

After recording, return to:

Datsopoulos, MacDonald & Lind

Attn: Dennis E. Lind

201 W. Main St.

Missoula, MT 59802

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09/16/2016 04:08:05 PM Covenants
Tyler R. Gernant, Missoula County Clerk & Recorder



DECLARATION OF INSTITUTIONAL CONTROLS ON REAL PROPERTY

THIS DECLARATION OF INSTITUTIONAL CONTROLS ON REAL PROPERTY ("Declaration") is made by BONNER PROPERTY DEVELOPMENT, LLC, a Montana limited liability corporation ("Grantor"), as of July 31, 2016. For purposes of this Declaration, the term "Grantor" includes its successors and assigns.

RECITALS

WHEREAS, this Declaration is an institutional control setting forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "ICs"). The property that is the subject of this Declaration is a portion of the former sawmill and plywood manufacturing plant known as the "Bonner Mill" located along Highway 200 and along the southwest bank of the Blackfoot River in unincorporated Bonner, Missoula County, Montana, as legally described below (the "Subject Property"):

Tract 3A-1R of Certificate of Survey No. 06487 located in the east one-half of Section 21 and the west one-half of Section 22, Tract 26A of Certificate of Survey No. 06487 located in the west one-half of Section 22 and Tract 27A of Certificate of Survey No. 06487 located in the west one-half of Section 22, all in Township 13 North, Range 18 West, P.M.M., Missoula County, Montana.

WHEREAS, Grantor is the current owner of the Subject Property and Stimson Lumber Company, an Oregon corporation ("Stimson"), is the former owner of the Subject Property. A portion of the Subject Property is subject to a remedial action under that certain Administrative Order on Consent, Docket No. SF-10-0001, between Stimson, the Montana Department of Justice, and the Montana Department of Environmental Quality ("DEQ") dated April 19, 2010 ("AOC") concerning a remedial action for soils and sediment contaminated with polychlorinated biphenyls ("PCBs") and petroleum, as well as the removal of a former cooling pond ("AOC Work"). The AOC Work addressed only a limited portion of the Subject Property and did not require Stimson to investigate or remediate any portions of the Subject Property outside of the scope of the AOC. The area of the AOC Work is depicted on the map attached to this document as **Exhibit A**.

WHEREAS, the AOC requires Stimson to place, or cause to be placed, restrictive covenants on those portions of the Subject Property where sediments or soils containing levels of PCBs higher than 0.22 mg/kg or parts per million ("ppm") (the residential cleanup level identified in the AOC) are left or placed to ensure that those areas are not used for residential use without additional remedial action. The AOC Work required the excavation and removal of all PCBs above 0.74 ppm, except in floodplain areas, which required excavation and removal of PCBs above 0.22 ppm. Therefore, these restrictive

covenants are necessary because sediments and soils containing PCBs higher than 0.22 ppm but less than 0.74 ppm were deposited or left at certain portions of the Subject Property, as depicted on Exhibit B attached hereto (the "Restricted Area").

WHEREAS, DEQ authorized Stimson's construction of a repository at the Subject Property for the disposal of approximately 37,000 cubic yards of stockpiled materials contaminated with PCBs at levels below 10 ppm ("Repository"). The term "Repository Area" as used in this Declaration consists of the Repository structure (contaminated materials, soil cap, and vegetative cover) and its associated stormwater dry wells and groundwater monitoring wells; this area is depicted in the figure attached in Exhibit C. The Repository Area is subject to certain operation, maintenance, and monitoring requirements as set out in the May 2016 *PCB Repository Operation, Maintenance, and Monitoring Plan* ("O&M Plan"), in addition to the restrictive covenants created pursuant to this Declaration.

WHEREAS, this Declaration is intended to and does meet all of the requirements under Montana law for the imposition of ICs on real property, this Declaration also is intended to and does constitute an enforceable institutional control restricting real property to mitigate the risk posed to the public health, safety, and welfare and the environment approved by DEQ under the terms of Section 75-10-727 of the Montana Code Annotated (2015) ("MCA"). Records describing the AOC Work are available through DEQ.

WHEREAS, this Declaration grants DEQ and Stimson certain rights as specified in this Declaration.

NOW THEREFORE, Grantor, as grantor and fee simple owner of the Subject Property hereby declares and grants to DEQ and Stimson, and their successors and assigns, the following covenants.

1) **General Restrictions and Requirements.**

- a) It is the intent of Grantor that the covenants set out in this Declaration shall run with the land and be binding on all current and future holders, owners, lessees, occupiers, and purchasers of any portion of the Subject Property. Except as provided in Section (5), below, this Declaration applies in perpetuity and every subsequent instrument conveying an interest in all or any portion of the Subject Property shall be subject to and shall include an express reference to the restrictive Declarations contained herein.
- b) No activity shall be conducted on the Restricted Area or the Repository Area that may threaten continued protection of human health or the environment without prior written approval from DEQ. This includes, but is not limited to, any activity that results or may result in the release of residual contamination that was contained as a part of the AOC Work or in accordance with all applicable work plans, including at the Repository, or that exacerbates or creates, or may exacerbate or create, a new exposure to residual contamination remaining on the Subject Property.

2) **Specific Prohibitions and Requirements.**

- a) *No Residential Use.* No portion of the Restricted Area or Repository Area shall be developed or used for any type of temporary or long-term residential purposes, including but not limited to use as a home, a living accommodation for a caretaker/watchman/custodian, campsite or any

structure (including a temporary or permanent mobile home or camper) intended for overnight use, or any structure or facility for any manner of residential habitation or use as a yard, play area, garden, or other grounds associated with such home, accommodation, structure, or facility. It is Grantor's intention that this restriction be interpreted as broadly as possible to prohibit any type of residential use of the Restricted Area or Repository Area whatsoever.

- b) *No Removal of PCB-contaminated Soil.* No PCB-contaminated soil or material may be removed from the Restricted Area or the Repository Area without advance express written approval by DEQ.
 - c) *Protection of the Integrity of the Remedial Action.* Unless and until the Repository has been removed pursuant to a DEQ-approved work plan, the Repository Area shall be maintained solely as a Repository in perpetuity and shall not be used for residential purposes or for commercial, industrial, recreational, or any other activities. The Repository Area, the contaminated soils in the Repository, the soil cover over the Repository, and the drainage features (run-on and run-off) around the Repository are to be maintained as required by DEQ, including as set out in the O&M Plan, and shall not be disturbed or altered without advance express written approval by DEQ. The fencing, barriers, signage and wells required by DEQ to be maintained in the Repository Area shall not be removed, disturbed or altered without the advance express written approval of DEQ.
 - d) *Well Prohibition.* No groundwater wells may be drilled in the Restricted Area or the Repository Area without advance express written approval of DEQ. Groundwater and catch basins currently located in the Repository Area or the Restricted Area, including monitoring wells and the fire suppression well, and any water obtained from those wells, may not be used in any manner as a potable water supply. The integrity of any monitoring wells must be maintained and no seals may be removed on any closed wells.
- 3) **Access.** Grantor shall maintain access to the Restricted Area and the Repository Area. Grantor freely and voluntarily grants DEQ and Stimson, and their authorized representatives, the right to enter the Subject Property at reasonable times to evaluate the effectiveness of this Declaration; to inspect, sample, operate, monitor and maintain the Restricted Area and the Repository Area; to enforce compliance with this Declaration; and to inspect related records.
 - 4) **Enforcement Rights.** Stimson and DEQ shall jointly and severally be entitled to enforce this Declaration as intended third party beneficiaries thereof. DEQ may delegate enforcement rights to one or more designees by notifying Grantor, or any future holders, owners, lessees, occupiers, and purchasers of the Subject Property, in writing of such delegation. Grantor specifically agrees that the remedy of specific performance shall be available to Stimson, DEQ, and DEQ's designees in such proceedings, and that no delay or forbearance by those parties shall constitute a waiver or bar to any authority or remedy authorized by law or this Declaration. All remedies available hereunder to DEQ and Stimson shall be in addition to any and all other remedies at law or in equity, including the Montana Comprehensive Environmental Cleanup and Responsibility Act. Venue for enforcement of this Declaration by DEQ shall be in the First Judicial District Court, Helena, Montana.
 - 5) **Modification or Removal of Restrictions.** If conditions at the Restricted Area or the Repository Area have changed or no longer exist, DEQ may allow modification or removal of some or all of the restrictions imposed by this Declaration if DEQ determines that modification or removal of the

restrictions imposed would not pose an unacceptable risk to public health, safety, and welfare and the environment, as provided by Section 75-10-727, MCA. Any modification or removal of restrictions shall be evidenced by filing of the DEQ-approved modification in the real property records of the Missoula County Clerk and Recorder.

- 6) **Notice Requirements.** Grantor and all future owners of the Subject Property must cause the ICs contained in this Declaration and any DEQ-approved modifications to be recorded in the office of the Clerk and Recorder of Missoula County, Montana. These ICs apply in perpetuity and every subsequent instrument conveying an interest in all or any portion of the Subject Property, including, but not limited to, deeds, leases, easements, and mortgages, must include a notice of the existence of this Declaration and its recording reference. When conveying any interest in the Subject Property, the then-property owner must notify DEQ at least 30 days in advance of the conveyance. DEQ need not be notified of conveyances of easements that are solely overhead (e.g., easements for utility lines). The conveying document must contain a notice in substantially the following form, as well as a complete copy of this Declaration:

NOTICE: THIS PROPERTY IS SUBJECT TO A RESTRICTIVE COVENANT RECORDED BY BONNER PROPERTY DEVELOPMENT, LLC ON _____, 2016 AND RECORDED IN THE PUBLIC LAND RECORDS ON _____, 2016 IN BOOK____, PAGE____[INSERT RECORDING REFERENCE IN BOLD FONT]. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT RESTRICTIVE COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.

Within 60 days of the date any such instrument or conveyance is executed, Owner must provide DEQ with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference. Any conveyance of all or a portion of the Subject Property must include a requirement to include the language in this Section (6) in all future conveyances.

- 7) Any required written notice, demand, request, consent, approval or communication shall either be served personally or sent by first class mail, postage prepaid, addressed as follows.

a) If to Stimson:

Mr. Steven Petrin, Environmental Manager
Stimson Lumber Company
700 Pacific Building
520 SW Yamhill Street
Portland, OR 97204

b) If to DEQ:

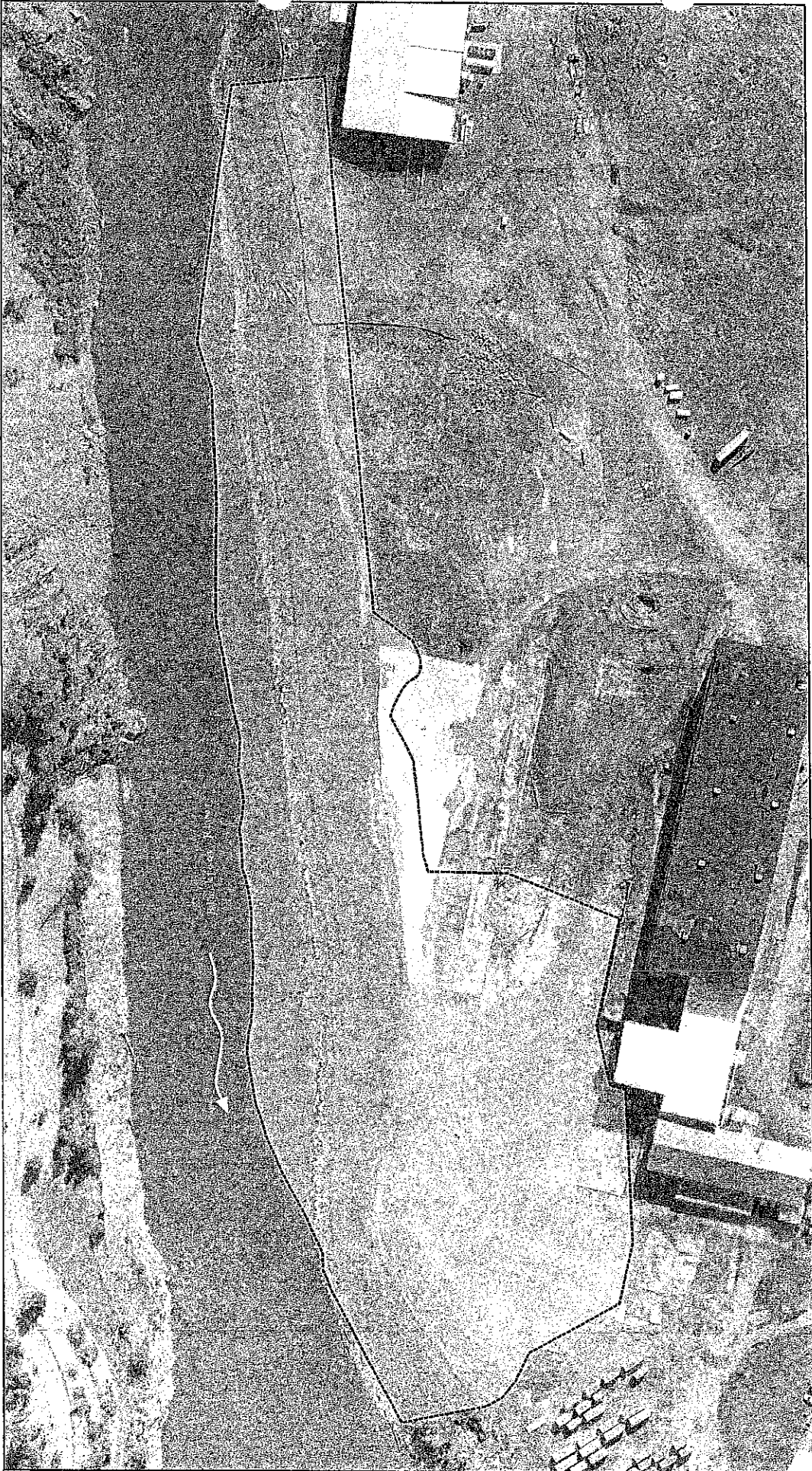
Bureau Chief, Federal Superfund Bureau
Montana Department of Environmental Quality
Re: Stimson Lumber Company Cooling Pond
P.O. Box 200901
Helena, MT 59620-0901

Legal- Remediation Division
Montana Department of Environmental Quality
Re: Stimson Lumber Company Cooling Pond
P.O. Box 200901
Helena, MT 59620-0901

- 8) All rights, benefits, authorities, abilities, and duties of DEQ as referenced or provided in this Declaration shall be exercisable by any successor agency established by the State of Montana.
- 9) **Miscellaneous Provisions**: The interpretation and performance of this instrument shall be governed by the laws of the State of Montana. The provisions of this Declaration shall be severable. If any provision in this Declaration or its application to any person or circumstance is held invalid, the remainder of this Declaration or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein. A heading used at the beginning of any section or paragraph or exhibit of this Declaration may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.

[Signature Page Follows]

EXHIBIT A
Map Showing Area of the AOC Work



0 150 Feet



0 150 Feet

NewFields

AOC Boundary (2016)

Exhibit A: AOC Area
Bonner Property Development, LLC
Institutional Controls
Former Bonner Mill, Bonner, MT

EXHIBIT B
Map Showing Restricted Area

Exhibit C
Map Showing Repository Area

