

WHEN RECORDED RETURN TO:

Craig S. Trueblood
Preston Gates & Ellis LLP
1400 Seafirst Financial Center
601 W. Riverside Avenue
Spokane, WA 99201-0636

RESTRICTIVE COVENANT

Reference No. of Related Documents:

Unknown

Grantor:

THE BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY
P.O. Box 961050
2650 Lou Menk Drive
Fort Worth, TX 76161-0050

Grantee:

WASHINGTON DEPARTMENT OF ECOLOGY
Suite 100
4601 North Monroe
Spokane, WA 99205-1295

Legal Description:

1. A portion of the Northeast Quarter of Section 4, Township 15 North, Range 29 East, W.M., Adams County, Washington.
2. Additional legal description is on Exhibit A of document.

Assessor's Property Tax Parcel Account Number(s):

RESTRICTIVE COVENANT

The property that is the subject of this Restrictive Covenant has been the subject of remedial action under Chapter 70.105D RCW. The work done to clean up the property and conduct long-term operation and maintenance (hereafter the "Cleanup Action") is described in the Consent Decree entered in State of Washington Department of Ecology v. Burlington Northern Railroad Company, Adams County Superior Court Cause No. 97-2-00237-4, and in attachments to the Decree and in documents referenced in the Decree. This Restrictive Covenant is required by Ecology under Ecology's rule WAC 173-340-440 (1996 ed.) because the Cleanup Action on the Site resulted in residual concentrations of total petroleum hydrocarbons which exceed Ecology's Method A cleanup levels for soil established under WAC 173-340-740(2). Contaminated soil is contained on site under a clean soil cover on the eastern portion of the Site and an asphalt cover on the western portion. Long-term groundwater monitoring, diversion, and drainage devices are in place on the Site.

The undersigned, Burlington Northern Railroad Company (BNRR), is the fee owner of real property (hereafter "the Property") in the County of Adams, State of Washington (legal description attached), that constitutes a portion of the BN-Othello Cleanup Site. BNRR 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.

Section 1. No groundwater may be taken for domestic, agricultural, commercial, or industrial purposes from any well at the Property.

Section 2. Any activity on the Property that may interfere with the Cleanup Action is prohibited. Any activity on the Property that may result in the release to the environment of a hazardous substance that was contained as a part of the Cleanup Action is prohibited unless approved by Ecology. 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 3. The Property shall not be used for any activities other than traditional industrial uses, as described in RCW 70.105D.020(23) and allowed under the City of Othello's zoning regulations.

Section 4. The owner of the Property must give written notice to the Department of Ecology, or to a successor agency, 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 the continued operation, maintenance and monitoring of the Cleanup Action.

Section 5. The owner must notify and obtain approval from the Department of Ecology, or from a successor agency, prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. The Department of Ecology or its successor agency may approve such a use only after public notice and comment.

Section 6. The owner shall allow authorized representatives of the Department of Ecology or of a successor agency the right to enter the Property at reasonable times for the purpose of evaluating compliance with the Cleanup Action Plan and the Consent Decree, to take samples, to inspect Cleanup Actions conducted at the Property and to inspect records that are related to the Cleanup Action.

Section 7. The owner of the Property and the owner's assigns and successors in interest reserve the right under WAC 173-340-440 (1996 ed.) to record an instrument which provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only with the consent of the Department of Ecology or of a successor agency. The Department of Ecology or a successor agency may consent to the recording of such an instrument only after public notice and comment.

Dated: 12/2/97

Name: D.P. Schneider

Title: General Director Real Estate
For Burlington Northern
Railroad Company

LEGAL DESCRIPTION

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 15 NORTH, RANGE 29 EAST, W.M., ADAMS COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Commencing at the southeast corner of the Northeast Quarter of Section 4, thence northerly along the easterly line of said section a distance of 847.40 feet; thence westerly measured at a right angle a distance of 67.00 feet to THE TRUE POINT OF BEGINNING; thence continuing westerly to a line lying 200.00 feet westerly and parallel with the as-built centerline of the Chicago Milwaukee St. Paul and Pacific Railroad; thence northerly along said parallel line to the south margin of Main Street; thence easterly along said margin to the west margin of Railroad Avenue; thence southerly along said margin to the southerly margin of Larch Street, said margin also being the northerly line of Block 26 prolonged westerly; thence easterly along said margin to a line being 167.00 feet more or less, westerly and parallel with east line of said Section, said point also being the northeast corner of Lot 6, Block 26, town of Othello, Washington; thence southerly along said parallel line to the southwest corner of Lot 5 of said Block 26, thence easterly along the south line of said Lot 5 to the westerly margin of Broadway Avenue; thence southerly along said margin to the northeast corner of Lot 1 of Block 35; thence westerly along the north line of said Lot 1 to the northwest corner of said Lot 1; thence southerly along a line which lies 167.00 feet westerly of and parallel with the east line of said Section 4, to the southwest corner of Lot 5 of said Block 35, town of Othello, Washington; thence along the south line of said lot to the west margin of Broadway Avenue; said margin lying 67.00 feet westerly and perpendicular to the east line of said section; thence southerly along said margin to the TRUE POINT OF BEGINNING.

EXHIBIT A

EXHIBIT E RESTRICTIVE COVENANT

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Section 1. No groundwater may be taken for domestic, agricultural, commercial, or industrial purposes from any well at the Property.

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Dated: _____

Name: _____
Title: _____

For Burlington Northern
Railroad Company