenant shall run with the land, and shall be binding upon future owners of the property.

RECITALS

A. As a condition of approval in a City of Ashland Planning Action (PA) 99-048, a Restriction Covenant was recorded on the property and the following notation was included on Parcel 7 of Partition Plat No. P-32-2000 Index Volume 11 Page 32 in the Record of Partition Plats in Jackson County, Oregon, Jackson County Survey File No. 16528.

"As a condition of approval of this plat, the City of Ashland has required the following statement: Parcel 7 is restricted from further development or land division until the property has been cleaned to residential standards. Written compliance with these standards shall be provided to the city from the Department of Environmental Quality."

B. On June 28, 2016 and after a properly noticed public hearing, the City of Ashland Planning Commission approved the following change to the original condition, as of record Planning Action 2016-00684:

"2) That the deed restriction required in condition 9 of PA 99-048 shall be revised to read as follows

Parcel 7 is restricted from further development or land division until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to a single residential property. Thereafter, development of or any subdivided parcel cannot occur until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to the use proposed for the subdivided parcel. Grantor will provide written document from the Department of Environmental Quality demonstrating compliance with these standards to the City."

AMENDMENT TO CLEANUP RESTRICTION COVENANT



Oregon

Tina Kotek, Governor

Department of Environmental Quality
Western Region Salem Office
4026 Fairview Industrial Dr SE
Salem, OR 97302
(503) 378-8240
FAX (503) 373-7944
TTY 711

March 10, 2023

Brandon Goldman
20 East Main Street
Ashland, Oregon 97520

Re: Response to Comments
October 2022 Staff Report Recommended Revision of the Remedial Action
ECSI #1146 Union Pacific Railroad Ashland Rail Yard

Dear Brandon Goldman,

Thank you for providing questions and comments regarding the *Staff Report Recommended Revision of the Remedial Action* dated October 2022. Please see below questions and comments from the City of Ashland in the letter dated December 6, 2022 followed by DEQ's responses:

1) *The proposed cleanup plan relies on the assumption that the highest land use allowed for the western nine acres of the site will be an "urban residential" use scenario. Please provide a detailed plain language explanation of the "urban residential" land use scenario, including how the exposure assumptions differ from a "Single Family Residential" scenario. Note that the zone for this property (E-1) will allow some degree of residential occupation on the first floor of multi-floor mixed use buildings, as is currently the case adjacent to the railyard property on Clear Creek Drive.*

DEQ Response: DEQ's urban residential land use scenario assumes development with any combination of apartments, condos, or townhomes with minimal yard space maintained by the homeowner. Land use may also include mixed use commercial-residential buildings with residents on the first floor. Single family residential land use is assumed to include homes on larger lots (typically greater than 5,000 square ft) where landscaping is maintained by the owner, and the expected exposure duration would be longer than urban residential.

2) *How was the urban residential exposure frequency of 175 days/year established, as noted in Table 1? Can this be reconciled with the City's mixed use zoning designation for the property that allows a portion of the first floor to have residential occupation?*

DEQ Response: 175 days/year is the default exposure frequency used in DEQ's human health risk assessment guidance for urban residential. Risk assessment for the urban residential scenario includes half the exposure time, but the same consumption rate as single family residential. DEQ's urban residential scenario does account for apartment buildings with residence on first floor.

3) *It is not clear why DEQ's site specific cleanup goal for lead is indicated as 1,000 mg/kg, yet the urban residential risk-based concentration is shown in Table 1 as 400 mg/kg. The site-specific risk-based*



concentrations for all other contaminants in Table 1 are shown as being the same as urban residential RBCs.

DEQ Response: Table 1 will be revised to show 400 mg/kg as the site-specific cleanup goal for lead with a footnote added to the Final Site-Specific Goal column header that states, "The Final Site-Specific Cleanup Goals will be compared to the Exposure Point Concentrations (EPCs) calculated from the 90% upper confidence limits within a given exposure area." The EPC calculated from the 90% upper confidence limits of current lead concentrations within the western 8.7 indicated acceptable risk for residential, urban residential, and occupational exposure scenarios when compared to the RBC of 400 mg/kg. Some of the lead concentrations included in the EPC calculations exceeded 400 mg/kg and 1,000 mg/kg. Although the western 8.7 acres has a calculated acceptable risk for lead, DEQ commented in its review of the revised risk assessment¹ that concentrations of lead above 1,000 mg/kg should still be addressed on the western 8.7 acres as part of a risk management strategy.

4) Except briefly in Section 3.1.1, The draft staff report omits any explanation of the 2016/2017 cleanup plan, including total volume of contaminated soil to be excavated or that the soil was proposed to be moved off-site. We request a clear explanation and rationale for why the 2022 cleanup plan is significantly less extensive than the one proposed in 2017. The previous cleanup plan was painstakingly developed with extensive community involvement and the new plan should include a public explanation of how it provides at least an equivalent level of site mitigation and public health protection.

DEQ Response: A more thorough explanation of changes since the 2016/2017 cleanup plan will be included in the final Record of Decision (ROD). Changes to DEQ RBCs for contaminants of concern at the Site required less cleanup to meet urban residential exposure requirements. Capping excavated soil on-site addresses community concerns about transporting the impacted soil through town. Since this cleanup is being done voluntarily by UPRR, they have significant leeway as to how they want to implement a remedial action as long as it is protective of human health. The remedy as proposed in the Staff Report is protective for urban residential and commercial use. The current plan will remove pockets of high levels of contamination that previously would not have been removed.

5) Similarly, the Administrative Record included in the draft staff report omits reference to the 2008 and 2016/2017 cleanup plans. These past documents were publicly available and are expected to be an important part of the project record for community members.

DEQ Response: Reference to the 2008 and 2016/2017 cleanup plans will be included in the Administrative Record in the final ROD.

6) The draft staff report indicates that a deed restriction will be imposed by DEQ requiring its approval before any portion of the eastern three acres of the railyard be subdivided or redeveloped in the future. The staff report should explicitly state that additional site investigation and cleanup work would be required before approval of any land development or site work. How does DEQ contemplate the city's role in this process, including notification and consultation with city planning staff about proposed local

¹ Oregon Department of Environmental Quality (ODEQ). 2019. Comments on the Supplemental Remedial Investigation/Feasibility Study Risk Evaluation 2nd Revision dated June 5, 2019. November 5.



land use changes and requirements for additional environmental work? An outline of DEQ's review and approval process of a proposed subdivision or redevelopment should be provided, including a reference to DEQ's anticipated evaluation criteria and requirements for public notice and comment.

DEQ Response: DEQ anticipates that the City would be notified of a potential subdivision, development, or land use changes through the local permitting process. The requirements and process for notifying DEQ will be outlined in the Site deed restriction, also known as an Environmental Protection Easement and Equitable Servitude (EES) document, that accompanies the property deed. If DEQ determines that additional investigation or cleanup is required, then the identified responsible party would likely have to follow the usual DEQ cleanup process including a work plan review, and possible site investigation, feasibility study, public notification, ROD, remedial design, and closure. DEQ would continue our collaborative communication with the City of Ashland and follow a process similar to that outlined in the following *DRAFT Public Involvement Phases of the UPRR Ashland ROD and Remedial Action*.

7) It appears that DEQ does not contemplate any limitations (e.g., deed restrictions) for the western nine acres of the railyard as long as it is used for commercial, industrial, or urban residential purposes. Since the risk assessment evaluated human exposures of this parcel using hypothetical 1-acre polygons as shown in Figure 5, is it possible that risk assessment outcomes would be different when the western nine acres is subdivided into a different configuration, other than the one acre lots shown in Figure 5?

DEQ Response:

State deed restriction(s) consisting of an EES will be applied to the western 8.7-acres and agreed on by UPRR and DEQ to define controls used to:

- Restrict site use to urban-residential and/or commercial use; and
- Restrict development or subdivision without additional assessment and/or approval from DEQ.

DEQ would need to review and approve any request to subdivide or develop either the western 8.7-acres or the eastern 3-acres to verify that development meets allowed land use requirements and that a subdivision does not result in unacceptable risk within any of the proposed subdivided parcels. DEQ would conduct a risk evaluation similar to how the hypothetical 1-acre subdivisions were considered, but evaluation areas and locations would be based on the proposed subdivision.

8) How did DEQ establish that groundwater beneficial use has not changed since the 2001 ROD? Were Oregon Dept. of Water Resources records reviewed for possible new water wells drilled near the site since 2001? Since water supply is often a big concern to our community, possible use of groundwater for irrigation in the future might be a concern and should be acknowledged in the report.

DEQ Response: A beneficial water use survey has not been conducted since 2001, however changes in water use in this area are unlikely based on requirements for new developments to connect to City water. To be certain, DEQ will include an updated beneficial water use survey in the revised ROD. DEQ can also include groundwater use restrictions in the EES if there is concern about possible future use and climate change and resource demands, etc.



Also, the likelihood that contaminants will migrate to off-site supply wells and affect current and/or future, reasonably likely, beneficial use is minimal. Groundwater is first encountered at the Site within the silt/clay unit and/or discontinuous sand unit at depths between approximately 6 and 20 feet below ground surface. A dense sandy silt unit (weathered bedrock) is located below this shallow water-bearing formation and above a deeper water bearing zone. Groundwater for beneficial use in the Site vicinity is drawn from the deep aquifer at depths greater than 60 to 100 feet below ground surface. Site contaminants of concern (Bunker C Oil and diesel) were detected in shallow groundwater. The likelihood that Bunker C oil and diesel will migrate to off-site supply wells and affect current and/or future, reasonably likely, beneficial use is minimal because: the viscous properties of Bunker C Oil limit its mobility; the vertical separation between the impacted shallow groundwater and the deeper aquifer utilized for beneficial use is at least 40 to 60 feet, containing at least 20 to 40 feet of bedrock; and cross-contamination of the deeper aquifer by a future installation of a well or borehole through contaminated shallow soil or groundwater is minimized through the use of Oregon well construction standards.

9) Two areas with high lead concentrations are targeted for cleanup, as well as one area with high arsenic. Sample resolution in these areas was very limited in past site investigations, so how were polygons determined for the excavations shown in Fig 6? The report should acknowledge the importance of future confirmation sampling when excavation occurs, to ensure removal of soil exceeding the cleanup criteria.

DEQ Response: This information will be added to the final ROD. Confirmation sampling will be required after excavation and removal of contaminated soil. Regarding the excavation areas, the Site risk assessment showed that arsenic was the primary contaminant risk driver, with lead being a secondary driver. Figure 6 shows the sample locations where the arsenic and lead samples exceeded 30 mg/kg and 1,000 mg/kg, respectively. Contiguous rectangular polygons were drawn around sample locations with arsenic and lead exceedances within the 8.7-acre western area to form the remedial action target areas. Each of the rectangular polygons has a minimum dimension of 50 feet in all directions from the sample location. Adjacent areas were extended and connected when there were no clean samples in between. All the arsenic and lead samples to be addressed were in the upper 1.5 feet of the 0- to 3-foot depth horizon of the surface soil, therefore, all the target areas extend to a depth of 1.5 feet.

10) The report briefly acknowledges the presence of significant volumes of subsurface soil saturated with Bunker C oil (NAPL, or non-aqueous phase liquids) in the eastern parcel, and the potential for direct contact with Bunker C oil for future construction or excavation workers. Unlike the September 2016 Remedial Action Workplan, there is no acknowledgement of the estimated extent or volume of these NAPL areas, previously estimated by UP and DEQ as 5,400 cubic yards. For better transparency, shouldn't the three estimated Bunker C areas be shown graphically in Figure 5 (Hypothetical Future Exposure Areas) to address anticipated public concerns about future exposure to subsurface NAPL (similar to how they were shown in the 2016 plan)?

DEQ Response: DEQ will include the estimated extent and volume of NAPL areas in the final ROD. However, there is significant uncertainty associated with both estimates, which will be noted in any graphics or estimates.



11) Regarding the three areas of soil saturated with Bunker C oil, it is evident that the proposed capping and securing of the three eastern acres of the railyard will possibly result in entombing this contamination in perpetuity, rather than eliminating it. How will DEQ address possible community concerns about the stigma of such legacy contamination remaining in an area that will be surrounded by development at some point in the future? Should monitoring wells be required to assure the entombing is effective in protecting the community's groundwater? As a practical matter, the proposed capping of the eastern three acres would appear to add little or no value to the local community, including expansion of the local tax base, facilitating economic growth, or taking development pressures off of undeveloped, open land elsewhere in Ashland or Jackson County. This concern may be important given the City of Ashland's obligation to address State of Oregon statutory goals and policy requirements for Climate Friendly and Equitable Communities.

DEQ Response: Leaving pockets of non-mobile petroleum in-place to degrade naturally is commonplace with the redevelopment of former industrial sites. Acceptable risk for the Site has been demonstrated in the risk assessment with the Bunker C contamination remaining in-place. This is because petroleum compounds are relatively non-toxic, and the toxicity decreases over time as it degrades and weathers. DEQ will attempt to address community concerns by engaging the public to inform them of the proposed plan and gain their input. DEQ does not feel that monitoring is required for the Bunker C based on its observed immobility and age. Clearing the western 8.7 acres for urban residential and/or commercial use will offer opportunities for development. After capping, the eastern 3 acres will also be available for development, recreation or greenspace.

12) The plan states that institutional controls are not uncommon for former industrial properties and if long term management is done properly, they all can be reliable. How will this be assured, and by whom, and with what processes? This would appear to be especially relevant given the current challenges with local and state government staff turnover during these long-term projects.

DEQ Response: Sites with institutional controls are recorded in the DEQ database and property owners are required to provide DEQ environmental reviews typically every five years. This process will be detailed in an EES attached to the property deed.

13) For the selected alternative, the staff report indicates that "...clean backfill will include 2,710 cubic yards to fill in the excavation areas on the west side plus an additional 2,870 cubic yards to supplement the consolidated soil on the eastern side and fill in the former holding pond depressions." How will the clean soil backfill be delineated from underlying contaminated soil, to facilitate the possibility of future site investigation and cleanup that might be required in the eastern capped parcel? Given the current plan does not anticipate the removal of soil from the site, what is the anticipated site elevation profile following the introduction of the required backfill in relationship to the adjacent properties?

DEQ Response: The excavation areas in the western 8.7 acres and the pre-remediation topography of the eastern 3 acres will be surveyed. Construction barriers may be used to delineate impacted material from cap material in the eastern 3 acres. Details of the final grading elevations and the use of any construction barriers will be included in the remedial design.



14) *The plan states that: "The eastern three-acre area will be fenced to limit access". The fencing installed several years ago by UP to secure the contaminated railyard area have proven to be unreliable for preventing access. How will the proposed fencing be made more secure in perpetuity to prevent unauthorized access? Will signage be posted with information and contact information for citizen inquiries? City staff request an opportunity to review and comment on UP's soil management plan, contaminated media management plan, and cap O&M plan before final DEQ approval.*

DEQ Response: These details will be included in the final ROD. DEQ believes a locked gate and sign are adequate to secure the Site. An annual inspection of the cap and fence will be included as part of the Operations and Maintenance (O&M) Plan for the Site after the cleanup remedy has been completed. There is no immediate health risk to trespassers in the Site's current condition and there will be no immediate health risk to trespassers upon cleanup completion. The purpose of the fence is primarily to discourage vagrancy and prevent potential damage to the cap until the property is developed. UPRR also has a no-trespass agreement in place with the Ashland Police Department for the property.

A soil management plan/contaminated media management plan and O&M Plan are typically included in a Remedial Action Completion report and the final EES attached to the property deed. There will be a public comment period on these documents after the ROD cleanup remedy is complete and before Site closure.

15) *The staff report briefly acknowledges the need for a new Record of Decision as part of this cleanup. Please include a summary of DEQ's administrative process for making environmental cleanup decisions for this property, including the likelihood of a Certificate of Completion when the cleanup is done. This summary should include DEQ's public involvement milestones as part of its cleanup process going forward.*

DEQ Response: Once the public comment period has ended for the Staff Report, DEQ will prepare a final ROD to include a detailed description of the final remedial action. DEQ will then oversee implementation and documentation of the cleanup in conformance with the ROD. DEQ will enter into an RD/RA agreement with UPRR to define implementation timeline and requirements for the remedial action. DEQ will also review a remedial action and remedial design work plan before implementation for cleanup. The responsible party will submit a Remedial Action Completion Summary Report when cleanup is complete. If DEQ determines the cleanup has been performed as directed by the ROD, the regulatory process is complete. DEQ will provide public notice of cleanup completion and allow 30 days for submission of comments or questions. Then DEQ issues a document to the Site owner called a No Further Action letter/Certificate of Completion. Sites may carry long-term requirements that are recorded on their deeds, such as ongoing monitoring and development restrictions, when necessary. Below is a more detailed draft outline of the UPRR Ashland ROD and Remedial Action process with anticipated public involvement milestones:



DRAFT UPRR Ashland ROD and Remedial Action Process and Public Involvement
City Covenant
Revise City Cleanup Restriction Covenant
DEQ Staff Report
DEQ holds 30-day comment period on Staff Report (Draft ROD), including public meeting and presentation to City Council
ROD
DEQ Signs ROD – <i>provide CC to City</i>
Remedial Design/Remedial Action (RD/RA)
Enter into RD/RA Voluntary Agreement with UPRR for implementation of the ROD
RD/RA Work Plan prepared for DEQ review
DEQ approve final RD/RA work plan – <i>provide CC to City</i>
Remedial Design prepared for DEQ Review
DEQ approve final Remedial Design
Remedial Action
Remedial Action implementation (earthwork)
Remedial Action Completion Summary Report with CMMP/Cap Maintenance Plan(s) drafted for DEQ review
Easement and Equitable Servitude (EES) documents drafted by DEQ and UPRR
CMMP/Cap Maintenance Plans and EES documents reviewed and commented on by DEQ – <i>provide CC to City</i>
Public Comment
DEQ holds 30-day comment period on Remedial Action Completion, including draft CMMP/Cap Maintenance Plans and EES documents
Remedial Action Completion
DEQ responds to comments on remedial action completion – <i>provide CC to City</i>
EES documents and attachments signed and recorded
DEQ issues NFA/Cert of Completion – <i>provide CC to City</i>
City removes Cleanup Restriction Covenant



16) Before DEQ issues its Certificate of Completion when it deems the cleanup is complete, the City requests a public involvement process that is consistent with what is being planned in late 2022 and early 2023 for the proposed cleanup plan. This should include a 60-day public comment period, at least one DEQ-hosted public meeting, a presentation to the Ashland City Council, and continued collaboration with city staff on public communications.

DEQ Response: DEQ anticipates having a 30-day public comment period of the Remedial Action Completion report and follow the typical public notice process before a certificate of completion is processed or NFA is issued, including: Publication of a notice and brief description of the proposed action in a local paper of general circulation and in the Secretary of State's Bulletin, and continued collaboration with city staff on public communications.

I hope the information in this letter addresses your current questions and concerns. Please contact me at (503) 726-6522 with any additional questions. I can also be reached via e-mail at margaret.oscilia@deq.oregon.gov

Sincerely,

Margaret L Oscilia

Margaret L. Oscilia, P.E.
Project Manager
Western Region Cleanup and Emergency Response

Translation or other formats

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800-452-4011 | TTY: 711 | deqinfo@deq.oregon.gov

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