

After recording return document to:

State of Washington
Department of Transportation
Real Estate Services Office
P O Box 47338
Olympia WA 98504-7338



200806240065

Skagit County Auditor

6/24/2008 Page 1 of 14 3:28PM

Document Title: Access Agreement

Reference Number of Related Document: N/A

Grantor(s): State of Washington, Department of Transportation

Grantee: BP West Coast Products LLC

Legal Description: Ptn Govt Lot 2, Section 6, T34N, R4E, WM

Additional Legal Description is on Page(s) 2 of, and Exhibit A to, Document

Assessor's Tax Parcel Number(s): 340406-0-052-0007 (P23672)

RE: IC No.1-29-08189
SR 5, SR 20 Interchange

Access Agreement

This Access Agreement (the "Agreement") is made effective this 20th day of June, 2008, between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, (WSDOT), and BP WEST COAST PRODUCTS LLC, (GRANTEE) a Delaware limited liability company.

GUARDIAN NORTHWEST TITLE CO.

RECITALS

B76204E-3

WSDOT owns certain real property located in Skagit County known to be a portion of the highway right of way of SR 20.

GRANTEE owns certain property nearby, which is known as former ARCO site number 6194, which WSDOT is condemning a portion of for right of way along State Route 20 in Skagit County. The remainder of the site is hereinafter referred to in this Agreement as the "Premises" and is legally described below.

GRANTEE is conducting an independent remedial action at the Premises under the Model Toxics Control Act and applicable regulations, WAC 173-340. GRANTEE's cleanup efforts include the installation, operation, monitoring and maintenance of certain Monitoring Wells and Recovery Wells.

GRANTEE plans to continue to conduct its independent remedial action at the Premises until the samples from the Monitoring Wells and/or Recovery Wells meet applicable cleanup standards set out in WAC 173-340.

WSDOT will take title to the Premises before GRANTEE is done with its independent remedial action at the Premises.

As the anticipated new owner of the Premises, WSDOT is willing to grant to GRANTEE a non-exclusive privilege of ingress and egress over, across, and upon the Premises in order to allow GRANTEE to complete its independent remedial action upon the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, IT IS MUTUALLY AGREED THAT:

1. **Premises.** The property that is subject to this Agreement is located in Skagit County. The property is legally described as follows and shall hereinafter be collectively referred to as the Premises:

That portion of the Government Lot 2, Section 6 Township 34 North, Range 4 East, W.M., Skagit County, Washington, as shown hachured on **Exhibit A**, attached hereto and by this reference incorporated herein.

2. **Term.** The term of this Agreement shall commence on the later of the date of execution of this Agreement by WSDOT or the date WSDOT takes title to the Premises (the "Commencement Date") and shall terminate on the later of five (5) years from the Commencement Date or when samples from all the Monitoring Wells and/or Recovery Wells meet applicable cleanup standards set out in WAC 173-340.

3. **Grant of Access.** WSDOT, for valuable consideration, the sufficiency of which is hereby acknowledged, grants to GRANTEE a non-exclusive privilege of ingress and egress over, across, and upon the Premises.

4. **Purpose of Access.** GRANTEE shall have the right at such times as may be necessary, to enter upon the Premises for the purpose of conducting its independent remedial action at the Premises, including without limitation, natural attenuation, closing the Wells at the conclusion thereof, and restoring the Premises to its pre-access condition. The right of access shall be non-exclusive and shall be subject to the following terms:



200806240065

Skagit County Auditor

A. GRANTEE may operate, monitor, and maintain the existing four (4) Monitoring Wells (MW) and five (5) Recovery Wells (RS) located and/or to be located on the Premises. The four (4) Monitoring Wells and five (5) Recovery Wells are shown on **Exhibit B**, attached hereto and by this reference made a part hereof.

B. GRANTEE may install additional Monitoring Wells and/or Recovery Wells as may be reasonably necessary for its independent remedial action at the Premises the Premises, provided that they first provide WSDOT with fifteen (15) days advance notice before installing any such additional Monitoring and/or Recovery Wells.

C. GRANTEE shall not permit any other party, except GRANTEE's duly authorized representatives, employees, agents, contractors and/or permittees to access the Premises. GRANTEE shall be deemed an independent contractor for all purposes, and GRANTEE's representatives, employees, agents, contractors and/or permittees, and their respective employees, shall not in any manner be deemed employees of WSDOT.

D. GRANTEE shall maintain the Monitoring Wells and Recovery Wells in accordance with Chapter 173-160 WAC and any amendments thereto at its expense.

E. GRANTEE shall leave the Premises in as secure, safe, neat, and clean a condition after each entry onto the Premises as the Premises were before each entry.

F. Use of the Premises is restricted to the hours between 9:30 a.m. and 4:00 p.m. Monday through Friday and no use is allowed Saturday, Sunday, or holidays, unless authorized in advance and in writing by the WSDOT Assistant Maintenance Superintendent. In addition, GRANTEE shall notify the WSDOT Assistant Maintenance Superintendent at least twenty four (24) hours prior to entry upon WSDOT property. Any access to or use of the Premises shall be done in a manner as to not pose a hazard to travel on the state highway or to GRANTEE's employees or agents.

G. Except as provided elsewhere herein, upon termination of this Agreement, the Monitoring Wells and Recovery Wells shall be closed and/or removed by GRANTEE at GRANTEE's expense in accordance with WAC 173-160-381, and GRANTEE shall restore the Premises to the original condition prior to its use for the Monitoring Wells and Recovery Wells.

H. GRANTEE shall notify WSDOT of completion of its work on the Premises so that WSDOT can confirm that the Monitoring Wells and Recovery Wells have been closed and/or removed and the Premises returned to their pre-Well condition.



I. GRANTEE shall not alter, damage or destroy any survey control monuments located on the Premises. In the event the acts or omissions of GRANTEE alter, damage or destroy any such monument, GRANTEE shall promptly notify WSDOT. WSDOT shall reset or replace said monument and GRANTEE agrees to reimburse WSDOT for all reasonable costs necessarily incurred in resetting or replacing said monument within thirty (30) days of the date of WSDOT's invoice. WSDOT shall not alter, damage or destroy any Monitoring Well or Recovery Well. In the event WSDOT alters, damages or destroys a Monitoring Well or Recovery Well, WSDOT shall promptly notify GRANTEE and pay GRANTEE's reasonable costs to repair or replace the Well within thirty (30) days of the date of GRANTEE's invoice.

J. This Agreement shall not be deemed or held to be an exclusive one and shall not prohibit WSDOT from granting other rights of entry, permits, or other interests or rights to other public or private companies or individuals, nor shall it prevent WSDOT from using any of the Premises or affect its right to full supervision and control over all or any part of them, none of which is hereby surrendered, so long as the access herein granted to GRANTEE is not obstructed thereby.

5. **Nonapplicability of Relocation Assistance.** GRANTEE acknowledges that this Agreement does not at any time entitle GRANTEE to assistance, with respect to the Wells, under the Uniform Relocation and Real Property Acquisition Policy (Ch. 8.26 RCW).

6. **Environmental Reports.** GRANTEE shall provide the WSDOT Assistant Maintenance Superintendent and the Assistant Director of Property Management designated herein, with copies of all environmental reports, data, and analyses generated at GRANTEE's request in connection with GRANTEE's use of the Premises under the terms of this Agreement within thirty (30) days of receipt of such reports, data, and analyses.

7. **Liens.** GRANTEE shall keep the Premises free from any liens arising out of GRANTEE's use of the Premises pursuant to this Agreement.

8. **Personal Property.** WSDOT shall not be liable in any manner for, or on account of, any loss or damage sustained to any personal property of whatsoever kind stored, kept, or maintained by GRANTEE on or about the Premises, except for such claims or losses that may be caused by WSDOT or its authorized agents or employees.

9. **Indemnification.**



A. GRANTEE agrees to defend, indemnify and hold harmless WSDOT from and against any and all claims, causes of action, demands and liability for bodily injury including, but not limited to, any costs, liabilities, damages, expenses, assessments, penalties, fines, losses, judgments and attorneys' fees associated therewith, where such claims, causes of action, demands and liability are caused by GRANTEE's use of the Premises pursuant to this Agreement. GRANTEE further agrees to retain, defend, indemnify and hold harmless WSDOT from any and all liability arising from the offsite disposal, handling, treatment, storage, or transportation of any such Hazardous Substances removed from the Premises as a result of GRANTEE's use of the Premises pursuant to this Agreement.

B. The provisions of this section shall survive the termination or expiration of this Agreement.

10. Insurance.

A. GRANTEE shall require its consultant to secure and maintain in effect a policy providing public liability insurance issued by an insurer licensed to conduct business in the State of Washington. The insurance policy shall provide liability coverage for any and all claims of bodily injury, property damage, and personal injury arising from the use of the Premises as provided in this Agreement. The insurance policy required by this section shall provide coverage no less than Two Million and no/100 Dollars (\$2,000,000.00) bodily injury and property damage or combined single limit of liability per occurrence, with a general aggregate limit of no less than Four Million and no/100 Dollars (\$4,000,000.00) per policy period. Such aggregate limits shall apply for this Premises location, and coverage under said policy shall be triggered on an "occurrence basis," not on a "claims made" basis.

B. The coverage required by this section shall be at least as broad as that provided by Commercial General Liability Policy, ISO (Insurance Services Office, Inc.) policy form CG 00 01 12 04, or its most current form or equivalent without modification.

C. WSDOT shall be named as an additional insured by endorsement of the liability policy required by this section utilizing a form which covers WSDOT for damages caused by the named insured's use of the Premises pursuant to this Agreement. The endorsement shall require the insurer to provide WSDOT with not less than thirty (30) days prior written notice before any cancellation of the coverage required by this section.

D. No changes whatsoever shall be initiated as to the coverage without prior written approval by WSDOT and written authorization by WSDOT to make any requested changes.



E. Unless approved by WSDOT in advance and in writing, the liability coverage required by this section shall not be subject to any deductible or self-insured retentions of liability greater than Five Thousand and no/100 Dollars (\$5,000.00) per occurrence. The payment of any such deductible or self-insured retention of liability amounts remains the sole responsibility of GRANTEE's consultant.

F. Coverage obtained by the GRANTEE in compliance with this section shall not be deemed as having relieved the GRANTEE of any liability in excess of such coverage.

G. The GRANTEE shall provide WSDOT with a certificate of insurance reflecting the insurance coverage required by this section within Twenty (20) business days of the execution of this Agreement. Such certificates shall also be provided upon renewal of said policies and changes in carriers.

11. **Nondiscrimination.** GRANTEE for itself, its successors and assigns, as part of the consideration hereof, does hereby agree to comply with all applicable civil rights and antidiscrimination requirements, including, but not limited to, Chapter 49.60 RCW.

12. **Assignment.** GRANTEE may assign this Agreement to a successor with the prior written approval of the WSDOT Assistant Director of Property Management, which approval shall not be unreasonably withheld.

13. **Surety Bond.** GRANTEE shall provide WSDOT with a surety bond in the amount of \$10,000.00 written by a surety company authorized to do business in the State of Washington. The surety bond shall be for work related to the closure and/or removal of the Monitoring Wells and Recovery Wells. The bond shall be furnished to WSDOT upon execution of this Agreement and shall remain in force until released in writing by WSDOT Assistant Director of Property Management, which release shall not be unreasonably withheld.

14. **Modifications.** This Agreement contains all of the agreements and conditions made between the parties hereto pertaining to the Premises and may not be modified orally or in any manner other than by written agreement signed by all parties. Failure on the part of WSDOT to enforce any covenant or provision herein contained shall not discharge or invalidate such covenant or provision or affect the right of WSDOT to enforce the same in the event of any subsequent breach or default.

15. **Interpretation.** This Agreement shall be governed and interpreted in accordance with the laws of the State of Washington. The titles to paragraphs or sections of



this Agreement are for the convenience only and shall have no effect on the construction or interpretation of any part hereof.

16. Binding Agreement. It is understood and agreed that delivery of this Agreement is hereby tendered and that the terms and obligations hereof shall not become binding upon the State of Washington unless and until accepted and approved hereon in writing for the State of Washington, Department of Transportation, by its Director of Real Estate Services.

17. Attorneys' Fees. In the event of any controversy, claim, or dispute arising out of this Agreement, each party shall be solely responsible for the payment of its own legal expenses, including but not limited to, attorney's fees and costs.

18. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

19. Venue. GRANTEE agrees that the venue of any action or suit concerning this Agreement shall be in the Thurston County Superior Court and all actions or suits thereon shall be brought therein, unless applicable law requires otherwise.

20. Totality of Agreement. It is understood that no guarantees, representations, promises, or statements expressed or implied have been made by WSDOT except to the extent that the same are expressed in this Agreement.

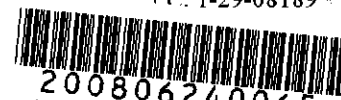
21. Authority. The undersigned parties warrant that the person executing this Agreement on their behalf has been duly authorized to execute this Agreement on behalf of that party.

22. Notices. Wherever in this Agreement notices or information are to be given, they will be served, personally delivered or sent by certified or overnight mail addressed to the parties at the address listed below unless a different address has been designated in writing and delivered to the other party:

WSDOT: DEPARTMENT OF TRANSPORTATION

Assistant Director Property Management

~~310 Maple Park Avenue SE~~ 243 Israel Road, Suite 101



PO BOX 4 7338
Olympia, WA 98504-7338

AND DEPARTMENT OF TRANSPORTATION
Assistant Maintenance Superintendent
Mail Stop: NB82-42
4100 CEDERDALE ROAD
MOUNT VERNON, WA 98274

GRANTEE: NATIONAL PROPERTY MANAGER/CONDEMNATION
SPECIALIST
Sue Tansey
P.O. Box 917
Oswego, IL 60543-0914

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

JUN 24 2008

Amount Paid ☒
Skagit Co. Treasurer
By MF Deputy



200806240065
Skagit County Auditor

Signatures:

BP WEST COAST PRODUCTS LLC,
a Delaware limited liability company

By: _____

Title: _____

Dated: _____

Vice President

June 18, 2008

Accepted and Approved by:

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION

By: _____

Gerald L. Gallinger
Director, Real Estate Services

Dated: _____

6/19/08

APPROVED AS TO FORM

By: _____

Patricia H. Hightower
Assistant Attorney General

Dated: _____

June 18th, 2008

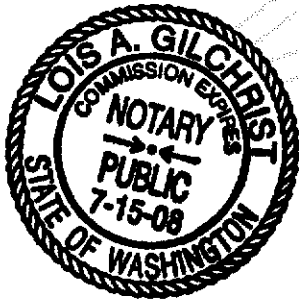


STATE AGENCY ACKNOWLEDGMENT

STATE OF WASHINGTON)
)
COUNTY OF THURSTON)

On this 19th day of June, 2008 before me personally appeared Gerald L. Gahinger ^{Terry Meares} to me known to be the duly appointed ^{acting} Director, Real Estate Services, and that he executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said State of Washington, for the uses and purposes therein set forth, and on oath states that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the 19th day of June, 2008.



Lois A. Gilchrist
(Signature)

Lois A. Gilchrist
(Print or type name)

Notary Public in and for the State of Washington
residing at Shelton
My commission expires 7/15/2008



CORPORATE ACKNOWLEDGMENT

STATE OF)
)
COUNTY OF)

On this _____ day of _____, 2008, fore me personally appeared _____ to me known to be the duly appointed _____, and that _____ executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and on oath states that was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the _____ day of _____, 2008

(Signature)

(Print or type name)

Notary Public in and for the State of _____
residing at _____
My commission expires _____



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange

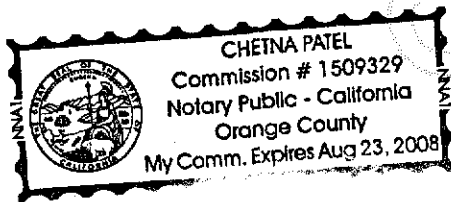
On June 18, 2008 before me, Chetna Patel, Notary Public

DATE

Name, Title Of Officer - E.G., "Jane Doe, Notary Public"

personally appeared Austin McGreal.

Who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instruments.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Chetna Patel

Signature of Notary

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

☐ INDIVIDUAL
☐ CORPORATE OFFICER

☒ VICE PRESIDENT

☐ PARTNER(S) ☐ LIMITED
☐ GENERAL

☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER:

TITLE OR TYPE OF DOCUMENTS

NUMBER OF PAGES

DATE OF DOCUMENTS

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)
BP West Coast Products, LLC

SIGNER(S) OTHER THAN NAMED ABOVE



200806240065

Skagit County Auditor

SR 20

760

NV LINE

GRADE INTERSECTION LT
SR 20 763+20.02 P.O.T.
K 10+00.00 P.O.T.

GRADE INTERSECTION
SR 20 763

WM-2
C 54+04.96
(135.51' RT)

WM-6
C 54+08.99
(111.63' RT)

WM-55
C 53+62.02
(57.21' RT)

WM-8
C 53+63.85
(73.49' RT)

WM-45
C 53+51.30
(185.18' RT)

WM-9
C 53+25.83
(67.40' RT)

WM-25
C 53+13.58
(176.30' RT)

WM-3
C 52+85.16
(116.47' RT)

WM-1
C 53+34.84
(128.23' RT)

WM-7
C 53+63.11
(151.69' RT)



200806240065
Skagit County Auditor

Exhibit B
Page 1 of 1
IC 1-29-08189
AA 1-12390
BP West Coast Products LLC