

WHEN RECORDED RETURN TO:
Sandra Treccani
Washington Dept of Ecology
4601 N. Monroe Street
Spokane, WA 99205

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DOCUMENT TITLE(S)

COURTESY

1. ENVIRONMENTAL COVENANT

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:

Additional numbers on page _____ of document

GRANTOR(S):

1. CECIL A. FRAZIER EXEMPTION EQUIVALENT TRUST AND ESTATE OF
MARIE M. FRAZIER.

2.
3.

Additional names on page _____ of document

GRANTEE(S):

1. WASHINGTON STATE DEPT OF ECOLOGY

2.
3.

Additional names on page _____ of document

LEGAL DESCRIPTION:

Lot-Unit: Block: Volume: Page:

Section: 4 Township: 39 Range: 40

Plat Name:

Additional legal description is on page 9 of document

ASSESSOR'S PROPERTY TAX PARCEL ACCOUNT NUMBER(S):

416800

Additional legal description is on page _____ of document

The Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

AFTER RECORDING RETURN TO:

Sandra Treccani
Washington Department of Ecology
4601 North Monroe Street
Spokane, Washington 99205

GRANTOR: Cecil A. Frazier Exemption Equivalent Trust and Estate of Marie M. Frazier

GRANTEE/ HOLDER: Washington State Department of Ecology

LEGAL DESCRIPTION: (abbreviated) That part of Government Lots 3 and 4, and the South ½ of the Northwest ¼ of Section 4, Township 39 North, Range 40 East, Willamette Meridian Stevens County, Washington. Full legal description provided as Exhibit A and depicted in Exhibit B.

TAX PARCEL NOS.: Parcel #416800, Stevens County, Washington

CROSS REFERENCE: Not applicable

ENVIRONMENTAL COVENANT

I. Purpose and Background

Grantor, the Cecil A. Frazier Exemption Equivalent Trust and Estate of Marie M. Frazier, hereby binds Grantor and its successors and assigns (collectively hereinafter, "Grantor") to the land use restrictions identified herein and grants such other rights under this Environmental Covenant made this day of January 5, 2010. This instrument grants a valid and enforceable Environmental Covenant pursuant to the Washington State Uniform Environmental Covenant Act, RCW Chapter 64.70 (UECA) to Washington Department of Ecology and its

successors and assigns (hereafter "Ecology" or "Holder"). The covenants granted herein are required conditions of a settlement agreement dated Nov 18, 2009 and entered into pursuant to the Comprehensive Environmental Response, Cleanup and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, by Steve Frazier as trustee of the Cecil A. Frazier Exemption Equivalent Trust and as personal representative of the Estate of Marie M. Frazier, and the United States Environmental Protection Agency ("EPA"). By his signature below, Steve Frazier represents that he has the authority to act on behalf of Grantor to agree to the terms of this Covenant.

The Le Roi Smelter Property ("Property") encompasses thirty-two acres at or near 117 Park Road in Northport, Stevens County Washington. The Property is situated approximately two hundred yards from the Columbia River and is the location of former ore smelting and lumber milling operations. A Burlington Northern Santa Fe rail line runs parallel to the Columbia River and forms the northern boundary of the Property. A legal description of the Property is provided as Exhibit A, and a map depicting the Property and areas relevant to the restrictions contained in this covenant is provided as Exhibit B.

EPA conducted a preliminary assessment and investigation of the Le Roi Smelter Site ("Site"), including the Property, and documented a release of hazardous substances at the Site including lead and arsenic. These hazardous substances were present in soils located on the Property and on surrounding residential and common use properties at concentrations that exceeded applicable cleanup levels. EPA concluded that hazardous substances at the Property and on surrounding properties present or may present an imminent and substantial endangerment to public health, welfare and the environment. In an Action Memo dated June 6, 2004 and supported by an administrative record, EPA implemented a removal action that involved excavating contaminated soil at the Property, from surrounding residential and common use properties, and from the property owned by the Burlington Northern Santa Fe Railway. The excavated soil was consolidated at an eleven-acre area on the Property and covered with a polyethylene liner, twelve inches of clean gravel, and wood debris (together the "cap" or "capped area"). A fence consisting of wire fencing and metal t-posts was erected around the perimeter of the eleven-acre capped to help maintain the integrity of the cap and limit access to the capped area.

In three areas on the western side of the Property, excavation was not deep enough to remove contaminants to appropriate levels. Instead, visual markers were established to identify the dividing line between contamination left in place beneath the markers and the clean soil placed above the visual markers as a protective barrier. The three visual marker areas are depicted in the map provided as Exhibit B (hereinafter "visual markers").

The Action Memo and supporting record are on file with EPA Region 10 or its successor agency. The regional office is currently located at 1200 6th Avenue Seattle, Washington 98101.

As part of an agreement to settle liability with EPA pursuant to CERCLA, EPA required Grantor, and Grantor agreed, to grant this Environmental Covenant as an institutional control to protect human health and the environment and to ensure the integrity of the response action. Ecology is not a party to the settlement. Ecology reserves all of its rights under the law, including but not limited to its rights to require different or additional remedial action under MTCA.

II. Conveyance and Covenant

This instrument is an Environmental Covenant executed pursuant to UECA concerning the Property owned by the Grantor and legally described in Exhibit A and depicted in Exhibit B, which are attached hereto and incorporated herein. Grantor covenants to and with the Holder and its successor and assigns, that Grantor is lawfully seized in fee simple of the Property, that the Grantor has good and lawful right and power to sell and convey the Property or any interest therein, that the Property is free and clear of encumbrances, except those reviewed and approved by EPA as documented by a title commitment dated Dec 1, 2009, and that Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

With this Environmental Covenant Grantor hereby binds Grantor, its heirs, executors, administrators, successors, and assigns to the restrictions and conditions set forth herein, and conveys to the Holder such restricted property interests. EPA and Ecology have the full rights to enforce the restrictions, conditions, or other rights set forth herein as provided by law including but not limited to CERCLA, MTCA, and UECA.

Grantor makes the following covenants as to limitations, restrictions, and uses to which the Property may be put and specifies that such covenants shall run with the land, as provided by law, shall inure to the benefit of the parties hereto, 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 (hereinafter "Owner"):

1. Any activity that may result in the release or exposure to the environment of hazardous substances beneath the cap, create a new exposure pathway for hazardous substances beneath the cap, or impair or interfere with the integrity of the cap, shall be prohibited unless prior written approval for the activity is provided by Ecology. Some examples of activities that are prohibited in the capped area without prior written approval include the following: drilling, digging, excavating, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capacity, piercing the surface with a rod, spike or similar item, bulldozing, or earthwork.

2. Any activity on the Property that may interfere with the integrity of the CERCLA action and continued protection of human health and the environment is prohibited.

3. Any activity on the Property that may result in the release or exposure to the environment of the contamination located beneath the visual markers, or create a new exposure pathway to contamination remaining on the Property, is prohibited without prior written approval from Ecology. No excavation, digging, drilling or earthwork beneath the visual markers, or puncturing, damaging or removing of the visual markers, shall be permitted unless prior written approval is provided for the activity by Ecology.

4. The Owner shall maintain the cap. Cap maintenance shall include an annual inspection of the capped area, maintaining a twelve-inch layer of gravel above the polyethylene liner, ensuring the cap is properly graded, taking actions to prevent erosion of the cap, and any other action necessary to maintain the integrity of the cap.

5. The Owner shall maintain access controls including fences, gates and roadways for the purpose of prohibiting or limiting access to the capped area and preventing damage to the cap.

6. The Owner shall submit to Ecology an annual report describing the results of the annual inspection of the capped area and any actions taken at the capped area related to cap maintenance and/or access control.

7. The Owner shall provide thirty days advanced written notice to Ecology of the Owner's intent to convey or transfer, in whole or in part, 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 operation and maintenance of the twelve inch thick cap of clean gravel and the visual markers.

8. The Owner shall restrict all leases at or on any portion of the Property to uses and activities consistent with this Environmental Covenant, and shall notify all lessees of the restrictions and limitations placed on the Property by this Environmental Covenant.

9. The Owner shall allow authorized representatives of EPA and Ecology the right to enter the Property at reasonable times to evaluate the CERCLA action and the cap, to take samples, to inspect any other remedial actions conducted at the Property, to inspect records related to the Site, and to conduct any other action that may be necessary to ensure that the removal action continues to protect human health and the environment.

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

III. Reservation of Rights

Grantor hereby reserves unto itself, its representatives, heirs, assigns, and successors all rights accruing from ownership of the Property that are not conditioned, restricted or prohibited by this Environmental Covenant.

IV. Enforcement

Compliance with this Environmental Covenant may be enforced pursuant to all applicable laws, including but not limited to CERCLA, UECA, and MTCA. EPA and Ecology shall have full enforcement rights. An action for equitable or injunctive relief for violation of this Environmental Covenant may also be maintained by the other persons and entities set forth in RCW 64.70.110. Failure by any party or person to enforce compliance with this Environmental Covenant in a timely manner shall not be deemed a waiver of the right to take subsequent enforcement actions.

V. Recordation

Grantor shall record this instrument in the official records of Stevens County, Washington and shall pay the costs associated with recording.

VI. General Provisions

Agency's Interest. Pursuant to RCW 64.70.030 the rights granted to EPA by this Environmental Covenant are not interests in real property.

Liberal Construction. This Environmental Covenant shall be construed in favor of effectuating the purpose of this Environmental Covenant. If any provision is found to be ambiguous, an interpretation consistent with the purposes of this Environmental Covenant that would render the provision valid shall be favored over any interpretation that would render it invalid.

Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

VII. Termination and Modification

This Environmental Covenant may only be amended or terminated in accordance with the procedures and process contained in the amendment and termination provisions of UECA, RCW 64.70.090 and 64.70.100, and with the provisions of WAC 173-340-440. Ecology may approve inconsistent uses (as described in Section II, paragraph 10 above), and/or termination only after public notice and opportunity for comment.

VIII. Signature and Acknowledgements

Grantor covenants that it is authorized to grant this Environmental Covenant and shall warrant and defend the same against all claims and demands challenging such authority. The undersigned parties represent and certify that they are authorized to execute this Environmental Covenant.

IN WITNESS WHEREOF, Mr. Steve Frazier has executed this Environmental Covenant as trustee of the Cecil A. Frazier Exemption Equivalent Trust and as personal representative of the Estate of Marie M. Frazier on this 1st day of Dec, 2009.

Signatory's printed name Steve Frazier

Signature _____

Mr. Steve Frazier on behalf of the Cecil A. Frazier Exemption Equivalent Trust and Estate of Marie M. Frazier

STATE OF WASHINGTON

COUNTY OF STEVENS)

The foregoing instrument was acknowledged and signed in my presence on the 1ST day of DECEMBER, in the year 2009, by the person(s) who appeared before me and who acknowledged it to be his/her/their free and voluntary act.



Name (signature) David E. McGrane

Notary Public for the state of WASHINGTON

My Commission expires on 2/12/2010

Printed Name DAVID E. MCGRANE

The forgoing Environmental Covenant is hereby approved and certified.

By: _____
Daniel J. Opalski, Director DATE
Office of Environmental Cleanup
United States Environmental Protection Agency
Region 10

By: Michael A. Hibbler 1/5/2010
Michael A. Hibbler, Regional Section Manager DATE
Toxics Cleanup Program
Washington State Department of Ecology

Signature _____
Mr. Steve Frazier on behalf of the Cecil A. Frazier Exemption Equivalent Trust and
Estate of Marie M. Frazier

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged and signed in my presence on the 22nd day of December, in the year 2009, by the person(s) who appeared before me and who acknowledged it to be his/her/their free and voluntary act.



Name (signature) Carol Diann Kennedy

Notary Public for the state of Washington

My Commission expires on 9/17/2012

Printed Name Carol Diann Kennedy

The forgoing Environmental Covenant is hereby approved and certified.

By: Lori Cohen 12/22/09
Lori Cohen, Acting Director DATE
Office of Environmental Cleanup
U.S. Environmental Protection Agency

By: _____
Michael A. Hibbler, Regional Section Manager DATE
Toxics Cleanup Program
Washington State Department of Ecology

EXHIBIT A

LEGAL DESCRIPTION OF REAL PROPERTY SUBJECT TO COVENANT

That part of Government Lots 3 and 4, and the South ½ of the Northwest ¼ of Section 4, Township 39 North, Range 40 East, Willamette Meridian in Stevens County, Washington, lying South of Burlington Northern, Inc., lying Northerly of right of way for Secondary State Highway No. 22- A Northport, Northerly, conveyed to State of Washington by deed recorded under Auditor's File No. 342054 and lying Easterly of right of way for Primary State Highway No. 22, Columbia River Bridge and approaches, at Northport.