



MULTNOMAH COUNTY OREGON

Division of Assessment & Taxation
501 SE Hawthorne #175
Portland OR 97214
Recording Section (503) 988-3034

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Multnomah County Official Records
R Weldon, Deputy Clerk

2013-146752



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After recording, return to:

Grantee

Oregon Department of Environmental Quality
Northwest Region
2020 SW Fourth Avenue, Suite 400
Portland, OR 97201
Attn: Rebecca Wells-Albers, Project Manager

Grantor

City of Portland Bureau of Parks and Recreation
1120 SW Fifth Avenue, Suite 1302
Portland, Oregon 97204

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes ("EES") is made on October 30, 2013, between City of Portland, Oregon ("Grantor") and the State of Oregon, acting by and through the Oregon Department of Environmental Quality ("Grantee" or "DEQ").

RECITALS

A. Grantor is the owner of certain real property located at 1099 NW Overton Street in Portland, Oregon 97209, State Tax Lot ID Number 1N1E34BB 2629, Property Tax Lot Number R541377 (the "Property"), the location of which is more particularly described in **Attachment A Survey and Legal Description** to this EES. The Property, recently redeveloped into The Fields Neighborhood Park, has been individually assigned identification number #5443 in the DEQ Environmental Cleanup Site Information ("ECSI") file of DEQ's Environmental Cleanup Program at the Northwest Region Office, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon 97201. Interested parties may contact DEQ's Northwest Region Office at 503-229-5263 to make an appointment to review reports regarding the historical environmental investigation and cleanup activities conducted on the Property. A summary of the remedial action performed at the Property is documented in the final DEQ-approved *Remedial Action Closure Report, The Fields Neighborhood Park, ECSI ID# 5443, Portland, Oregon* ("Closure Report", AMEC, June 7, 2013). See **Attachment B Closure Report Summary**.

B. The 3.3-acre property is located northeast of the intersection of NW 11th Avenue and NW Overton Street in Portland, Oregon and consists of city blocks 18, 21, 22, and 25. The Property is a portion of the former 26-acre Hoyt Street Rail Yard (HSRY). Historical HSRY operations resulted in impacts to soil and groundwater and enrollment of the HSRY property as a whole into the DEQ ECSI Cleanup Program (ECSI #1080).

C. On December 15, 2000, the Director of DEQ or delegate selected the remedial action for the greater HSRY property which included the Property set forth in the Record of Decision (ROD). [Record of Decision, Selected Remedial Action for Hoyt Street Railyard, Portland, Oregon, December 15, 2000].

D. On January 13, 2011, DEQ issued an Explanation of Significant Difference (ESD), Proposed Change to the Record of Decision for the Hoyt Street Rail Yard, Multnomah County Oregon (ECSI No. 1080). The ESD allowed for the development of site-specific risk-based concentrations for park users and a decrease in the required thickness of the site cap. The required cap thickness was decreased from three feet to two feet for the greater park area, and from five feet to three feet in the playground area. The underlying demarcation layer between remaining contaminated soil and capped soil was still required throughout the Property.

E. In 2012 the remedial action as required in the ROD and ESD was initiated. Redevelopment of the Property and implementation of the remedial actions was completed in 2013. Schematic diagrams illustrating the specifications for the greater park area and playground area cap types and a plan view map

delineating the configuration of cap types are included in *Attachment C Site Development Plan Cap Details*.

F. Long-term management requirements for the Site stipulated in the ROD include: 1) Site Inspection and Maintenance Plan; 2) Worker Notification and Protection Plan; 3) Soil and Groundwater Management Plan; 4) DEQ Notification in the event of a change in Site use; 5) groundwater use restriction; and 6) groundwater monitoring (which has been and as of August 2013 continues to be the responsibility of BNSF Railroad Company, a subsidiary of Berkshire Hathaway Inc.).

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

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

1. DEFINITIONS

1.1 "Acceptable risk level" has the meaning set forth in Oregon Revised Statute ("ORS") 465.315 and Oregon Administrative Rule ("OAR") 340-122-0115.

1.2 "DEQ" means the Oregon Department of Environmental Quality and its employees, agents, and authorized representatives. "DEQ" also means any successor or assign of DEQ under the laws of Oregon, including but not limited to any entity or instrumentality of the State of Oregon authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by DEQ.

1.3 "Ecological receptor" has the meaning set forth in OAR 340-122-0115.

1.4 "Engineering control" has the meaning set forth in OAR 340-122-0115.

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

1.6 "Owner" means any person or entity, including Grantor, who at any time owns, or acquires any right, title, or interest in or to any portion of the Property or a vendee's interest of record to any portion of the Property, including any successor, heir, assign or holder of title or a vendee's interest of record to any portion of the Property, excluding any entity or person who holds such interest solely for the security for the payment of an obligation and does not possess or control use of the Property.

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

2. GENERAL DECLARATION

2.1 Grantor, in consideration of Grantee's issuance of a No Further Action ("NFA") letter with conditions, grants to DEQ an Easement for access and accepts the Equitable Servitudes described in this instrument and, in so doing, declares that the Property is now subject to and shall in the future be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this EES.

2.2 Each condition and restriction set forth in this EES touches and concerns the Property and the equitable servitudes granted in Section 3 and easement granted in Section 4 below, runs with the land for all purposes, is binding upon all current and future owners of the Property as set forth in this EES, and inures to the benefit the State of Oregon. Grantor further conveys to DEQ the perpetual right to enforce the conditions and restrictions set forth in this EES.

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

3.1 **Soil Cap Engineering Control.** Except upon prior written approval from DEQ, Owner may not conduct or allow operations or conditions on the Property or use of the Property in any way that might penetrate the soil cap at the Property or jeopardize the soil 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 will maintain the required soil cap engineering controls in accordance with the ROD. See **Attachment C Site Development Plan and Cap Details.**

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

3.3 **Use of the Property.** Owner shall not use or occupy or allow other parties to occupy or use the Property for any purpose except in full compliance with all conditions and restrictions in Section 3 of this EES.

4. EASEMENT (RIGHT OF ENTRY)

4.1 During reasonable hours and subject to reasonable security requirements, DEQ may enter upon and inspect any portion of the Property as reasonably necessary to determine whether the requirements of this EES have been or are being complied with. Except when necessary to address an imminent threat to human health or the environment, DEQ will use its best efforts to notify the Owner a minimum of seventy two hours before DEQ entry to the Property. DEQ may enter upon the Property at any time to abate, mitigate, or cure at the expense of the Owner the violation of any condition or restriction contained in this EES, provided DEQ first gives written notice of the violation to Owner describing what is necessary to correct the violation and Owner fails to cure the violation within the time specified in such notice. Any such entry by DEQ to evaluate compliance or to abate, mitigate, or cure a violation may not be deemed a trespass.

5. RELEASE OF RESTRICTIONS

5.1 Owner may request release of any or all of the conditions or restrictions contained in this EES by submitting such request to the DEQ in writing with evidence that the conditions or restrictions are no longer necessary to protect human health and the environment. The decision to release any or all of the conditions or restrictions in this EES will be within the sole discretion of DEQ.

5.2 Upon a determination pursuant to Subsection 5.1, DEQ will, as appropriate, execute and deliver to Owner a release of specific conditions or restrictions, or a release of this EES in its entirety.

6. GENERAL PROVISIONS

6.1 **Notice of Transfer/Change of Use.** Owner must notify DEQ within 10 days after the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of Owner's interest in or Owner's right of occupancy of the Property. Such notice must include the full name and address of the Party to whom Owner has transferred an interest or right of occupancy. In addition, Owner must notify DEQ a minimum of 10 days before the effective date of any change in use of the Property that might expose human or ecological receptors to hazardous substances as defined under Oregon Removal and Remedial Action law at ORS 465.200 and identified in the ROD applicable to the Property. Such notice must include complete details of any planned development activities or change in use. Notwithstanding the foregoing, Owner may not commence any development inconsistent with the conditions or restrictions in Section 3 without prior written approval from DEQ as provided in Subsection 3 of this EES or removal of the condition or restriction as provided in Subsection 5.1. Any redevelopment, disturbance or removal of the remaining contaminated soils shall be carried out according to the methods outlined in the Contaminated Media Management Plan (CMMP), referenced in **Attachment B**, in effect at the time and in conformance with Oregon cleanup requirements. Upon completion of any additional remedial actions, Owner shall provide to DEQ such site closure documentation as may be required by DEQ. This subsection does not apply to the grant or conveyance of a security interest in the Property.

6.2 **Zoning Changes. Owner must notify DEQ** no less than 30 days before Owner's petitioning for or filing of any document initiating a rezoning of the Property that would change the base zone of the Property under the City of Portland zoning code or any successor code. As of the date of this EES, the base zone of the Property is Open Space with a Design Overlay (OSd).

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

6.4 **Inspection and Reporting.** Owner will immediately notify DEQ of any condition or occurrence at the Property that does not conform with provisions of this EES. In addition, Owner will maintain records documenting inspection and reporting as outlined in the DEQ approved *Remedial Action Work Plan* (AMEC 1996)]. Owner will submit inspector records to DEQ within 30 days of receipt of a notice letter from DEQ of its periodic review of compliance with this EES. Reports provided to DEQ in response to this notification must include sufficient detail to allow DEQ to determine compliance with EES requirements, and include a photographic log that supports the report's narrative.

6.5 **Reference in Deed.** A reference to this EES, including its location in the public records, must be recited in any future deed conveying the Property or any portion of the Property. Each condition and restriction contained in this EES runs with the land so burdened until such time as the condition or restriction is removed by written certification from DEQ, recorded in the deed records of the County in

which the Property is located, certifying that the condition or restriction is no longer required to protect human health or the environment.

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

6.7 **Enforcement and Remedies.** Upon any violation of any condition or restriction contained in this EES, the State of Oregon, in addition to the remedies described in Section 4, may enforce this EES as provided in the No Further Action Letter or seek available legal or equitable remedies to enforce this EES, including civil penalties as set forth in ORS 465.900.

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IN WITNESS WHEREOF Grantor and Grantee have executed this EES as of the date and year first set forth above.

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

GRANTOR: City of Portland Bureau of Parks and Recreation

By: *Mike Abbate*
Mike Abbate Director of Portland Parks and Recreation

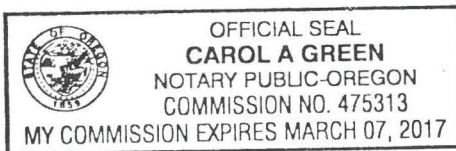
Date: 11.1.13

STATE OF OREGON)
) ss.
County of Multnomah)

APPROVED AS TO FORM

Carol A. Green
CITY ATTORNEY

The foregoing instrument is acknowledged before me this 1st day of November, 2013, by Mike Abbate Director of Portland Parks and Recreation, on its behalf.



Carol A. Green
NOTARY PUBLIC FOR OREGON
My commission expires: 3/7/2017

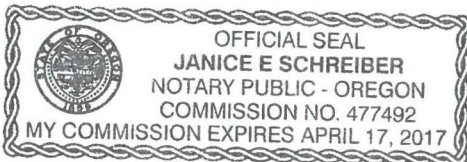
GRANTEE: State of Oregon, Department of Environmental Quality

By: *Keith Johnson*
Keith Johnson, Manager, Northwest Region Cleanup Program

Date: 10/30/13

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument is acknowledged before me this 30 day of October, 2013, by Keith Johnson, the Manager, Cleanup Program of the Northwest Region of the Oregon Department of Environmental Quality, on its behalf.



Janice E. Schreiber
NOTARY PUBLIC FOR OREGON
My commission expires: April 17, 2017

ATTACHMENT A
Survey and Legal Description

EXHIBIT A

CITY OF PORTLAND

DOC. NO.'S 2005-018601 & 2011-079152

JUNE 14, 2013

LEGAL DESCRIPTION

A PARCEL OF LAND BEING TRACTS "C", "D" AND LOT 33, HOYT STREET YARDS NO. 2, TRACT "G", HOYT STREET YARDS NO. 3, AND PARCEL 1, PARTITION PLAT NO. 2010-41, MULTNOMAH COUNTY PLAT RECORDS, BEING THOSE TRACTS OF LAND DESCRIBED IN DEED TO THE CITY OF PORTLAND, A MUNICIPAL CORPORATION OF THE STATE OF OREGON, ACTING BY AND THROUGH PORTLAND PARKS AND RECREATION, IN DOCUMENT NUMBERS 2005-018601 & 2011-079152, MULTNOMAH COUNTY DEED RECORDS, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 27 AND THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

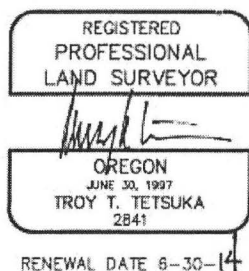
BEGINNING AT THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE OF NW 11TH AVENUE (60 FEET WIDE) AND THE NORTHERLY RIGHT-OF-WAY LINE OF NW OVERTON STREET (60 FEET WIDE), SAID POINT BEING THE SOUTHWEST CORNER OF SAID TRACT "D"; THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF NW 11TH AVENUE AND THE NORTHERLY EXTENSION THEREOF NORTH 00°03'56" EAST 626.26 FEET TO THE PORTLAND TERMINAL RAILROAD COMPANY SOUTHERLY RIGHT-OF-WAY LINE (VARIABLE WIDTH); THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE SOUTH 48°57'52" EAST 410.41 FEET; THENCE SOUTH 40°34'15" EAST 81.77 FEET; THENCE SOUTH 38°22'11" EAST 55.10 FEET TO THE MOST EASTERLY CORNER OF SAID PARCEL 1 AND THE BEGINNING OF A NON-TANGENT CURVE, A RADIAL LINE THROUGH SAID POINT BEARS NORTH 18°41'32" WEST; THENCE ALONG THE SOUTHEASTERLY LINES OF SAID PARCEL 1 AND SAID TRACT "G" ALONG THE ARC OF 302.00 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY THROUGH A CENTRAL ANGLE OF 46°36'02" (THE LONG CHORD OF WHICH BEARS SOUTH 48°00'27" WEST 238.91 FEET) AN ARC DISTANCE OF 245.63 FEET TO THE EASTERLY LINE OF SAID TRACT "D"; THENCE ALONG SAID EASTERLY LINE SOUTH 00°03'56" WEST 91.92 FEET TO SAID NORTHERLY RIGHT-OF-WAY LINE OF NW OVERTON STREET; THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE NORTH 89°56'04" WEST 220.00 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 144,655 SQUARE FEET OR 3.321 ACRES, MORE OR LESS.

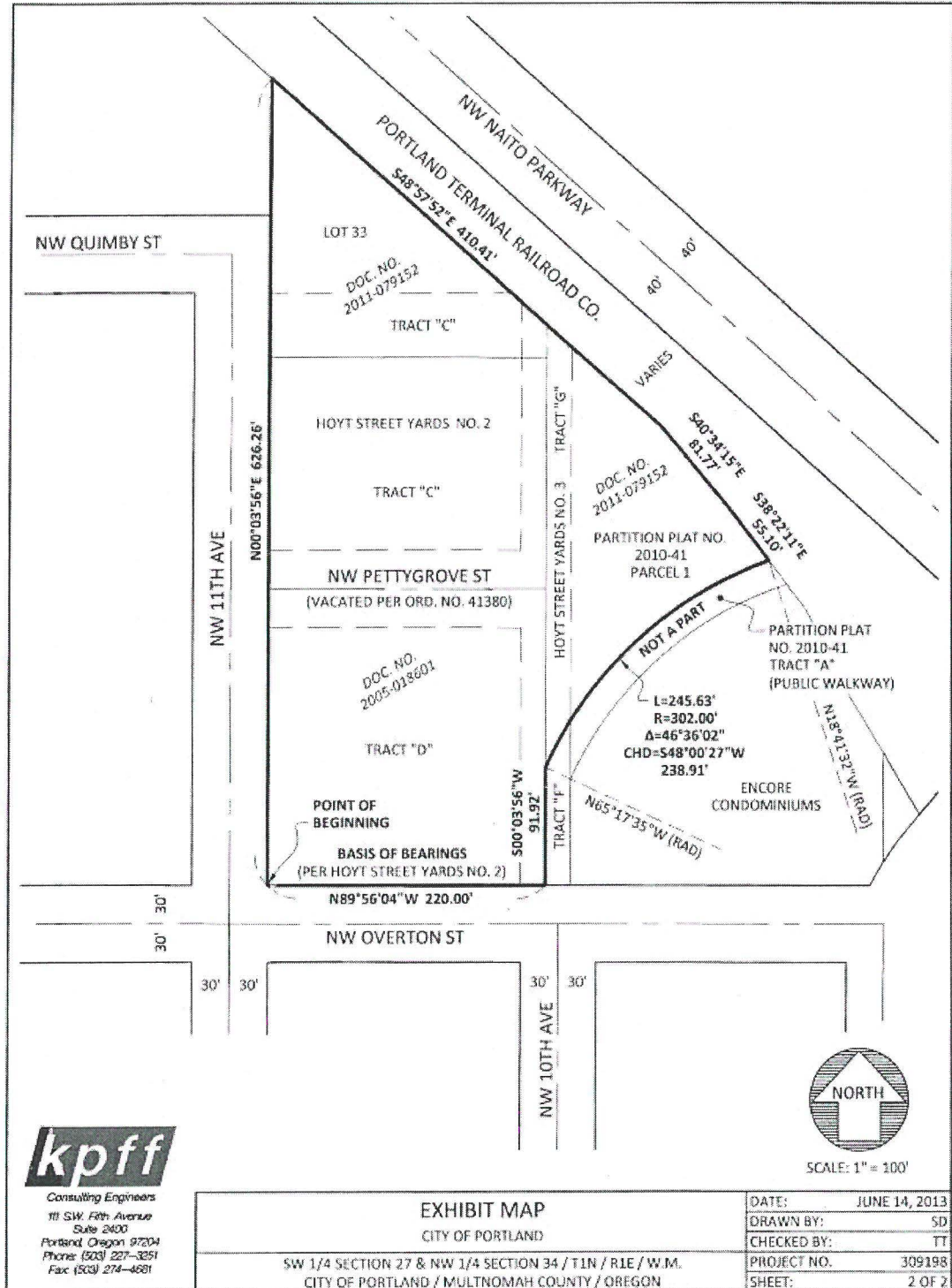
THE BASIS OF BEARINGS IS THE NORTHERLY RIGHT-OF-WAY LINE OF NW OVERTON STREET AS NORTH 89°56'04" WEST, PER HOYT STREET YARDS NO. 2, MULTNOMAH COUNTY PLAT RECORDS.

THE PARCEL OF LAND IS SHOWN ON THE ATTACHED EXHIBIT MAP AND BY THIS REFERENCE MADE A PART THEREOF.

SPECIAL NOTE: THIS LEGAL DESCRIPTION **DOES NOT** INCLUDE TRACT "A" (PUBLIC WALKWAY) PARTITION PLAT NO. 2010-41, MULTNOMAH COUNTY PLAT RECORDS.



SHEET 1 OF 2



ATTACHMENT B

Closure Report Summary **The Fields City Park (ECSI #5443)** **1099 NW Overton Street, Portland, Oregon**

Background

The 3.3-acre Site is located at 1099 NW Overton Street northeast of the intersection of NW 11th Avenue and NW Overton Street in Portland, Oregon and consists of city blocks 18, 21, 22, and 25. The Site is a portion of the former 26-acre Hoyt Street Rail Yard (HSRY). Historical HSRY operations resulted in impacts to soil and groundwater and enrollment of the HSRY property as a whole into the DEQ ECSI Cleanup Program (ECSI #1080). The Site, recently redeveloped into The Fields City Park, has been individually assigned identification number #5443 in DEQ's ECSI database.

In December 2000 DEQ issued a Record of Decision (ROD) for the HSRY property outlining the contaminated soil remediation and mitigation methods required during redevelopment of the Site. The ROD mandated that 3 feet of a soil cap was required in park areas and 5 feet of soil cap in playground areas. The ROD also stipulated unrestricted reuse of soil with contaminant concentrations below conservative ON-1 Risk-Based Concentrations (RBCs) protective of urban resident children. In January 2011 DEQ issued an Explanation of Significant Difference (ESD) revising the required soil cap thicknesses to 2 feet in the park area and 3 feet in the playground area.

A Remedial Action Work Plan (RAP) and Contaminated Media Management Plan (CMMP) were completed by AMEC and approved by DEQ. The documents outlined remedial actions, cap construction methods, and contaminated media management requirements to be implemented during redevelopment of the Site.

Contaminants of Concern

The primary contaminants detected at the subject property were petroleum hydrocarbons, polynuclear aromatic hydrocarbons (PAHs), and lead.

Redevelopment and Remediation Activities

Site redevelopment cut and fill activities occurred between April 2012 and November 2012. During this period a total of 3,450 tons of Managed Soil and 2,851 tons of the more contaminated Special Handling Soil was removed and disposed of at either the Hillsboro Landfill or Riverbend Landfill, both Subtitle D landfills. The removal of 201 tons of higher surface soil contamination from an identified Hot Spot area was included in the remedial actions. Some Managed Soil was reused on Site in compliance with the RAP and site-specific soil Park User RBCs.

In accordance with the ROD/ESD, a 2 to 3 foot clean soil cap underlain by a geotextile demarcation layer, hardscape, or other cap materials was built to limit potential contact with impacted soil. Two distinct surface cap types, Greater Park Area and Children's Area, were constructed.

The owner/property manager is required to maintain necessary records, as stipulated in the site-specific:

1) Site Inspection and Maintenance Plan; 2) Worker Notification and Protection Plan; and 3) Soil and

Groundwater Management Plan; copies of which are included in the DEQ-approved Remedial Action Work Plan (AMEC, 1996).

Site Closure

All remedial action measures undertaken during the redevelopment of The Fields Park were successfully complete. These measures included the removal of contaminated soil and the construction of a surface cap across the entirety of the Site. Long-term management requirements for the Site stipulated in the ROD include: 1) Site Inspection and Maintenance Plan; 2) Worker Notification and Protection Plan; 3) Soil and Groundwater Management Plan; 4) DEQ Notification in the event of a change in Site use; 5) groundwater use restriction; and 6) groundwater monitoring (currently the responsibility of BNSF Railroad).

Reports

AMEC, 2009a. Phase II Environmental Site Assessment, Fields Park Blocks 22 and 25. June 30, 2009.

AMEC, 2009b. Corrective Action Report, Fields Park Blocks 22 and 25. November 5, 2009.

AMEC, 2011a. Stormwater Infiltration, The Fields Neighborhood Park. January 14, 2011.

AMEC, 2011b. Remedial Action Work Plan, The Fields Neighborhood Park. April 13, 2011.

AMEC, 2011c. Soil Data Summary Report, The Fields Neighborhood Park. April 13, 2011.

AMEC, 2011c. Contaminated Media Management Plan, The Fields Neighborhood Park. August 4, 2011.

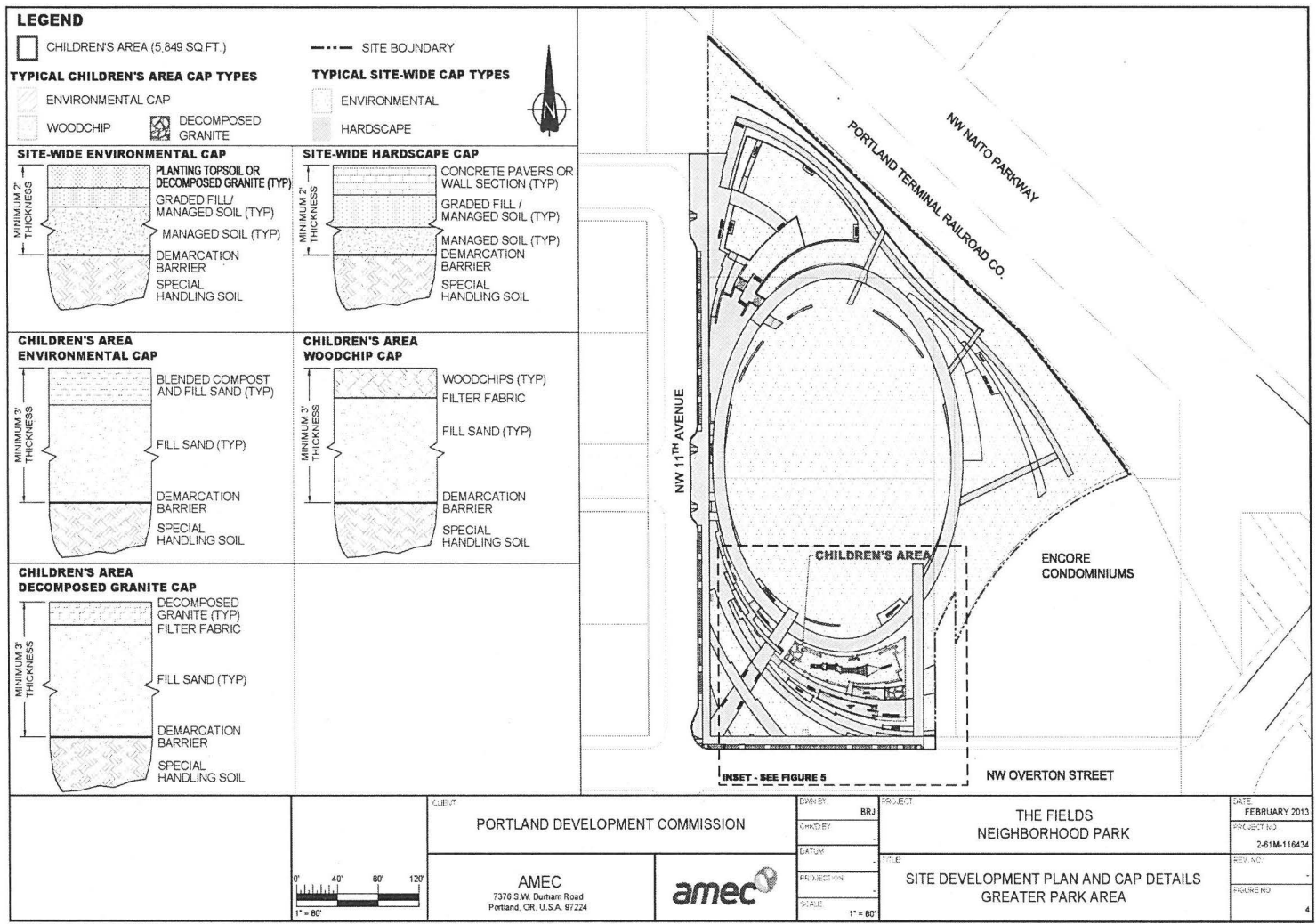
Anchor Environmental, LLC (Anchor), 2004. Environmental Construction Report – Hoyt Street Phases 3 and 4.

Hahn and Associates, Inc. (Hahn), 2004. Data Package Report for Subsurface Investigation Activities, Blocks 18, 21, and 25. May 5, 2004.

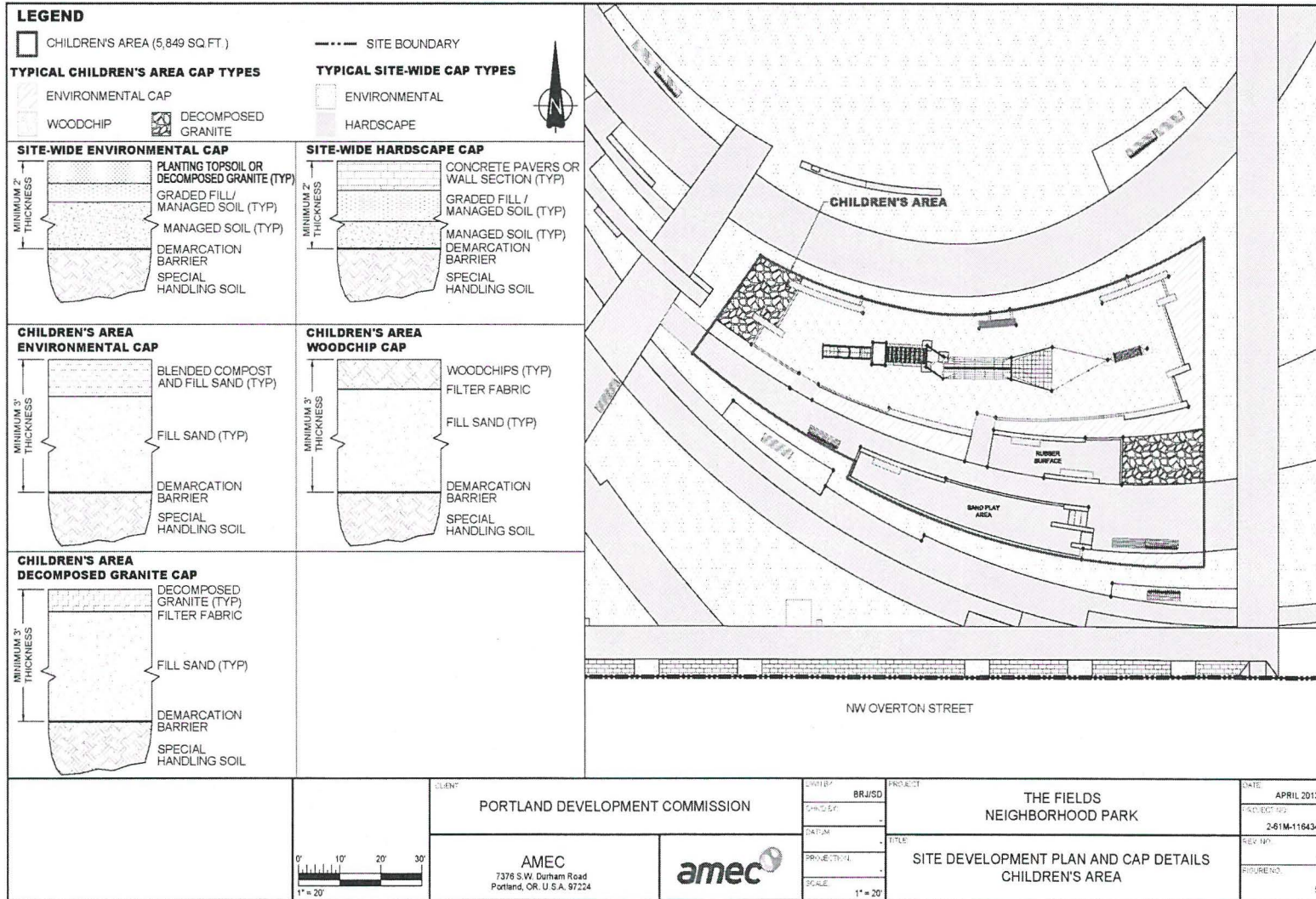
Oregon Department of Environmental Quality (DEQ), 2000. Record of Decision, Selected Remedial Action for Hoyt Street Railyard. December 15, 2000.

DEQ, 2011a. Explanation of Significant Difference: Proposed Change to the Record of Decision for The Hoyt Street Rail Yard, Multnomah County, Oregon (ECSI No. 1080). January 13, 2011.

ATTACHMENT C Site Development Plan and Cap Details



K:\11000\11800\11643\116434\DWG\DES\Figure 4-5 Site Development Plan and Cap Details - Children's Area(The Fields).dwg - Figure 4 - Jul. 10, 2013 12:18pm - brian.johnson



K:\11000\11800\11643\116434\DWG\223\Figure 4-5 Site Development Plan and Cap Details - Children's Area(The Fields).dwg - Figure 5 - Jul. 10, 2013 12:19pm - Brian Johnson