

Multnomah County Official Records E Murray, Deputy Clerk	2021-095831
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**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Portland General Electric Company
Attn: Property Manager
121 SW Salmon Street, 1WTC 1302
Portland, OR 97204-9951

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
AND GRANT OF IRREVOCABLE LICENSE**

Property Address: 12500 NW Marina Way
Multnomah County
Portland, OR 97231

Tax Parcel IDs: 2N1W34-00300 (Property ID: R325472)
2N1W34-00100 (Property ID: R325467)

Portland General Electric Company (“Declarant”) is the fee-simple owner of the Harborton property in Multnomah County, Oregon, commonly referred to as 12500 NW Marina Way, Portland, Oregon (“Property”).

The Declarant implemented a natural resource damage assessment restoration project known as the Harborton Natural Resource Damage Assessment Restoration Project (“Harborton Restoration Project”) on approximately 53.39 acres of the Property, as depicted and described in the attached Exhibit A (“Restoration Area”).

The Harborton Restoration Project is intended to restore, preserve, and enhance native species and their habitats consistent with conservation purposes and performance standards more particularly described in the Harborton Natural Resource Damage Assessment Habitat Development Plan (“Harborton Restoration Plan”). The Harborton Restoration Plan has been reviewed and recognized by the Portland Harbor Natural Resource Trustee Council (“Trustee Council”).¹ As required by the Harborton Restoration Plan and the Trustee Council, Declarant has agreed to enter into and abide by this Declaration of Covenants, Conditions, and Restrictions and Grant of Irrevocable License (“Deed Restriction”).

¹ The Trustee Council includes the National Oceanic and Atmospheric Administration on behalf of the Department of Commerce, the United States Department of Interior, the Oregon Department of Fish and Wildlife on behalf of the State of Oregon, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Nez Perce Tribe.

The Declarant and the Trustee Council agree that the Harborton Restoration Plan shall govern the use and occupancy of the Restoration Area during the term of this Deed Restriction.

NOW, THEREFORE, Declarant does hereby covenant, condition, restrict, and grant as follows:

A. INCORPORATION:

The Exhibit, referenced herein and attached hereto, and the Harborton Restoration Plan, referenced herein, are incorporated into this Deed Restriction by reference. The above recitals are likewise incorporated herein by reference and made a part of this Deed Restriction.

B. RESTRICTIONS:

This Declaration is subject to any and all pre-existing easements, covenants and restrictions of record affecting the Restoration Area. The Restoration Area is and will continue to be encumbered with a pre-existing underground pipeline easement granted to Olympic Pipe Line Company as well as an associated service pipeline (the "Pipeline"), dated July 22, 1964 and recorded on July 23, 1964 in Book 91 on Page 360, as amended by Clarification of Easement, dated October 5, 1970 and recorded on October 12, 1970 in Book 755 on Page 27 ("Pipeline Easement"); and adjacent communication conduit easement granted to Pacific Fiber Link, L.L.C., dated September 28, 1998 and recorded on October 5, 1998 under Recording No. 98-179150 ("Conduit Easement"). Declarant shall address, consistent with the Harborton Restoration Plan, any impacts to restored habitat caused by activities associated with the pre-existing easements.

Above ground utility lines cross the Restoration Area. Public or private utilities, including electric, telephone, or other communications services over the Restoration Area, are permitted, provided that such utilities over the Restoration Area must be installed, maintained, repaired, removed, or replaced within their existing right-of-way consistent with prudent utility practices. Any impacts to conservation values caused by utility repair, maintenance, installation, removal, or replacement over the Restoration Area shall be addressed by the Landowner consistent with the Harborton Restoration Plan. When conducting aerial utility line maintenance, installation, repair, removal, or replacement, use of aircraft will be minimized to the extent feasible during bird nesting season from March 15th to August 15th to avoid disturbance of nesting and foraging waterfowl and other migratory birds. Specific to eagle nest(s) located in the Restoration Area, aircraft will adhere to the National Bald Eagle Management Guidelines for allowable activities and are prohibited within 1,000 feet of such nest(s) from January 1st to August 15th unless otherwise authorized by permit.

Further, all rights accruing from Declarant's ownership of the Property, including but not limited to, exclusive possession of the Property, the right to transfer or assign Declarant's interest, or any portion thereof, in same that is otherwise subject to and complies with the terms of this Deed Restriction, and the right to engage in or permit or invite others to engage in all uses of the Property that are not prohibited herein and are not inconsistent with the purposes of Harborton Restoration Plan are reserved to Declarant and Declarant's successors and assigns. If

Declarant transfers or assigns Declarant's Property interest, Declarant's successors and assigns assume all obligations and agree to and be bound by the terms, conditions and covenants of this Deed Restriction and Declarant is relieved of any obligations and liabilities under this Deed Restriction.

The Declarant hereby restricts, as set forth below, the uses to which the Restoration Area may be put. The Declarant declares that these restrictions shall constitute covenants that run with the land, as provided by applicable law, and said restrictions shall continue in perpetuity or for the maximum period allowed by law, unless terminated as set forth herein. The restrictions on the Restoration Area's use under this Deed Restriction shall be binding on the Declarant and its successors, assigns, lessees, licensees, and invitees, and any subsequent person or entity claiming an interest in the Property.

Uses of the Restoration Area shall be restricted to the following:

1. Uses furthering natural resource damage assessment restoration objectives consistent with the Harborton Restoration Plan. The term "natural resource" shall be defined pursuant to 42 U.S.C. § 9601 (16).
2. Implementation of the Harborton Restoration Plan consistent with and pursuant to the terms of the Harborton Restoration Plan, as agreed to by and between the Trustee Council and the Declarant.
3. Activities and uses compatible with the preservation and enhancement of native species and their habitats in a manner consistent with the conservation purposes and performance standards set forth in the Harborton Restoration Plan.
4. Any activity for which entry is authorized pursuant to the "Grant of Irrevocable License" section of this Deed Restriction and otherwise consistent with the Harborton Restoration Plan.

Prohibited uses of the Restoration Area, in so far as they are not reserved herein or identified as permitted by the Harborton Restoration Plan, include, but are not limited to, the following:

1. Construction, reconstruction, or placement of any permanent building or structure.
2. Unseasonable watering; use of fertilizers, biocides, or other agricultural chemicals; incompatible fire protection activities; and any and all other uses which may adversely affect the Harborton Restoration Plan conservation objectives and performance standards.
3. Grazing and agricultural activity of any kind.
4. Commercial or industrial uses.

5. Depositing or accumulating soil, trash, ashes, refuse, waste, bio-solids, or any other material.
6. Filling, dumping, excavating, draining, dredging, mining, drilling, removing, exploring for or extracting minerals, loam, gravel, soil, rock, sand, or other material on or to a depth of 100 feet below the surface of the Property, or granting or authorizing surface entry for any of these purposes.
7. Altering the surface or general topography of the Restoration Area, including building roads, paving, or otherwise covering the Restoration Area with concrete, asphalt, or any other impervious material.
8. Removing, destroying, or cutting trees, shrubs, or other vegetation, except for actions to maintain features and vegetation addressed in the Harborton Restoration Plan, such as removing invasive vegetation.
9. Use of motorized vehicles on the Restoration Area, except as required for maintaining the features and vegetation identified in the Harborton Restoration Plan.
10. Transferring any water, mineral, or air rights necessary to maintain or restore the biological resources of the Restoration Area.
11. Planting, introduction, or dispersal of invasive or exotic plant or animal species.
12. Manipulating, impounding, or altering any natural watercourse, body of water, or water circulation on the Property, other than those actions set forth under the Harborton Restoration Plan, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters.
13. Permitting a general right of access to the Restoration Area other than the Irrevocable License granted herein.
14. Hunting.
15. Trapping of native species, other than as permitted by the Harborton Restoration Plan.

For avoidance of doubt, nothing contained herein is intended to limit or restrict in any fashion any right of Declarant or any subsequent owner of that portion of the Property which is not specifically included within the Restoration Area to use such Property.

The Restoration Area shall not be used for any purposes inconsistent with the Harborton Restoration Plan and the perpetual protection and conservation of the Restoration Area as provided in the Harborton Restoration Plan.

C. GRANT OF IRREVOCABLE LICENSE:

The Declarant hereby grants the Trustee Council or its designee(s) an irrevocable license, during the term hereof, to enter the Restoration Area at reasonable times, subject to giving the Declarant's manager for the Harborton Restoration Project 48-hours' advance notice (except in cases where the Trustee Council or its designee(s) reasonably determines that immediate entry is required to preserve the conservation values of the Restoration Area consistent with the Harborton Restoration Plan) to monitor the Declarant's compliance with the terms of this Deed Restriction and for other purposes consistent with this instrument; provided that the Trustee Council or its designee(s) shall not unreasonably interfere with the Declarant's authorized use and quiet enjoyment of the Restoration Area or Declarant's use and quiet enjoyment of Declarant's property which is not included in the Restoration Area and shall comply with all reasonable safety, security, and operational rules of Declarant.

E. NO DEDICATION; NO RIGHT OF PUBLIC USE:

The provisions of this Deed Restriction do not constitute an offer or dedication for public use nor do the provisions provide for public access to the Property or any portion thereof.

F. ENFORCEMENT:

The Declarant hereby grants the Trustee Council and its designee(s), as a third party beneficiary, the right to enforce the terms of this instrument and prevent any activity or use of the Restoration Area that is inconsistent with the terms of this instrument or the Harborton Restoration Plan and, thus, detrimental to the interests of the Trustee Council and its designee(s). Any such action by less than all of the members of the Trustee Council shall be on behalf of the Trustee Council as a whole and Declarant shall not be subjected to successive or multiple actions regarding the same subject matter. Further, consistent with the forgoing grant of a right of enforcement, the Declarant and its successors and assigns hereby recognizes the Trustee Council and its designee(s)' standing to specifically enforce the terms of this instrument.

Declarant, at the written request of a member of the Trustee Council or its authorized designee(s), agrees to promptly execute and deliver all such further documents or instruments, and promptly to take and forbear from all such actions, as may be reasonably necessary or appropriate in order to more effectively confirm or carry out the provisions of this Deed Restriction and the rights granted herein.

G. TERMINATION:

This instrument shall automatically terminate upon conveyance by Declarant of a Conservation Easement Deed to an authorized holder, which is appurtenant to the Restoration Area and that has previously been approved by Trustee Council. Notwithstanding the foregoing, Declarant and the Trustee Council shall prepare and record any instruments that are reasonably necessary to remove any cloud on title to the Property which is inconsistent with the Harborton Restoration Plan other than the interests noted in Section C hereof and Indenture.

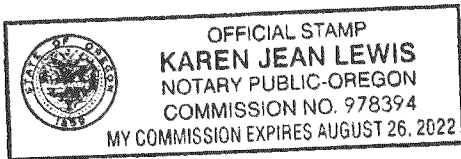
IN WITNESS WHEREOF, the undersigned, being duly authorized by the Declarant herein, has executed this instrument on behalf of the Declarant on 17 day of June, this 2021.

FOR DECLARANT,
PORTLAND GENERAL ELECTRIC COMPANY *KMI*

Marion M. Pope
Name: Marion M. Pope
Title: President and CEO

STATE OF OREGON
COUNTY OF Multnomah

This instrument was acknowledged before me on this 17 of June, 2021 by Marion M. Pope of Portland General Electric Company, an Oregon corporation, on behalf of the company.



Karen Jean Lewis
NOTARY PUBLIC FOR OREGON
Print Name: Karen Jean Lewis
My Commission Expires: August 26, 2022

Exhibit A

Legal Description – Restoration Area

A parcel of land in a portion of all that property described in Book 646, Page 1178, Multnomah County deed records, Section 34, Township 2 North, Range 1 West, Willamette Meridian and in the Jacob Sanders Donation Land Claim (DLC No.53), City of Portland, Multnomah County, Oregon more particularly described as follows:

Commencing at a 5/8 inch iron rod with a yellow plastic cap inscribed “DEA INC” set in survey number 50303 per Multnomah County survey records, at the intersection of the northeasterly right-of-way line of Northwest Marina Way, being 55.00 feet northeasterly of the centerline when measured at right angles, and that certain compromise line for the west line of the Jacob Sanders Donation Land Claim (DLC No. 53); thence North 1°29’34” East along said West DLC line, 39.94 (L1) feet to a point being the southwesterly corner of said Parcel and also being at the intersection of said west DLC line and a line 30.00 feet from and parallel with said northeasterly right-of-way line of Northwest Marina Way and its prolongation, said point also being the Point of Beginning of said Parcel; thence along said west line of the Sanders DLC line North 1°29’34” East, 1139.83 feet (L2), more or less to a point on the low water line of the Willamette River said point bears North 1°29’34” East, 167.6 feet (+/-) from the Witness Corner to the Northwest Corner of said Sanders DLC No. 53 said point being monumented with a 2 inch iron pipe with a 4-1/4 inch brass disk; thence easterly along said low water line of the Willamette River 3174.5 feet (+/-) to a point at the intersection of said low water line and the easterly line of said parcel described in Book 646, Page 1178, Multnomah County deed records also being tax lot 300 and the westerly line of the Bonneville Power Administration Ross-Keeler No. 1 Transmission line right-of-way; thence along the easterly line of said parcel described in Book 646, Page 1178, Multnomah County deed records South 60°34’58” West, 148.39 feet (L3); thence leaving easterly line of said parcel described in Book 646, Page 1178, Multnomah County deed records North 30°58’04” West, 383.00 feet (L4); thence South 54°59’18” West, 233.68 feet (L5); thence North 47°11’42” West, 459.78 feet (L6); thence North 34°09’15” West, 84.54 feet (L7); thence North 47°11’42” West, 312.04 feet (L8); thence South 42°48’18” West, 854.84 feet (L9) to a point on a line 30.00 feet northeasterly from and parallel with said northeasterly right-of-way line of Northwest Marina Way and it’s prolongation; thence along said line 30.00 feet northeasterly from and parallel with said northeasterly right-of-way line of said Northwest Marina Way and it’s prolongation North 47°11’57” West, 868.46 feet (L10) to the Point of Beginning.

The above described parcel of land contains 53.39 acres more or less.

