



**RETURN NAME and ADDRESS**

Union Pacific Railroad Company, Attn: John DeJong

4315 Sprague Ave

Spokane Valley, WA 99212

Please Type or Print Neatly and Clearly All Information

**Document Title(s)**

Environmental Covenant

**Reference Number(s) of Related Documents**

NA

**Grantor(s)** (Last Name, First Name, Middle Initial)

Union Pacific Railroad Company

**Grantee(s)** (Last Name, First Name, Middle Initial)

Washington State Department of Ecology

**Legal Description** (Abbreviated form is acceptable, i.e. Section/Township/Range/Qtr Section or Lot/Block/Subdivision)

Township 25 North, Range 44 East, Section 11, SE Quarter Section, Lot 8,

**Assessor's Tax Parcel ID Number** 45114.9030 and 45114.9181

The County Auditor will rely on the information provided on this form. The Staff will not read the document to verify the accuracy and completeness of the indexing information provided herein.

**Sign below only if your document is Non-Standard.**

I am requesting an emergency non-standard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some parts of the text of the original document. Fee for non-standard processing is \$50.

\_\_\_\_\_  
Signature of Requesting Party

After Recording Return  
Original Signed Covenant to:  
Sandra Treccani  
Toxics Cleanup Program  
Department of Ecology  
4601 N Monroe  
Spokane, WA 99205

## Environmental Covenant

**Grantor:** Union Pacific Railroad Company

**Grantee:** State of Washington, Department of Ecology (hereafter "Ecology")

**Brief Legal Description:** portions of 45114.9030 and 45114.9181 as described in Exhibit A

**Tax Parcel Nos.:** 45114.9030 and 45114.9181

### RECITALS

- a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70.105D RCW, and Uniform Environmental Covenants Act ("UECA"), chapter 64.70 RCW.
- b. The Property that is the subject of this Covenant is part or all of a site commonly known as Aluminum Recycling Trentwood, Facility/Site ID 628. The Property is legally described in Exhibit A, and illustrated in Exhibit B, both of which are attached (hereafter "Property"). If there are differences between these two Exhibits, the legal description in Exhibit A shall prevail.
- c. The Property is the subject of remedial action conducted under MTCA. This Covenant is required because residual contamination remains on the Property after completion of remedial actions. Specifically, the following principal contaminants remain on the Property:

Medium	Principal Contaminants Present
Soil	Aluminum, arsenic, barium, chromium (total), copper, mercury

- d. It is the purpose of this Covenant to restrict certain activities and uses of the Property to protect human health and the environment and the integrity of remedial actions conducted at the site. Records describing the extent of residual contamination and remedial actions conducted are available through Ecology. This includes the following document:

- Final Cleanup Action Report, Union Pacific Railroad, Aluminum Recycling Trentwood Site, May 3 2024

- e. This Covenant grants Ecology certain rights under UECA and as specified in this Covenant. As a Holder of this Covenant under UECA, Ecology has an interest in real property, however, this is not an ownership interest which equates to liability under MTCA or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* The rights of Ecology as an "agency" under UECA, other than its' right as a holder, are not an interest in real property.

## COVENANT

Union Pacific Railroad Company, as Grantor and fee simple owner of the Property hereby grants to the Washington State Department of Ecology, and its successors and assignees, the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall supersede any prior interests the Grantor has in the property and run with the land and be binding on all current and future owners of any portion of, or interest in, the Property.

### Section 1. General Restrictions and Requirements.

The following general restrictions and requirements shall apply to the Property:

- a. **Interference with Remedial Action.** The Grantor shall not engage in any activity on the Property that may impact or interfere with the remedial action and any operation, maintenance, inspection or monitoring of that remedial action without prior written approval from Ecology.
- b. **Protection of Human Health and the Environment.** The Grantor shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from Ecology. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as a part of the remedial action or that exacerbates or creates a new exposure to residual contamination remaining on the Property.
- c. **Continued Compliance Required.** Grantor shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation, maintenance and monitoring of remedial actions and continued compliance with this Covenant.
- d. **Leases.** Grantor shall restrict any lease for any portion of the Property to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Property.
- e. **Preservation of Reference Monuments.** Grantor shall make a good faith effort to preserve any reference monuments and boundary markers used to define the areal extent of coverage of this Covenant. Should a monument or marker be damaged or destroyed, Grantor shall have it replaced by a licensed professional surveyor within 30 days of discovery of the damage or destruction.

### Section 2. Specific Prohibitions and Requirements.

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and requirements shall apply to the Property.

- a. **Land use.**

The remedial action for the Property is based on a cleanup designed for industrial property. As such, the Property shall be used in perpetuity only for industrial uses, as that term is defined in the rules promulgated under Chapter 70.105D RCW. Prohibited uses on the Property include but are not limited to residential uses, childcare facilities, K-12 public or private schools, parks, grazing of animals, growing of food crops, and non-industrial commercial uses.
- b. **Containment of soil/waste materials.**

The remedial action for the Property is based on containing contaminated soil under a cap consisting of geotextile materials overlain by a minimum of six inches of gravel and located as illustrated in Exhibit B. The primary purpose of this cap is to prevent direct contact of humans or ecological receptors with contaminated soil, and to minimize transport potential by wind or stormwater runoff. As such, the following restrictions shall apply within the area illustrated in Exhibit B:

Except as provided in Section 2.c below, any activity on the Property that will compromise the integrity of the cap including: drilling; digging; piercing the cap with sampling device, post, stake or similar device; grading; excavation; installation of underground utilities; removal of the cap; or,

application of loads in excess of the cap load bearing capacity, is prohibited without prior written approval by Ecology. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to the cap. Unless an alternative plan has been approved by Ecology in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

The Grantor covenants and agrees that it shall annually, or at another time as approved in writing by Ecology, inspect the cap and report within thirty (30) days of the inspection the condition of the cap and any changes to the cap that would impair its performance.

**c. Railroad Use.**

For the purposes of this Section 2, removal and replacement of rails, ties, and ballast associated with routine rail and railroad tie maintenance shall not be considered subject to the restrictions and requirements under this Section 2. In general, except as restricted by Section 1, railroad operations, construction, or maintenance activities may occur without Ecology notification so long as appropriate health and safety procedures are implemented and all media are managed in compliance with applicable MTCA regulations.

**Section 3. Access.**

**a.** The Grantor shall maintain clear access to all remedial action components necessary to construct, operate, inspect, monitor and maintain the remedial action.

**b.** The Grantor freely and voluntarily grants Ecology and its authorized representatives, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant and associated remedial actions, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, and to inspect related records. For these purposes:

- i.** Before entering the Property, all Ecology representatives who will be performing work on the Property are required to participate in Union Pacific's eRailsafe Program. All representatives must be able to provide proof of completion of this program prior to entry to the Property.
- ii.** Grantor has a Controlled Access Policy, a security program intended to provide a safe workplace and maintain the integrity and security of railroad facilities. Except in emergencies, Ecology agrees to notify the Grantor at least seven (7) days in advance of Ecology commencing its work, and will specifically include in that notice any plans for Ecology representatives or Ecology equipment to be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. Upon receipt of such notice, the Grantor will determine and inform Ecology whether a flagman or Union Pacific Railroad Company official needs to be present and whether Ecology needs to implement any special protective or safety measures;
- iii.** Before commencing work, Ecology shall participate in a job briefing conducted by the Grantor, unless an emergency prevents such participation. The briefing will specify the type of Union Pacific Railroad Company On-Track Safety for the type of work being performed and provide any special instructions relating to the work zone around machines and minimum distances. During the job briefing, Ecology will note the limits of track authority, which

tracks may or may not be fouled, and clearing the track.<sup>1</sup>

The following safety rules shall be followed by Ecology's authorized representatives at the site:

1. Ecology representatives shall maintain a distance of at least twenty-five (25) feet to any track unless the determination discussed in the paragraph above has identified the conditions under which a closer distance is allowed, or Ecology has entered the site in response to an emergency.
2. Ecology shall take reasonable measures to keep its job site free from safety and health hazards and ensure that its on-site representatives are competent and adequately trained in all safety and health aspects of the job. Ecology shall promptly notify the Grantor of any U.S. Occupational Safety and Health Administration reportable injuries that occur to any Ecology representative during the work performed on the job site.
3. No Ecology representative accessing the site shall at that time use, be under the influence of, or have in their possession any beverage, legally obtained marijuana, or illegally obtained drug, narcotic or other substance that may inhibit the safe performance of work.
4. Ecology representatives shall be suitably dressed to perform their duties safely and in a manner that will not unduly interfere with their vision, hearing, or free use of their hands or feet. Ecology representatives shall wear the following appropriate personal protective equipment as specified by Union Pacific Railroad Company:
  - An orange, reflectorized vest, or similar orange reflectorized workwear approved by the Grantor;
  - Only waist-length shirts with sleeves and trousers that cover the entire leg; If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching;
  - Sturdy and protective footwear;
  - Protective head gear that means American National Standard Z89.1 latest revision. It is suggested that all hardhats be affixed with Ecology's log or name;
  - Eye protection that meets American National Standard for occupational and educational eye and face protection, Z87.1 latest revision; and,
  - Hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site.
- iv. In the event Grantor implements railroad safety requirements and directives that are not in effect at the time this Covenant becomes effective, and these requirements or directives may affect access provisions under this Section 3, Grantor shall notify the Grantee. Grantor and Grantee shall then discuss Grantee's compliance with such requirements, and, if needed and agreeable to both parties, amend the Covenant in accordance with Section 5.

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<sup>1</sup> The limits of track authority relate to who at the railyard has authority over the tracks (e.g., maintenance of way, engineering, transportation) and how far (in distance) such authority extends. Track fouling typically means any access within twenty (20) feet of the tracks, including people and equipment. Clearing the tracks would occur if the authority changed and everyone present needed to leave the accessed area to accommodate train passage.

c. No right of access or use by a third party to any portion of the Property is conveyed by this instrument.

**Section 4. Notice Requirements.**

a. **Conveyance of Any Interest.** The Grantor, when conveying any interest in any part of the property described in Exhibit A, including but not limited to title, easement, leases, and security or other interests, must:

- i. Provide written notice to Ecology of the intended conveyance at least thirty (30) days in advance of the conveyance.
- ii. Include in the conveying document a notice in substantially the following form, as well as a complete copy of this Covenant:

**NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON [DATE] AND RECORDED WITH THE SPOKANE COUNTY AUDITOR UNDER RECORDING NUMBER [RECORDING NUMBER]. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.**

- iii. Unless otherwise agreed to in writing by Ecology, provide Ecology with a complete copy of the executed document within thirty (30) days of the date of execution of such document.

b. **Reporting Violations.** Should the Grantor become aware of any violation of this Covenant, Grantor shall promptly report such violation in writing to Ecology.

c. **Emergencies.** For any emergency or significant change in site conditions due to Acts of Nature (for example, flood or fire) resulting in a violation of this Covenant, the Grantor is authorized to respond to such an event in accordance with state and federal law. The Grantor must notify Ecology in writing of the event and response actions planned or taken as soon as practical but no later than within 24 hours of the discovery of the event.

d. **Notification procedure.** Any required written notice, approval, reporting or other communication shall be personally delivered or sent by first class mail to the following persons. Any change in this contact information shall be submitted in writing to all parties to this Covenant. Upon mutual agreement of the parties to this Covenant, an alternative to personal delivery or first class mail, such as e-mail or other electronic means, may be used for these communications.

<p>Chris Goble Assistant Vice President, Real Estate Union Pacific Railroad Company 1400 Douglas St Mail Stop 1690 Omaha, NE 68179</p> <p>With a copy to: John DeJong 4315 E. Sprague Ave.</p>	<p>Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 – 7600 (360) 407-6000 <a href="mailto:ToxicsCleanupProgramHQ@ecy.wa.gov">ToxicsCleanupProgramHQ@ecy.wa.gov</a></p>
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Spokane Valley, WA 99212 509.866.8329 John.DeJong@up.com	
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**Section 5. Modification or Termination.**

a. Grantor must provide written notice and obtain approval from Ecology at least sixty (60) days in advance of any proposed activity or use of the Property in a manner that is inconsistent with this Covenant. For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction at the site:

i. Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal; and

ii. If Ecology approves of the proposal, the Covenant must be amended to reflect the change before the activity or use can proceed.

b. If the conditions at the site requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in MTCA and UECA and any rules promulgated under these chapters.

c. By signing this agreement, per RCW 64.70.100, the original signatories to this agreement, other than Ecology, agree to waive all rights to sign amendments to and termination of this Covenant.

**Section 6. Enforcement and Construction.**

a. This Covenant is being freely and voluntarily granted by the Grantor.

b. Within ten (10) days of execution of this Covenant, Grantor shall provide Ecology with an original signed Covenant and proof of recording and a copy of the Covenant and proof of recording to others required by RCW 64.70.070.

c. Ecology shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity, including MTCA and UECA. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.

d. The Grantor shall be responsible for all costs associated with implementation of this Covenant. Furthermore, the Grantor, upon request by Ecology, shall be obligated to pay for Ecology's costs to process a request for any modification or termination of this Covenant and any approval required by this Covenant.

e. This Covenant shall be liberally construed to meet the intent of MTCA and UECA.

f. The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant 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.

g. A heading used at the beginning of any section or paragraph or exhibit of this Covenant 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.

The undersigned Grantor warrants he/she holds the title to the Property and has authority to execute this Covenant.

EXECUTED this 14<sup>th</sup> day of May, 2024.

Chris Doble

by: CHRIS D. GOBLE

Title: Assistant Vice President - Real Estate

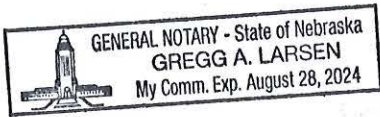


CORPORATE ACKNOWLEDGMENT

STATE OF Nebraska  
COUNTY OF Douglas

On this 14th day of May, 2024, I certify that Chris D. Goble personally appeared before me, acknowledged that he/she is the AVP-Real Estate of the corporation that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument for said corporation.

Greg A. Larsen  
Notary Public in and for the State of ~~Washington~~ Nebraska  
Residing at \_\_\_\_\_  
My appointment expires August 28, 2024



The Department of Ecology, hereby accepts the status as GRANTEE and HOLDER of the above Environmental Covenant.

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

*Nick A*

by: NICHOLAS M. ACKLAM

Title: WMS-2 TCP-ERO SECTION MGR

Dated: MAY 23, 2024

STATE ACKNOWLEDGMENT

STATE OF WA

COUNTY OF Spokane

On this 23<sup>rd</sup> day of May, 2024, I certify that Nicholas Acklam personally appeared before me, acknowledged that he/she is the TCP-ERO section Manager of the state agency that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument for said state agency.

Amanda Hiebert  
Notary Public in and for the State of Washington

Residing at Spokane County

My appointment expires 11/31/26



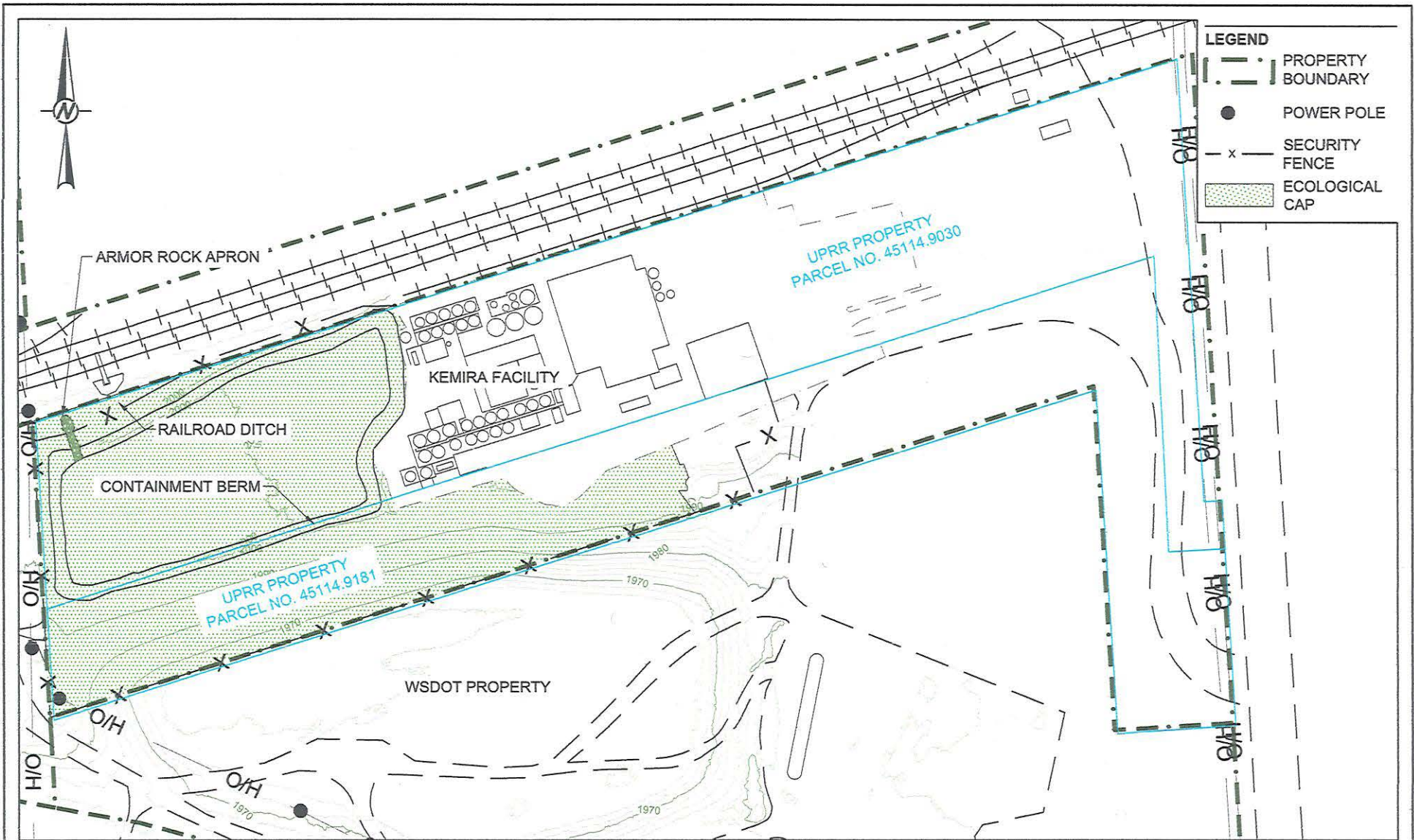
## Exhibit A

### LEGAL DESCRIPTION

11-25-44: PTN OF LT 8 IN SE1/4 LYG N OF LN DRN PAR WITH & 200FT DIST SLY WHEN MEAS AT R/A FROM SLY SPO INT RY R/W LN; ALSO E 100FT OF N575FT OF LT8 (UNION PACIFIC RR LEASE S182508) and

11-25-44: PART OF GOVERNMENT LOT 8, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE WEST LINE OF SAID GOVERNMENT LOT 8 AND A LINE DRAWN PARALLEL WITH AND 200FT SOUTHEASTERLY, WHEN MEASURED AT RIGHT ANGLES AND/OR RADially, FROM THE SOUTHEASTERLY RIGHT OF WAY LINE OF THE SPOKANE INTERNATIONAL RAILWAY; THENCE N74°53'E ALONG SAID PARALLEL LINE A DISTANCE OF 1275.71FT; THENCE S00°47'E 326.53FT; THENCE N89°13'E 70.00FT, MORE OR LESS, TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF SULLIVAN ROAD, WHICH POINT IS 30.00FT WESTERLY, WHEN MEASURED AT RIGHT ANGLES, FROM THE EASTLINE OF SAID SECTION 11; THENCE S00°47'E ALONG SAID WESTERLY RIGHT OF WAY LINE 193.47FT; THENCE S89°13'W 130FT; THENCE N00°47'W 380.81FT; THENCE S74°53'W 1213.78FT, MORE OR LESS, TO THE SAID WEST LINE OF SAID GOVERNMENT LOT 8, THENCE N00°54'W ALONG SAID WEST LINE TO THE POINT OF BEGINNING. (AFN 9112310430)

**Exhibit B**  
**PROPERTY MAP**



CLIENT  
UNION PACIFIC RAILROAD CO.

PROJECT  
ALUMINUM RECYCLING TRENTWOOD SITE  
REMEDIAL ACTION - DROSS REMOVAL PROJECT  
SPOKANE VALLEY, WASHINGTON

**AS-BUILT**



CONSULTANT



YYYY-MM-DD	2024-04-12
DESIGNED	VMN
PREPARED	REDMOND
REVIEWED	TJN
APPROVED	TJN

TITLE  
**EXTENT OF ECOLOGICAL CAP ENVIRONMENTAL COVENANT  
RESTRICTIONS APPLY**

PROJECT NO. 19119180  
PHASE 1000

REV. 1

FIGURE  
**EXHIBIT B**