

AFTER RECORDING RETURN TO:
Preston Gates & Ellis LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104-1158
Attn: Craig S. Trueblood

RESTRICTIVE COVENANT 

GRANTOR: The Burlington Northern and Santa Fe Railway Company

GRANTEE: The State of Washington Department of Ecology

Legal Description:
Abbreviated form: Portion of Burlington Northern and Santa Fe Railway Co.'s 400.00
ft wide charter ROW located in the NE 1/4 of Section 31, Township
13 N, Range 19 E, W.M., Yakima County

Additional legal on page: Exhibit A pg 9

Assessor's Tax Parcel ID No(s): N/A



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RESTRICTIVE COVENANT
Former Woods Industries Site, 1 East King Street
Yakima, Washington

This Restrictive Covenant is made pursuant to an Administrative Order on Consent for Removal Action re: Woods Industries Site, Yakima Washington, U.S. EPA Docket No. 1087-03-18-106 CERCLA ("AOC"), Revised Code of Washington ("RCW") 70.105D.030(1)(f) and (g) and Washington Administrative Code ("WAC") 173-340-440, this 23^d day, of July 2004, by The Burlington Northern and Santa Fe Railway Company ("BNSF"), its respective successors and assigns, and the State of Washington Department of Ecology ("Ecology"), its successors and assigns.

The response action undertaken by BNSF under the AOC, was conducted under the authority of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et. seq. and under the direction and oversight of the U.S. EPA. CERCLA requires that removal response actions comply with state or federal applicable or relevant and appropriate requirements ("ARARs") to the extent practicable. RCW 70.105D.030(1)(g) and WAC 173-340-440 have been identified as ARARs for the BNSF removal response action. Therefore, this Restrictive Covenant is intended to comply with that statute and regulation and be enforceable by both Ecology and the United States Environmental Protection ("EPA") against BNSF and any successor(s) in interest of the real property affected by it until such time said Restrictive Covenant is released, according to this covenant's terms or is modified, after approval from EPA or Ecology.

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RECITALS

A. The Burlington Northern and Santa Fe Railway Company ("BNSF") is the fee owner of the real property located in the City of Yakima, State of Washington, described in the legal description attached hereto (hereinafter, the "Property").

B. The Property has been the subject of response actions under 42 U.S.C. Section 9604, the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"). The response actions at the Property were conducted under and consistent with Administrative Orders on Consent, with EPA Region 10 CERCLA Docket No. 1087-03-18-106 (and attachments to those AOCs, as approved by EPA) between EPA and BNSF's predecessor corporation (collectively "AOCs"). The response actions and remedial activities at the site are hereinafter referred to as "Response Action." The Response Action resulted in removal of pesticide residues and other contaminants from soils at the property.

C. This Restrictive Covenant is required by EPA to further the purposes of those AOCs and because residual concentrations of pesticides and other contaminants remain at the Property. The Response Action resulted in reduction of these substances to levels that do not pose a threat or risk to human health or the environment, so long as the provisions of this Restrictive Covenant are met and property uses consistent with the Response Action are continued.

D. This Restrictive Covenant also complies with the requirements of WAC 173-340-440 for implementation of institutional controls that are required to assure



continued protection of human health and the environment or the integrity of the cleanup action.

COVENANTS

BNSF makes the following declarations as to limitations, restrictions, and uses to which the Property may be put, and BNSF specifies that such declarations are intended to constitute covenants that touch and concern the land and 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, tenants, easement holders or licensees of any portion of or interest in the Property.

Section 1. No ground water may be taken for domestic, agricultural, commercial, or industrial purposes from any well at the Property, unless EPA or Ecology determines that such ground water meets applicable standards for domestic, agricultural, commercial, or industrial purpose and usage for one or more such purposes is consistent with applicable law.

Section 2. Any activity on the Property that interferes with the Response Action is prohibited, unless approved by the EPA or Ecology. For the purpose of implementing this section, soils may be excavated up to 2 feet below the grade existing at the time this Restrictive Covenant is signed and executed without prior notice to EPA or Ecology. Excavations between 2 and 4 feet below the grade existing at the time this Restrictive Covenant is signed and executed require prior notification to EPA or Ecology, with an opportunity for EPA or Ecology to comment on the proposed excavation within 30 days. All excavations greater than 4 feet below the grade existing at the time this Restrictive

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Covenant is signed and executed will require prior notice to EPA or Ecology and implementation of plans or controls that shall be approved by EPA or Ecology before conducting the excavations in order to protect human health and the environment from potentially contaminated soils.

Section 3. Any future use of the property shall be for commercial or industrial purposes that are allowed under the City of Yakima's zoning regulations and other laws applicable to the site.

Section 4. BNSF shall restrict leases to uses and activities consistent with this Restrictive Covenant and shall notify all lessees of the restrictions on the use of the Property.

Section 5. If BNSF or it's lessees wish to use the Property in a manner that is inconsistent with the terms of this Restrictive Covenant, BNSF shall notify and obtain approval from EPA or Ecology prior to such use.

Section 6. BNSF shall allow authorized representatives of EPA and Ecology, the right to enter the Property at reasonable times for the purpose of taking samples related to the Response Action, inspecting the Response Action, and inspecting records that are related to the Response Action or actions on the Property that may affect the Response Action.

Section 7. In the event of a transfer of any interest in the Property, BNSF shall give thirty (30) days advance written notice to EPA and/or Ecology, of the conveyance of any interest in the Property.



Section 8. BNSF agrees to include reference to this Restrictive Covenant (including recording number, date and title) in any instrument conveying title or other recorded interest in or to the Property. Within thirty (30) days following the recording of such document, BNSF shall provide EPA and Ecology with a copy of the recorded instrument, showing its recorded number.

Section 9. BNSF, its assigns and successors, reserve the right to record an instrument that extinguishes some or all of this Restrictive Covenant and terminates some or all of the aforesaid limitation on its use and enjoyment. However, such an instrument may be recorded only with the consent of EPA or Ecology.



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FIRST AMERICAN TITLE COMP CALI 927 00

DATED this 23rd day of July, 2004.

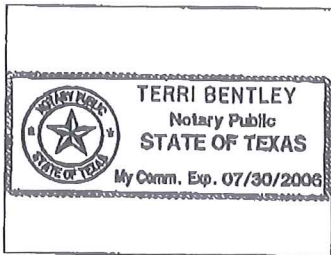
THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By *D.P. Schneider*
Name D. P. Schneider
Title GENERAL DIRECTOR REAL ESTATE

TEXAS
STATE OF ~~WASHINGTON~~)
) ss.
COUNTY OF TARRANT)

I certify that I know or have satisfactory evidence that D. P. SCHNEIDER
is the person who appeared before me, and said person acknowledged that he/she signed this instrument,
on oath stated that he/she was authorized to execute the instrument and acknowledged it as the
GENERAL DIRECTOR REAL ESTATE of The Burlington Northern and Santa Fe
Railway Company, to be the free and voluntary act of such party for the uses and purposes mentioned in
the instrument.

Dated: 7-23-04



(Use this space for notarial stamp/seal)

Terri Bentley
Notary Public
Print Name TERRI BENTLEY
My commission expires 7-30-06



EXHIBIT A

Property Legal Description

THAT PORTION OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY'S (FORMERLY NORTHERN PACIFIC RAILWAY COMPANY) 400.00 FOOT WIDE CHARTER RIGHT OF WAY, BEING 200.00 FEET WIDE ON EACH SIDE OF SAID RAILWAY COMPANY'S MAIN TRACK CENTERLINE, AS NOW LOCATED AND CONSTRUCTED UPON, OVER AND ACROSS THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 13 NORTH, RANGE 19 EAST, W.M., YAKIMA COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTH LINE OF SAID NORTHEAST QUARTER OF SECTION 31 AND THE CENTERLINE OF SAID MAIN TRACK; THENCE SOUTHEASTERLY ALONG SAID MAIN TRACK CENTERLINE 428.00 FEET; THENCE NORTHEASTERLY AT RIGHT ANGLES TO SAID MAIN TRACK CENTERLINE 19.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTHEASTERLY AT RIGHT ANGLES TO SAID MAIN TRACK CENTERLINE 181.00 FEET TO THE NORTHEASTERLY CHARTER RIGHT OF WAY LINE; THENCE SOUTHEASTERLY ALONG SAID RIGHT OF WAY LINE 1131.00 FEET; THENCE SOUTHWESTERLY AT RIGHT ANGLES TO SAID MAIN TRACK CENTERLINE 182.00 FEET TO A POINT 18.00 FEET DISTANCE FROM SAID CENTERLINE; THENCE NORTHWESTERLY PARALLEL WITH SAID CENTERLINE 405.00 FEET; THENCE SOUTHWESTERLY AT RIGHT ANGLES TO SAID MAIN TRACK CENTERLINE 5.00 FEET; THENCE NORTHWESTERLY PARALLEL TO SAID CENTERLINE 587.00 FEET; THENCE NORTHEASTERLY AT RIGHT ANGLES TO SAID MAIN TRACK CENTERLINE 6.00 FEET; THENCE NORTHWESTERLY PARALLEL WITH SAID CENTERLINE 139.00 FEET TO THE TRUE POINT OF BEGINNING.

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