



RETURN NAME and ADDRESS

Ted Uecker, Department of Ecology

4601 N. Monroe

Spokane, WA 99205-1295

Please Type or Print Neatly and Clearly All Information

Document Title(s)

Environmental Covenant

Reference Number(s) of Related Documents

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

BN Leasing Corporation, a wholly owned subsidiary of BNSF Railway Company

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

State of Washington, Department of Ecology

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

Portion of the E 1/2 of the SW 1/4 of S34, T26N, R43E, Willamette

Meridian, Situated in Spokane County, Washington

Assessor's Tax Parcel ID Number 36343.0005

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:
Ted Uecker
Toxics Cleanup Program
Department of Ecology
Eastern Regional Office
4601 N Monroe
Spokane, WA 99205-1295

Environmental Covenant

Grantor: BN Leasing Corporation, a wholly owned subsidiary of BNSF Railway Company

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

Brief Legal Description: Portion of the E1/2 of the SW ¼ of S34, T26N, R43E, Willamette Meridian, Situated in Spokane County, Washington

Tax Parcel Nos.: 36343.0005

Cross Reference: VCP No. EA0117

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 the BNSF Hillyard Lead Soil Pile Site (Facility Site ID No. 960924). 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	Lead, Arsenic and Cadmium

e. 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 documents:

- 1. Feasibility Study and Cleanup Action Plan, BNSF Hillyard Lead Site, Former Hillyard Rail Yard, Spokane, Washington: GeoEngineers, Inc., August 2, 2005.*
- 2. Specifications for Remediation Excavation, BNSF Hillyard Rail Yard, Spokane, Washington: GeoEngineers, Inc., October 8, 2007.*

3. Remedial Action Report, BNSF Hillyard Rail Yard Lead Site, Spokane, Washington: GeoEngineers, Inc., December 5, 2011.

f. 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 rights as a holder, are not an interest in real property.

COVENANT

BN Leasing Corporation 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 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. Containment of Soil. 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.

c. Cap Monitoring. The Grantor covenants and agrees that it shall biannually, or until site development protective of the cap occurs, 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.

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. All persons who access the Property shall comply with any applicable health and safety plan(s) and will be required to complete BNSF's Contractor Safety Training Program (www.BNSFcontractor.com), unless they are escorted by someone who has completed the program.

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, 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 (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.

BNSF Railway Company 2500 Lou Menk Drive AOB-3 Fort Worth, TX 76131-2828 Attn: Vice President Environmental	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 – 7600 (360) 407-6000 ToxicsCleanupProgramHQ@ecy.wa.gov
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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.

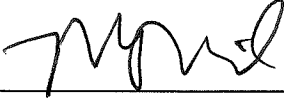
Section 6. Enforcement and Construction.

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.
- h.** Neither Ecology nor Grantor intends any third party beneficiaries with enforcement rights under this Covenant.
- i.** By signing this Covenant, the Grantor does not intend to affect the scope of existing preemption under federal law, including but not limited to the Interstate Commerce Commission Termination Act, 49 U.S.C. § 100501.

The undersigned Grantor warrants that BN Leasing Corporation holds the title to the Property and the authority to execute this Covenant.

EXECUTED this 20th day of December, 2018.



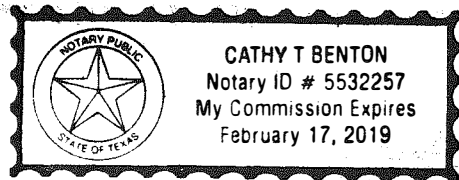
By: Mark Ude

Title: Assistant Vice President and Assistant Secretary

STATE OF WASHINGTON
COUNTY OF SPOKANE

On this 20th day of December, 2018, I certify that Mark Ude personally appeared before me, acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument, and acknowledged it as the Assistant Vice President and Assistant Secretary at BN Leasing Corporation to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

Cathy T. Benton
Notary Public in and for the State of Washington
Residing at Weatherford, Tx
My appointment expires Feb 17, 2019



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

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

William J. Fees

by: William J. Fees

Title: UNIT SUPERVISOR

Dated: FEBRUARY 11, 2019

STATE ACKNOWLEDGMENT

STATE OF Washington

COUNTY OF Spokane

On this 11th day of February, 2019, I certify that William J. Fees personally appeared before me, acknowledged that **he/she** is the Unit Supervisor - TCP 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.

Cynthia K. Anderson
Notary Public in and for the State of Washington

Residing at Spokane WA

My appointment expires Sept 14, 2019

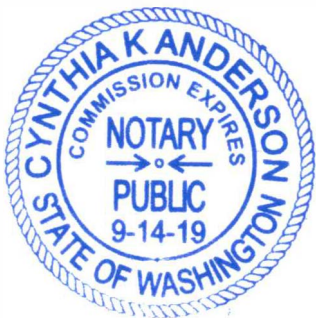


Exhibit A

LEGAL DESCRIPTION

THAT PORTION OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 26 NORTH, RANGE 43 EAST, WILLAMETTE MERIDIAN, SITUATED IN THE COUNTY OF SPOKANE, STATE OF WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 3 INCH BRASS DISK, BEING A WASHINGTON STATE DEPARTMENT OF TRANSPORTATION SURVEY MONUMENT DESIGNATED AS GP32395-193, HAVING ESTABLISHED GRID COORDINATES OF 268435.907 FEET NORTH, 2494794.987 FEET EAST, WASHINGTON STATE PLANE COORDINATE SYSTEM, NORTH ZONE, NORTH AMERICAN DATUM OF 1983, 2011 ADJUSTMENT;

THENCE NORTH 2° 33' 19" WEST, 7936.74 FEET TO A 3 INCH BRASS DISK, BEING A WASHINGTON DEPARTMENT OF TRANSPORTATION SURVEY MONUMENT DESIGNATED AS GP32395-194, HAVING ESTABLISHED GRID COORDINATES OF 276364.752 FEET NORTH, 2494441.133 FEET EAST OF SAID COORDINATE SYSTEM AND DATUM;

THENCE NORTH 68° 18' 07" EAST, 616.38 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 86° 50' 13" EAST, 352.97 FEET;

THENCE SOUTH 00° 05' 20" WEST, 661.26 FEET;

THENCE SOUTH 86° 34' 11" WEST, 333.74 FEET;

THENCE NORTH 01° 34' 53" WEST, 662.01 FEET;

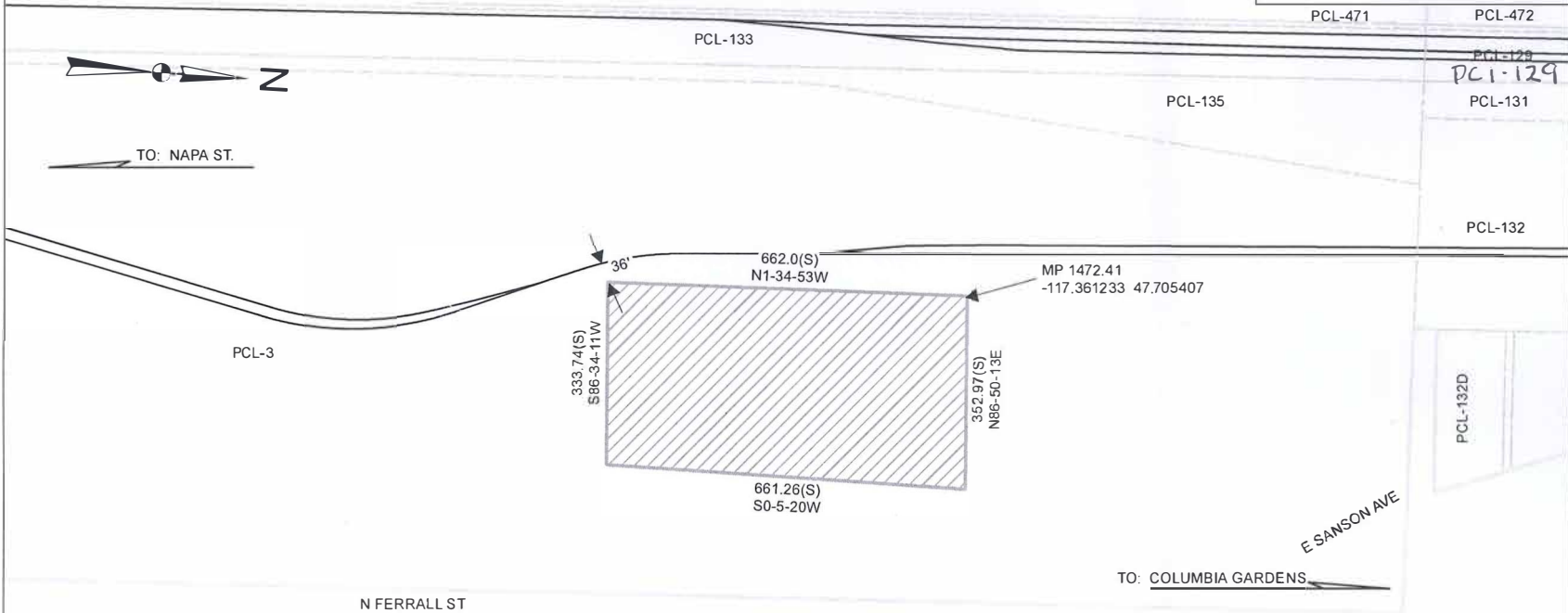
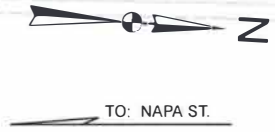
CONTAINING 226,926 SQUARE FEET MORE OR LESS.

COORDINATE SYSTEM: WA N

JLL T1[®]: -
BW Proj. No.: 12196.003
MAP REFERENCE:
STA. = s62133
R/W = -





EXHIBIT "B"

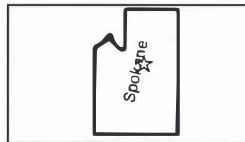
SCALE: 1 IN = 250 FT



TO: STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY
AT: HILLYARD
SPOKANE COUNTY,
WA

LEGEND:

-  ENVIRONMENTAL COVENANT AREA
-  RIGHT OF WAY LINE
-  PARCEL LINES
-  TRACK



MEASUREMENTS BASED ON PROVIDED SURVEYS
(S) MEASUREMENTS TAKEN OFF SURVEY
(M) MEASUREMENT

DRAWN BY: JNC

DRAWING NO. 74121

NORTHWEST DIVISION
KETTLE FALLS SUBDIVISION - L.S. 0653-1
VAL. SEC. 51001
GN RY WA-01, MAP S-11B
SEC. 34, T26N, R43E WILLM
DATE: 2/5/2019
MP 1472.41