



201106170122 8 PGS
 06/17/2011 10:27:47 AM \$69.00
 PIERCE COUNTY, WASHINGTON

RECEIVED

After Recording Return to:

*11 JUN -8 A10:24

Marv Coleman, Site Manager/Inspector
 Department of Ecology
 Southwest Regional Office, Toxics Cleanup Program
 P.O. Box 47775
 Olympia, WA 98504-7775

WA STATE
 DEPARTMENT OF ECOLOGY
 SW REGIONAL OFFICE

RECEIVED

JUN 21 2011

WA State Department
 of Ecology (SWRO)

ENVIRONMENTAL COVENANT

Grantor: John D. Nichols
 3520 33rd Street Ct NW
 Gig Harbor, WA 98335-8577

Grantee: State of Washington, Department of Ecology
 PO Box 47775
 Olympia, WA 98504-7775

Abbreviated Legal Description:

PTN Section 04, Township 20 N, Range 03 EWM, Quarter 14, being NORTHERN PAC EAST D INDUSTRY SITES L 1 & 2 BLK C SEG E 7817

Tax Parcel Number(s): 6370000080

Grantor, **John D. Nichols**, hereby binds Grantor, its successors and assigns to the land use restrictions identified herein and grants such other rights under this environmental covenant (hereafter "Covenant") made this 15 day of JUNE, 2010 in favor of the State of Washington Department of Ecology ("Ecology"). Ecology shall have full right of enforcement of the rights conveyed under this Covenant pursuant to the Model Toxics Control Act, RCW 70.105D.030(1)(g), and the Uniform Environmental Covenants Act, RCW 67.70.005 *et seq.*

This Declaration of Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by **John D. Nichols**, his successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Covenant. The Remedial Action conducted at the property is described in the following documents:

- Consent Decree entered in *State of Washington, Department of Ecology v. BNSF Railway Company, City of Tacoma, Home Electric Company, 1815 East D. Street LLC, Washington Department of Transportation*, Pierce County Superior Court Cause No.08-2-11105-4.
- “Final Remedial Investigation/Feasibility Study (RI/FS), BNSF Oil Pipeline Site, Tacoma, Washington” (GeoEngineers 2007).
- “Final Cleanup Action Plan (CAP), BNSF Oil Pipeline Site, Tacoma, Washington” (GeoEngineers 2008).
- “Remedial Action Report, BNSF Oil Pipeline Site, Tacoma, Washington” (GeoEngineers 2010).

In accordance with the CAP, the Remedial Action focused on control and recovery of bunker-range petroleum hydrocarbons (BRPHs) believed to be associated with a former pipeline, underground storage tanks and other potential sources in the area. BRPH in soil is the primary contaminant at the site, but other contaminants associated with BRPH in soil, including carcinogenic polycyclic aromatic hydrocarbons (cPAHs), were also present and removed as part of the Remedial Action. Fill materials throughout the Thea Foss waterway area, including those on the property, are also known to have concentrations of cPAHs unrelated to BRPH. BRPH contaminated soils and wood waste were excavated to the maximum extent practicable as part of the Remedial Action, pursuant to the CAP and Consent Decree.

This Covenant is required because after completion of the Remedial Action, soil concentrations of cPAH exceed the Model Toxics Control Act Method A Cleanup Level(s) established under WAC 173-340-740 in certain locations of the property believed to be unrelated to BRPH. This covenant is also required because a conditional point of compliance has been established for groundwater.

The undersigned, **John D. Nichols**, is the fee owner of real property (hereafter “Property”) in the County of Pierce, State of Washington, that is subject to this Covenant. The Property is legally described in Attachment A of this covenant, which is made part hereof by reference.

John D. Nichols makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter “Owner”).

Section 1.

1. No groundwater may be taken for any use from the Property.
2. Carcinogenic polycyclic aromatic hydrocarbons (cPAHs) are present in fill materials on the property in areas unrelated to BRPH. The known locations of cPAH contaminated soil are depicted in Attachment B. Any activity on the Property that may result in the release or exposure to the environment of the contaminated soil that was contained as part of the Remedial Action, or create a new exposure pathway, is prohibited. Some examples of activities that are prohibited in the capped areas include: drilling, digging, placement of any

objects or use of any equipment which deforms or stresses the surface beyond its load-bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork.

Section 2. Any activity on the Property that may interfere with the Integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

Section 3. Any activity on the Property that may result in the release or exposure o the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 4. The Owner of the Property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 5. The Owner must restrict leases to uses and activities consistent with the Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the Property, to determine compliance with this Covenant, and to inspect records that are related to the Remedial Action.

Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Covenant shall no longer limit the use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

JOHN D. NICHOLS

By: John D. Nichols

Dated: 10-12-10

Name: _____

Title: _____

STATE OF WASHINGTON)

COUNTY OF Pierce) ss.

On this 12 day of October, 2010, I certify that John Nichols is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned therein.

Renae Ellen Geese

Notary Public in and for the State of Washington,

Print Name Renae Ellen Geese

My commission expires 01-21-13



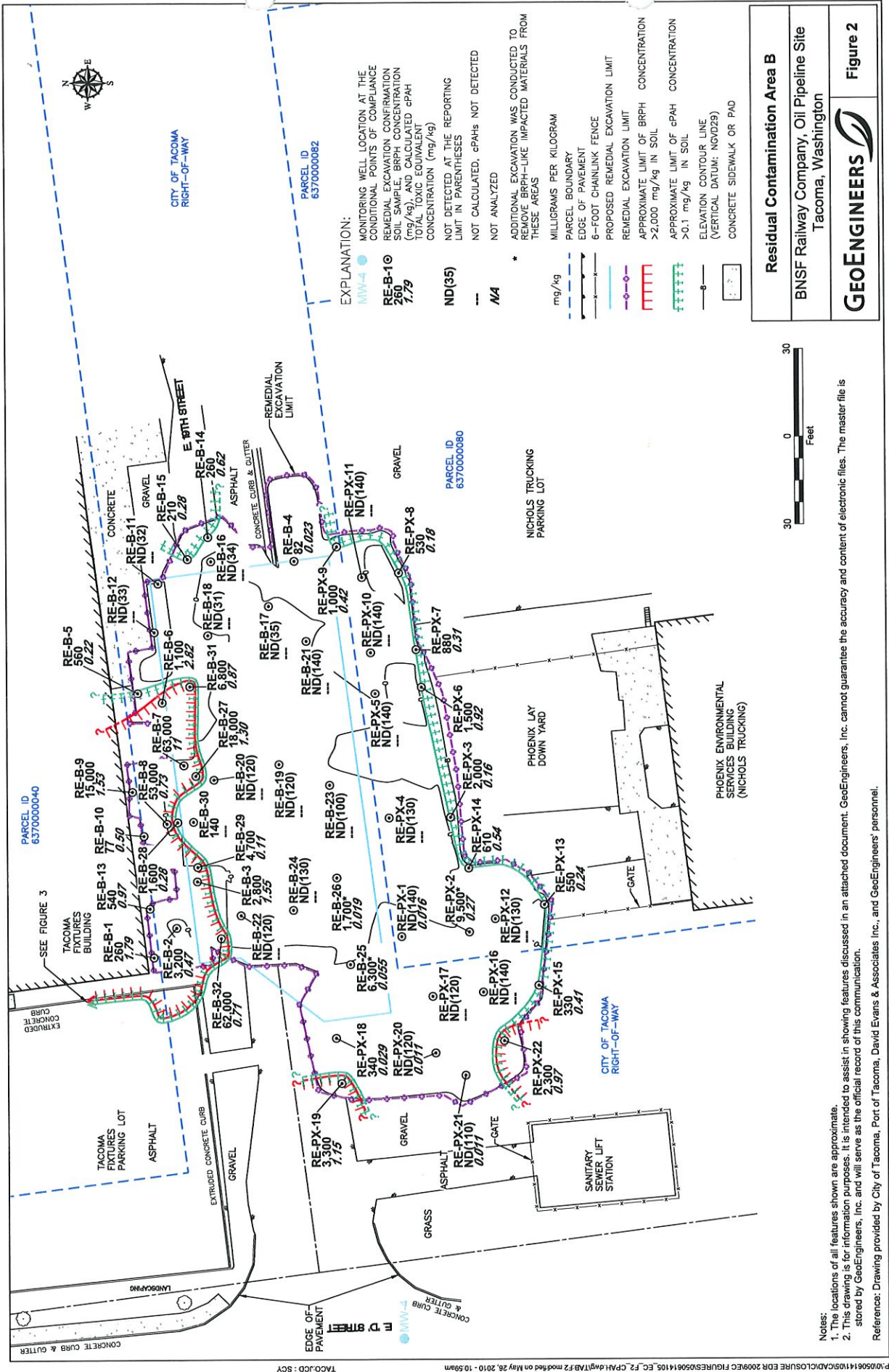
ATTACHMENT A

Lots 1 and 2, Block of the Corrected Plat of Northern Pacific East D Street Industry Sites, an addition to the City of Tacoma, Pierce County, Washington, as recorded on November 2, 1960 in Book 21 of Plats, Page 31, records of the Pierce County Auditor.

ATTACHMENT B

[Figure 2 to be recorded]

**Auditor's notation
to facilitate
scanning process**



EXPLANATION:

- MW-4 ● MONITORING WELL LOCATION AT THE CONDITIONAL POINTS OF COMPLIANCE
- RE-B-10 ● REMEDIAL EXCAVATION CONCENTRATION SOIL SAMPLE BRPH CONCENTRATION (mg/kg) AND CALCULATED cPAH TOTAL TOXIC EQUIVALENT CONCENTRATION (mg/kg)
- ND(35) ○ NOT DETECTED AT THE REPORTING LIMIT IN PARENTHESES
- NOT CALCULATED, cPAHS NOT DETECTED
- NA * NOT ANALYZED
- mg/kg ADDITIONAL EXCAVATION WAS CONDUCTED TO REMOVE BRPH-LIKE IMPACTED MATERIALS FROM THESE AREAS
- MILLIGRAMS PER KILOGRAM
- PARCEL BOUNDARY
- EDGE OF PAVEMENT
- 6-FOOT CHAINLINK FENCE
- PROPOSED REMEDIAL EXCAVATION LIMIT
- REMEDIAL EXCAVATION LIMIT
- APPROXIMATE LIMIT OF BRPH CONCENTRATION >2,000 mg/kg IN SOIL
- APPROXIMATE LIMIT OF cPAH CONCENTRATION >0.1 mg/kg IN SOIL
- ELEVATION CONTOUR LINE (VERTICAL DATUM: NGVD29)
- CONCRETE SIDEWALK OR PAD

Residual Contamination Area B
 BNSF Railway Company, Oil Pipeline Site
 Tacoma, Washington

GEOENGINEERS

Figure 2



Notes:
 1. The locations of all features shown are approximate.
 2. This drawing is for information purposes. It is intended to assist in showing features discussed in an attached document. GeoEngineers, Inc. cannot guarantee the accuracy and content of electronic files. The master file is stored by GeoEngineers, Inc. and will serve as the official record of this communication.

Reference: Drawing provided by City of Tacoma, Port of Tacoma, David Evans & Associates Inc., and GeoEngineers' personnel.