

Mining provisions for July 11, 2012 Agenda

To: Board of Trustees

From: Bruce Stewart

Through: Office of the Executive Director

Date: 7-11-12

Pursuant to direction from Chairman Seilheimer and other trustees and following up on the issue of oil and gas mining considered at the April 18, 2012 meeting of the Board of Trustees, set forth below are two revisions, the first of the template language involving grading, blasting, filling, and mining and the second of the cookbook provision for oil and gas mining.

6. GRADING, BLASTING, FILLING AND MINING. (Standard Template)

(i) Grading, blasting, filling, or earth removal shall not materially alter the topography of the Property except (a) for clearing, grading, and dam construction to create ponds (but not storm water retention ponds to serve other properties), (b) for restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section II, Paragraph 3 (i)(f) above, (c) for erosion and sediment control pursuant to an erosion and sediment control plan, or (d) as required in the construction of permitted buildings, structures, roads, and utilities. Grantee may require appropriate sediment and erosion control practices to be undertaken for the construction of buildings, structures, roads or utilities that require Grantee approval in Section II Paragraph 2 (i) above, as a condition of such approval.

(ii) Grading, blasting, filling, or earth removal in excess of one acre for the purposes set forth in subparagraphs (a) through (d) above require 30 days' prior notice to Grantee. Generally accepted agricultural activities, including the conversion of forest land into farmland, shall not constitute a material alteration of the topography. Surface mining and dredging on or from the Property are prohibited. Subsurface mining is prohibited, except that exploration for and extraction of oil from under the surface of the Property by horizontal or slant drilling from well sites on adjacent or nearby properties is permitted.

6. GRADING, BLASTING, FILLING AND MINING. (Provision when landowner requests the right to locate a well site for oil and gas exploration on property going under easement)

(i) Grading, blasting, filling, or earth removal shall not materially alter the topography of the Property except . . . (e) as permitted and limited in Section II Paragraph 6 (ii) below with respect to the qualified mineral interest hereby retained by Grantor in subsurface gas and oil only and the right to explore for and extract such hydrocarbons.

(ii) As of the date of this Easement Grantor is the owner of the entire Property including the mineral rights located under the surface of the Property; such mineral rights have not been severed from the surface of the Property. The method of exploration and extraction of gas or oil and the measures that will be taken to protect the conservation values of the Property used during and after completion of exploration and extraction (the "gas or oil plan") must be approved by Grantee in writing, complied with by Grantor, and meet the following general requirements: (a) such method must not be inconsistent with the particular conservation values protected by this Easement, (b) such method must have only a limited, temporary, localized impact on the Property, and (c) such method must not be irretrievably destructive of any significant conservation interests.

The gas or oil plan must include the following: (a) a description of the areas to be disturbed on the surface of the Property, (b) the impact of the mining activity on the conservation values being protected herein and the proposed mitigation of any adverse impacts, (c) the impact of the mining activity on water resources on or below the surface of the Property and the proposed mitigation of any adverse impacts, and (d) the plan for the proposed reclamation of surface of the Property to its original state at the conclusion of the project.

The gas or oil plan shall specifically provide for the following: (a) no more than one well site with one well may be located on the Property, (b) no more than one acre may be utilized or disturbed for such well and any other exploration, production or storage facilities, (c) the drilling pad and any exploration, production, or storage facilities must be concealed from public view by vegetation or the natural topography and must be removed therefrom at the conclusion of the permitted mining activity by or on behalf of Grantor, (d) the location and placement of all pipelines leading from the well must be approved in writing by Grantee, (e) any altered physical features of the Property must be restored to their original state and the restored topography appropriately vegetated within a period of one year upon conclusion of the permitted mining activity by or on behalf of Grantor, (f) the payment of a cost recovery charge in an amount determined by Grantee's Board of Trustees from time to time for (1) review of the gas or oil plan, lease, surface-use agreement, and any other documents required or entered into for gas or oil exploration and extraction from the Property and (2) for monitoring and enforcement of the these restrictions by Grantee or a retained consultant, and (g) the posting of a reclamation bond payable to Grantee in an amount and in a form suitable to Grantee to ensure that Grantee has sufficient funds to reclaim the site if Grantor, lessee, or an assignee fails to do so within the stated one year period. Grantee may disapprove the gas or oil plan if it finds that the plan does not comply with the requirements of this Section II Paragraph 6 (ii).

Grantor shall not lease any subsurface gas or oil mineral rights unless such instrument (e.g. gas or oil lease, any accompanying surface-use agreement, and any other instruments involving the leasing of such rights) references this Easement, sets forth or summarizes the provisions of this Section II Paragraph 6 (ii), specifically requires compliance with all terms and conditions of this Easement, and makes Grantee a party thereto. Grantor shall provide copies of such documents to Grantee for Grantee's review and approval.