

**DECLARATION OF RESTRICTIVE COVENANT AND GRANT OF ENVIRONMENTAL
PROTECTION EASEMENT – ROSE TOWNSHIP PROPERTY**

A Recommendation

1. **Division and Department:** Finance and Administration Division
2. **Introduction:**

This item recommends that the Board of Trustees (“Board”) approve a Declaration of Restrictive Covenant and Grant of Environmental Protection Easement (“Restrictive Covenant and Easement”) being required by the United States Environmental Protection Agency (“USEPA”) and Michigan Department of Environmental Quality (“MDEQ”) for a portion of Oakland University’s property in Rose Township, Michigan.

The Property

In 1984, Oakland University (“University”) received approximately 121 acres of property in Rose Township, Michigan as a gift. The property is undeveloped except for one single-family home located on the property’s western boundary, which the University currently rents via a residential lease on a year-to-year basis.

A portion of the northern boundary of the property, consisting of approximately 21 acres (the “Property”), abuts the Rose Township Superfund Site (“Superfund Site”), a contaminated area as designated by the USEPA. A portion of the Property, consisting of approximately 13.6 acres (the “Restricted Area”), is associated with the Superfund Site. The attached diagram depicts the Property and the Restricted Area.

In 1992, the Board approved an access agreement with Chrysler Corporation (“Chrysler”) that granted Chrysler access to the Property and the Restricted Area to perform testing, monitoring and cleanup activities related to the Superfund Site. Pursuant to the access agreement, Chrysler erected a fence and installed ten monitoring wells on the Property and in the Restricted Area. The access agreement was subsequently extended with Board approval in 1995 and 1996. At the request of the USEPA, a new group known as the Rose Township Group (“RTG”) assumed responsibility from Chrysler for cleanup activities at the Superfund Site after Chrysler filed for bankruptcy protection, and in December 2010 the Board approved an access agreement that grants RTG continued access to the Property and the Restricted Area. RTG maintains the fence and inspects, samples and monitors the monitoring wells. The access agreement with RTG is currently in effect and will terminate only after the USEPA notifies the University and RTG that no further cleanup of the Superfund Site is necessary.

**Declaration of Restrictive Covenant and Grant of Environmental Protection
Easement – Rose Township Property
Oakland University
Board of Trustees Formal Session
July 1, 2014
Page 2**

The Property is also subject to a permanent easement over the northwest tip of the Property, which is held by Consumers Energy Company (“Consumers”) pursuant to a Right of Way granted by the University’s donor of the Property in 1951. The permanent easement grants Consumers the right to construct, repair and maintain up to two gas mains within the permanent easement, and Consumers has constructed and operates two gas mains in the permanent easement.

The Proposed Declaration of Restrictive Covenant and Grant of Environmental Protection Easement

The USEPA and the MDEQ are requiring that the owners of the properties adjacent to the Superfund Site, and the holders of easements across those properties, consent to the recording of the Restrictive Covenant and Easement.

The stated purposes of the Restrictive Covenant and Easement includes the intent to “protect the public health, safety, welfare, and the environment” and to “prohibit or restrict activities that could result in unacceptable exposure to environmental contamination present at the Property.”

In general, the Restrictive Covenant and Easement prohibits the following in the Restricted Area:

- Residential uses;
- Activities that would increase the cost of or otherwise interfere with response activities;
- The construction of and use of wells or other devices to extract groundwater for consumption, irrigation or any other use.
- The construction of new structures or buildings unless plans are approved by the the USEPA and MDEQ; and
- Excavation or other activities that would disturb the soils unless conducted in accordance with applicable state and federal environmental health and safety laws and regulations.

The Restrictive Covenant and Easement also guarantees the USEPA and MDEQ access to the Property and Restricted Area and requires the University to: (i) notify the USEPA, MDEQ and RTG of any anticipated transfer of the Property; and (ii) include a notice on any deeds, leases or similar instruments identifying the existence of the Restrictive Covenant and Easement.

The owners of the other properties adjacent to the Superfund Site, and the holders of easements across those properties, have agreed/consented to the recording of the

**Declaration of Restrictive Covenant and Grant of Environmental Protection
Easement – Rose Township Property
Oakland University
Board of Trustees Formal Session
July 1, 2014
Page 3**

Restrictive Covenant and Easements. The USEPA and MDEQ have approved the Restrictive Covenant and Easements.

The Restrictive Covenant and Easement will not have any impact upon the Oil and Gas Lease between the University and Jordan Development Company, LLC that the Board authorized on June 26, 2013 (the “Jordan Lease”).

The Restrictive Covenant and Easement for the Property has been reviewed and approved by the Office of the Vice President for Legal Affairs and General Counsel, and is in compliance with the law and University policies and regulations, and conforms to legal standards and policies of the Vice President for Legal Affairs and General Counsel.

The Board’s Policy and Procedures

The Board’s Policy and Procedure for Disposal, Acquisition, Lease, and Other Transfer of Real Property Interests requires that “[e]asements may be granted on University property only with the prior approval by the Board of Trustees.”

3. **Previous Board Action:** On August 29, 1984, the Board accepted a gift of the Property. On October 1, 1992, the Board authorized a three (3) year Access Agreement with Chrysler for the purpose of performing remediation activities at the Rose Township Superfund Site, which was subsequently extended for six (6) months. On April 11, 1996, the Board extended the term of that Access Agreement for an additional two (2) years, which ended in May, 1998. On April 7, 2010, the Board authorized an Agreement Regarding Easement with Consumers expanding an existing utility easement on the Property held by Consumers. On December 9, 2010, the Board authorized a new Access Agreement with the RTG for the purpose of continuing remediation activities at the Rose Township Superfund Site. On December 3, 2012, the Board authorized the University to seek bids to lease the Rose Township property for oil and gas exploration and the Board subsequently authorized the Jordan Lease on June 26, 2013.
4. **Budget Implications:** None.
5. **Educational Implications:** None.
6. **Personnel Implications:** None.
7. **University Reviews/Approvals:** This recommendation was formulated by the Vice President for Finance and Administration and approved by the President.


**Declaration of Restrictive Covenant and Grant of Environmental Protection
Easement – Rose Township Property
Oakland University
Board of Trustees Formal Session
July 1, 2014
Page 4**

8. Recommendation:

RESOLVED, that the Board of Trustees authorizes the Vice President for Finance and Administration to execute the Proposed Declaration of Restrictive Covenant and Grant of Environmental Protection Easement for the Rose Township Property.

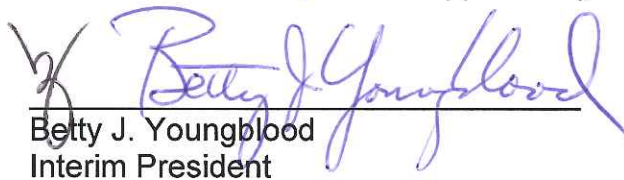
9. Attachments: Diagram of the Property and the Restricted Area.

Submitted to the President
on 6/24, 2014 by



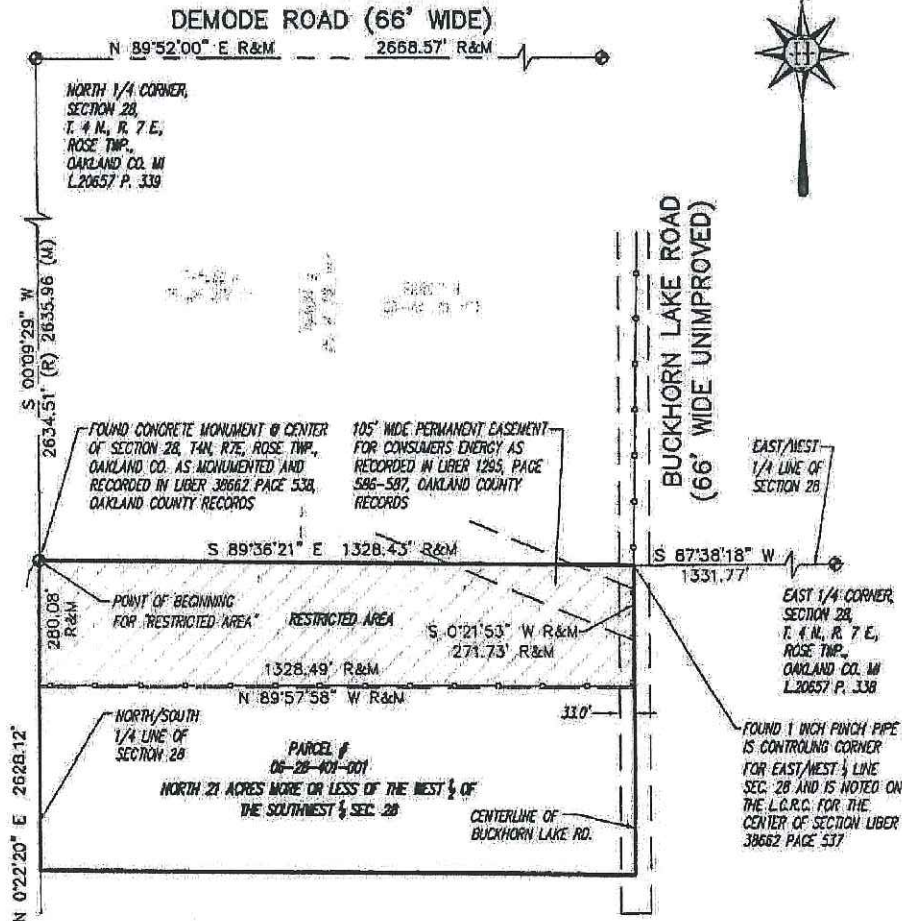
John W. Beaghan
Vice President for Finance and Administration
and Treasurer to the Board of Trustees

Recommended on June 26, 2014
to the Board of Trustees for approval by



Betty J. Youngblood
Interim President

PARCEL ID #06-28-401-001



LEGEND

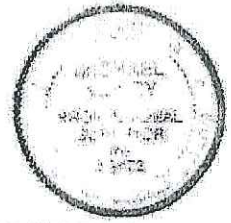
- PROPERTY LINE ————
- EASEMENT LINE - - - - -
- PARCEL LINE ————
- FENCE LINE ————
- FOUND IRON ○
- SET IRON ○
- RECORD MEAS. R
- FIELD MEAS. M

LEGAL DESCRIPTION
 PARCEL # 06-28-401-001

SEE PAGE TWO.

I, Michael J. Nowry, a Professional Surveyor in the State of Michigan, do hereby Certify that the parcel of land described and delineated hereon has been surveyed under my supervision; that the plat hereon is a true representation of the survey as performed and that there are no encroachments other than as shown hereon; that said survey was performed with an error of closure no greater than 1 in 5000 and that I have fully complied with the requirements of Section 3, Public Act 132 of 1970.

MICHAEL J. NOWRY
 PROFESSIONAL SURVEYOR, 52472 *Michael J. Nowry*



Nowry & Hale
Land Surveying LLC
 192 N. Main, Suite D, Plymouth, MI, 48170
 ph. 734.448.5501 email: info@nowryandhalelandsurveying.com

DATE:	09-09-13	CLIENT:
PROJ. #	013-111	MATT JERUE
DWG. BY:	MJN	CTI & ASSOCIATES INC.
CHKED BY:	ALH	51331 PONTIAC TRAIL, WIXOM, MI 48393