Managing Environmental Liabilities: Prospective Purchaser Agreements

DEQ Cleanup Program

Lorenzo Danielson, JD | Oregon Department of Environmental Quality

Statutory Directive – ORS 465.327(1)

"In order to facilitate **cleanup and reuse** of contaminated property, the Department of Environmental Quality **may**… provide a party with a release of liability…" (emphasis added)

Objective is to Negotiate

Liability Protection

In Exchange For

Substantial Public Benefit

Types of PPAs

- Administrative Agreement
  - Liability protection from the state
  - No 3rd party liability protection
- Consent Order
  - Liability protection from the state AND 3rd parties
  - 30-day public notice period beginning on 1st of the month
- Consent Judgement
  - Liability protection from the state AND 3rd parties
  - 30-day public notice period beginning on 1st of the month

Eligibility Criteria – ORS 465.327(1)(a)-(d)

- Prospective Purchaser is not currently liable
- Removal or remedial action is necessary to protect human health or environment
- Redevelopment or reuse will not make the situation worse
- Substantial public benefit will result

Substantial Public Benefit – ORS 465.327

Statutory examples:

- Generation of substantial funding to facilitate remedial measures at facility
- Commitment to perform substantial remedial measures at facility
- Productive reuse of vacant or abandoned industrial or commercial facility
- Development of facility by government or nonprofit to address “important public purpose”

PPA Pre-Application Meetings

Who attends PPA pre-apps?

Purchaser decides on their attendees:

- Usually: Purchasing entity reps, environmental consultant, legal counsel
- Sometimes: Current owner/seller, lender, partner

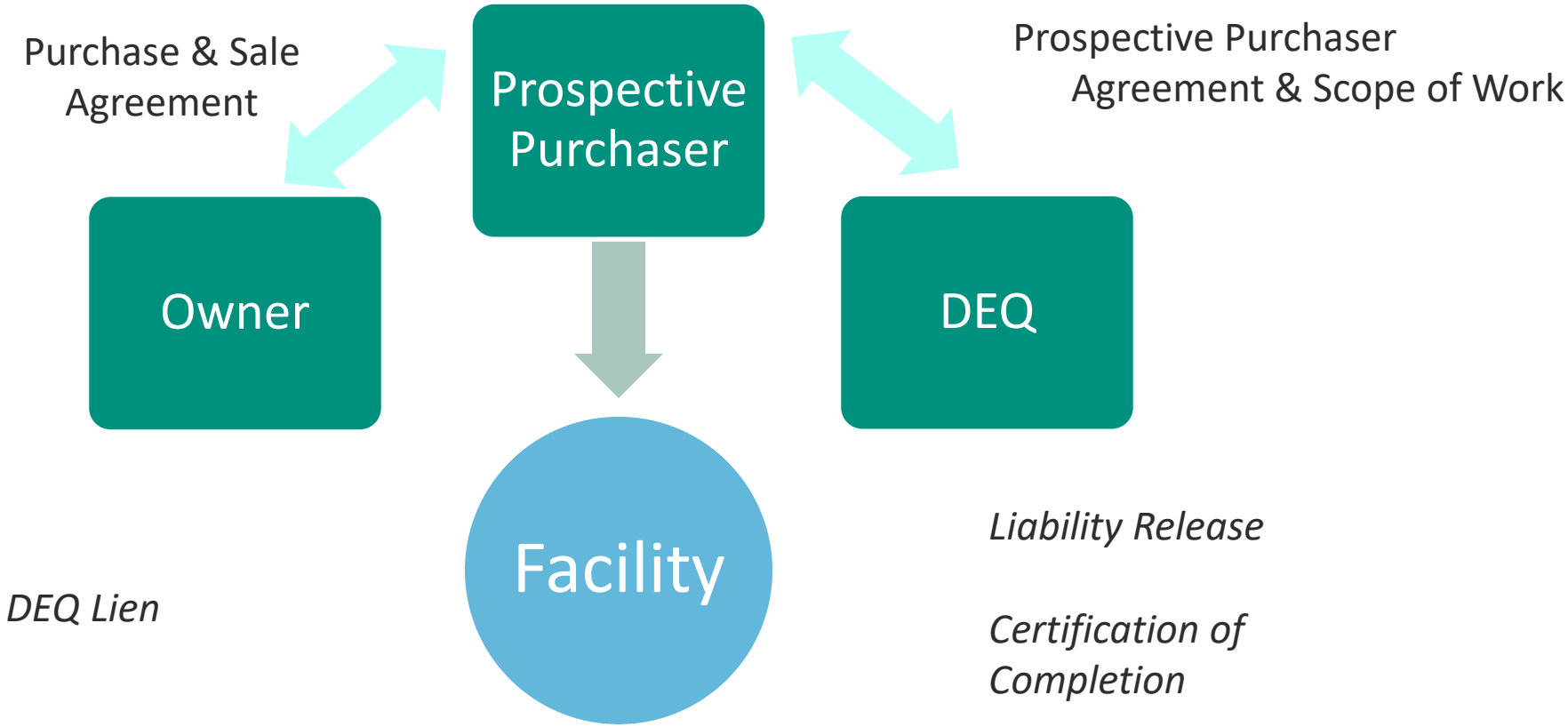
DEQ attendees include:

- Usually: PPA Coordinator, Regional Cleanup Manager, Lead Worker &/or Project Manager (core DEQ “team”)
- Sometimes: HQ Cleanup Manager, Regional Solutions Team, DOJ Attorney, DEQ specialist

What do we talk about?

- Purchaser’s Vision
- Site Information
- Scope of Work concepts
- PPA Program requirements, types, timelines, costs
- Special issues or questions
- Wrap up and next steps

PPA Process:
Who's Negotiating What?



Certificate of Completion

- Documents “satisfactory completion of obligations” of PPA
- Confirms protection from liability
- May be recorded on title to property
- PPA continues to “run with the land” as a property interest, transfers to new owners
- Ongoing obligations may be carried by Easement and Equitable Servitude (EES)

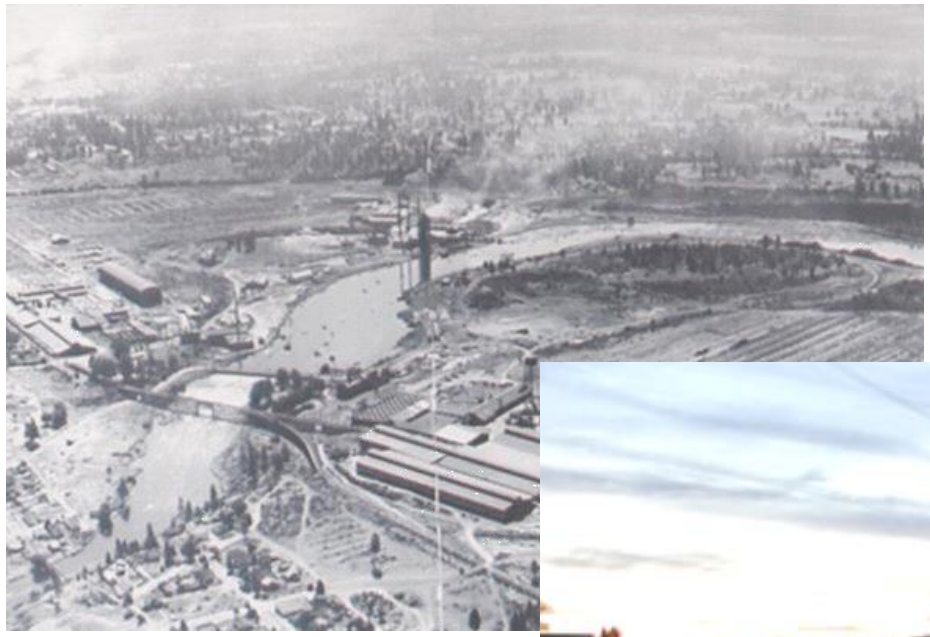
PPA vs. No Further Action (NFA) Letter

PPA:

- Provides statutory liability protection
- Recorded on title
- Property interest that runs with the land
  - Protection extends to future owners

- NFA:
- States DEQ's view that no further remedial action is necessary
- Not a property interest
- No legal bearing
- Can be withdrawn
- Comfort letter may be written to restate original NFA

Bend Mill site to Commercial Development



ECSI
1891

Rose City Plating to Sellwood Public Library and Lofts

ECSI
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Thank you!

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