



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
4601 N Monroe Street • Spokane, WA 99205-1295 • 509-329-3400

July 23, 2020

Shane DeGross
BNSF Railway Company
605 Puyallup Avenue
Tacoma, WA 98421

Re: No Further Action at the following Site:

- **Site Name:** BNSF Hillyard Lead Soil Site
- **Site Address:** 4800 to 5300 Block N. Ferrall Street, Spokane
- **Facility/Site No.:** 960924
- **VCP Project No.:** EA0117

Dear Shane DeGross:

The Washington State Department of Ecology (Ecology) received your request for an opinion on your independent cleanup of the BNSF Hillyard Lead Soil Site facility (Site). This letter provides our opinion. We are providing this opinion under the authority of the Model Toxics Control Act (MTCA), Chapter 70.105D Revised Code of Washington (RCW).

Issue Presented and Opinion

Is further remedial action necessary to clean up contamination at the Site?

NO. Ecology has determined that no further remedial action is necessary to clean up contamination at the Site.

This opinion is dependent on the continued performance and effectiveness of the post-cleanup controls and monitoring specified below.

This opinion is based on an analysis of whether the remedial action meets the substantive requirements of MTCA, Chapter 70.105D RCW, and its implementing regulations, Chapter 173-340 Washington Administrative Code (WAC) (collectively "substantive requirements of MTCA"). The analysis is provided below.

Description of the Site

This opinion applies only to the Site described below. The Site is defined by the nature and extent of contamination associated with the following releases:

- Arsenic, cadmium, and lead into the soil.
- Petroleum hydrocarbons, chlorinated solvents, volatile organic compounds (VOCs), and polycyclic aromatic hydrocarbons (PAHs) into the soil.

Enclosure A includes a detailed description and diagram of the Site, as currently known to Ecology.

Please note a parcel of real property can be affected by multiple sites. At this time, we have no information that the parcel(s) associated with this Site are affected by other sites.

Basis for the Opinion

This opinion is based on the information contained in the following documents:

1. Site Characterization Report, Southeast Portion of Former Hillyard Railyard Lead-Contaminated Soil, Spokane, Washington: Environmental Management Resources, Inc., September 2002.
2. Soil Sampling Report, Hillyard Lead Soil Pile Site, Spokane, Washington: GeoEngineers, Inc., October 29, 2003.
3. Feasibility Study and Cleanup Action Plan, BNSF Hillyard Lead Site, Former Hillyard Rail Yard, Spokane, Washington: GeoEngineers, Inc., August 2, 2005.
4. Sampling and Analysis Plan, BNSF Hillyard Lead Site, Hillyard, Washington: GeoEngineers, Inc., December 19, 2007.
5. Revised Sampling and Analysis Plan, BNSF Hillyard Lead Site, Hillyard, Washington: GeoEngineers, Inc., September 17, 2008.
6. Soil Characterization Sampling, BNSF Hillyard Rail Yard, Spokane Washington: GeoEngineers, Inc., April 11, 2008.7
7. Remedial Action Report, BNSF Hillyard Rail Yard Lead Site, Spokane, Washington: GeoEngineers, Inc., December 5, 2011.

Those documents are kept in the Central Files of the Eastern Regional Office of

Ecology (ERO) for review by appointment only. You can make an appointment by calling the ERO resource contact at (509) 329-3415.

This opinion is void if any of the information contained in those documents is materially false or misleading.

Analysis of the Cleanup

Ecology has concluded that **no further remedial action** is necessary to clean up contamination at the Site. That conclusion is based on the following analysis:

1. Characterization of the Site.

Ecology has determined your characterization of the Site is sufficient to establish cleanup standards and select a cleanup action. The Site is described above and in **Enclosure A**.

The Site is approximately 500,000 square feet in extent. The primary contaminants of concern include lead, cadmium, and arsenic metals. Diesel-, gasoline-, and oil-range petroleum hydrocarbons, chlorinated solvents, VOCs, and PAHs are also present in soil at concentrations exceeding the applicable cleanup levels. Approximately 45,500 cubic yards of lead-contaminated soil exist at the Site. Representative samples were collected for Dangerous Waste characterization. The vertical and lateral extent of the contamination have been characterized in the documents listed above.

2. Establishment of cleanup standards.

a. Substance-specific standards.

Ecology has determined the cleanup levels and points of compliance you established for the Site meet the substantive requirements of MTCA.

The cleanup levels were established using MTCA Method A and are based on protection of groundwater. The land use is classified as industrial, though cleanup levels for unrestricted land use were used in portions of the Site within 200 feet of residentially property. The cleanup levels are as follows:

Method A Industrial

Arsenic:	20 milligrams per kilogram (mg/kg)
Cadmium:	2 mg/kg
Lead:	1,000 mg/kg

Method A Unrestricted

Arsenic:	20 mg/kg
Cadmium:	2 mg/kg
Lead:	250 mg/kg

In addition to the established cleanup level, a remediation level of 2,500 mg/kg for lead was applied to the Site to comply with Washington State Dangerous Waste regulations (WAC 173-303). The point of compliance for soil is throughout the soils at the Site. This is the standard point of compliance.

3. Selection of cleanup action.

Ecology has determined the cleanup action you selected for the Site meets the substantive requirements of MTCA.

- Excavation of all contaminated soil.
- Treatment of soil with lead concentrations exceeding 2,500 mg/kg.
- Construction of a containment area for treated and untreated soils.
- Backfilling and encapsulation of the containment area.
- Implementation of institutional controls.

4. Cleanup.

Ecology has determined the cleanup you performed meets the cleanup standards established for the Site. This determination is dependent on the continued performance and effectiveness of the post-cleanup controls and monitoring specified below.

- Approximately 194,000 tons of contaminated soil were excavated and stockpiled for Dangerous Waste characterization using EPA Method 1311, the Toxicity Characteristic Leaching Procedure (TCLP).
- Soils with lead concentrations exceeding the 2,500 mg/kg remediation level were treated with a mixture of Portland cement and a phosphorous-based chemical reagent. These soils then underwent a second TCLP analysis to confirm the treatment was effective.

- Treated and untreated lead-contaminated soils were backfilled into the containment area and capped with approximately 6 inches of sand, a 40 mm high-density polyethylene (HDPE) liner, and an additional 24 inches of sand and gravel. The capped containment area was graded at a 0.5 percent slope to allow drainage toward a designated infiltration basin and drainage swales. A 6-foot chain-link fence was installed surrounding the containment area.
- Site soils containing petroleum hydrocarbons, construction debris, and limited amounts of lead were excavated and disposed at the Roosevelt Regional Landfill in Roosevelt, Washington.

Post-Cleanup Controls and Monitoring

Post-cleanup controls and monitoring are remedial actions performed after the cleanup to maintain compliance with cleanup standards. This opinion is dependent on the continued performance and effectiveness of the following:

1. Compliance with institutional controls.

Institutional controls prohibit or limit activities that may interfere with the integrity of engineered controls or result in exposure to hazardous substances. The following institutional controls are necessary at the Site:

- Restriction of land use
- Protection of engineered controls
- Continued monitoring of cap and containment area

To implement those controls, an Environmental Covenant has been recorded on the following parcel of real property in Spokane County:

- 36343.0005

Ecology approved the recorded Covenant. A copy of the Covenant is included in **Enclosure B**.

2. Operation and maintenance of engineered controls.

Engineered controls prevent or limit movement of, or exposure to, hazardous substances. The following engineered controls are necessary at the Site:

- Containment area capped with HDPE liner and two feet of soil and sediment.

- Chain-link fence around the perimeter of the containment area.

Ecology has approved the Soil Management Plan you submitted for these engineered controls. This plan is included as **Enclosure C**.

Periodic Review of Post-Cleanup Conditions

Ecology will conduct periodic reviews of post-cleanup conditions at the Site to ensure that they remain protective of human health and the environment. If Ecology determines, based on a periodic review, that further remedial action is necessary at the Site, then Ecology will withdraw this opinion.

Listing of the Site

Based on this opinion, Ecology removed the Site from our Hazardous Sites List following a public comment period from April 1-30, 2019. As part of this opinion, Ecology will initiate the process of removing the Site from our Confirmed and Suspected Contaminated Sites List.

Limitations of the Opinion

1. Opinion does not settle liability with the state.

Liable persons are strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the release or releases of hazardous substances at the Site. This opinion **does not**:

- Resolve or alter a person's liability to the state.
- Protect liable persons from contribution claims by third parties.

To settle liability with the state and obtain protection from contribution claims, a person must enter into a consent decree with Ecology under RCW 70.105D.040(4).

2. Opinion does not constitute a determination of substantial equivalence.

To recover remedial action costs from other liable persons under MTCA, one must demonstrate that the action is the substantial equivalent of an Ecology-conducted or Ecology-supervised action. This opinion does not determine whether the action you performed is substantially equivalent. Courts make that determination. See RCW 70.105D.080 and WAC 173-340-545.

Shane DeGross
July 23, 2020
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3. State is immune from liability.

The state, Ecology, and its officers and employees are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing this opinion. See RCW 70.105D.030(1)(i).

Termination of Agreement

Thank you for cleaning up the Site under the Voluntary Cleanup Program (VCP). This opinion terminates the VCP Agreement governing this project (#EA0117).

For more information about the VCP and the cleanup process, please visit our website: <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Cleanup-process/Cleanup-options/Voluntary-cleanup-program>. If you have any questions about this opinion or the termination of the Agreement, please contact me by phone at (509) 329-3522 or e-mail at ted.uecker@ecy.wa.gov.

Sincerely,



Ted M. Uecker
ERO Toxics Cleanup Program

TU: hg

Enclosures (3): A – Description and Diagrams of the Site
B – Environmental Covenant for Institutional Controls
C – Soil Management Plan

cc: Tra Thai, VCP Financial Manager (without enclosures)

Enclosure A
Description and Diagrams of the Site

Site Description

The site is located in the Hillyard area of north Spokane and is bounded by Wellesley Avenue on the south and Ferrall Avenue on the east. The west side of the site is bordered by BNSF railroad tracks and by a commercial and residential area further to the west. A residential area is located to the east of the property, and the area to the south is occupied by the Hillyard Dross (Aluminum Recycling) site and Koch Materials asphalt plant. The site is zoned heavy industrial by the City of Spokane.

Historically, the site was a railroad yard originally owned and operated by Great Northern Railroad Company from 1890 until 1960, when ownership transferred to Burlington Northern Railroad (BNRR). BNRR owner operated the rail yard from 1960 through the 1970s. Demolition of the former facilities occurred in the 1980s. The rail yard has remained vacant since demolition, except for active rail lines on the west portion of the property (Figure 2). The rail yard is currently owned by BNSF (formerly known as Burlington Northern Santa Fe Railway Company), a successor company to BNRR.

The Site is located in an area of historical accumulation of soil, clinker, ash, and metallic debris containing elevated levels of lead, arsenic, cadmium, and other contaminants of concern (COCs). Lead-contaminated soil was identified at the Site in 2002 when soil was preliminarily used as a source of borrow material for an engineered soil cap for the Aluminum Recycling Corporation site located across East Wellesley Avenue south of the Site.

The Site is located over the Spokane Valley – Rathdrum Prairie sole source aquifer; and depth to groundwater in this area is approximately 175 feet below ground surface. Groundwater flow is to the northwest. The site is underlain by flood deposits (poorly sorted boulders, cobbles, gravel and sand), which overlie basalt. The Spokane River is approximately 1.5 miles south of the site.

Remedial actions at the Site occurred between 2008 and 2010. Soil with COCs greater than cleanup levels was removed, excavated, and stockpiled. Confirmation samples were collected from the excavation to verify removal of contaminated soils. Soil with lead concentrations greater than 2,500 milligrams per kilogram was stabilized and placed into the containment area after Toxicity Characteristic Leaching Procedure results confirmed that leachable lead concentrations were less than 5 milligrams per liter.

After both the treated and untreated soils were placed in the containment area, the containment area was capped with a low-permeability, high-density polyethylene liner and a minimum of 2 feet of native soil and sediment. The containment area was graded

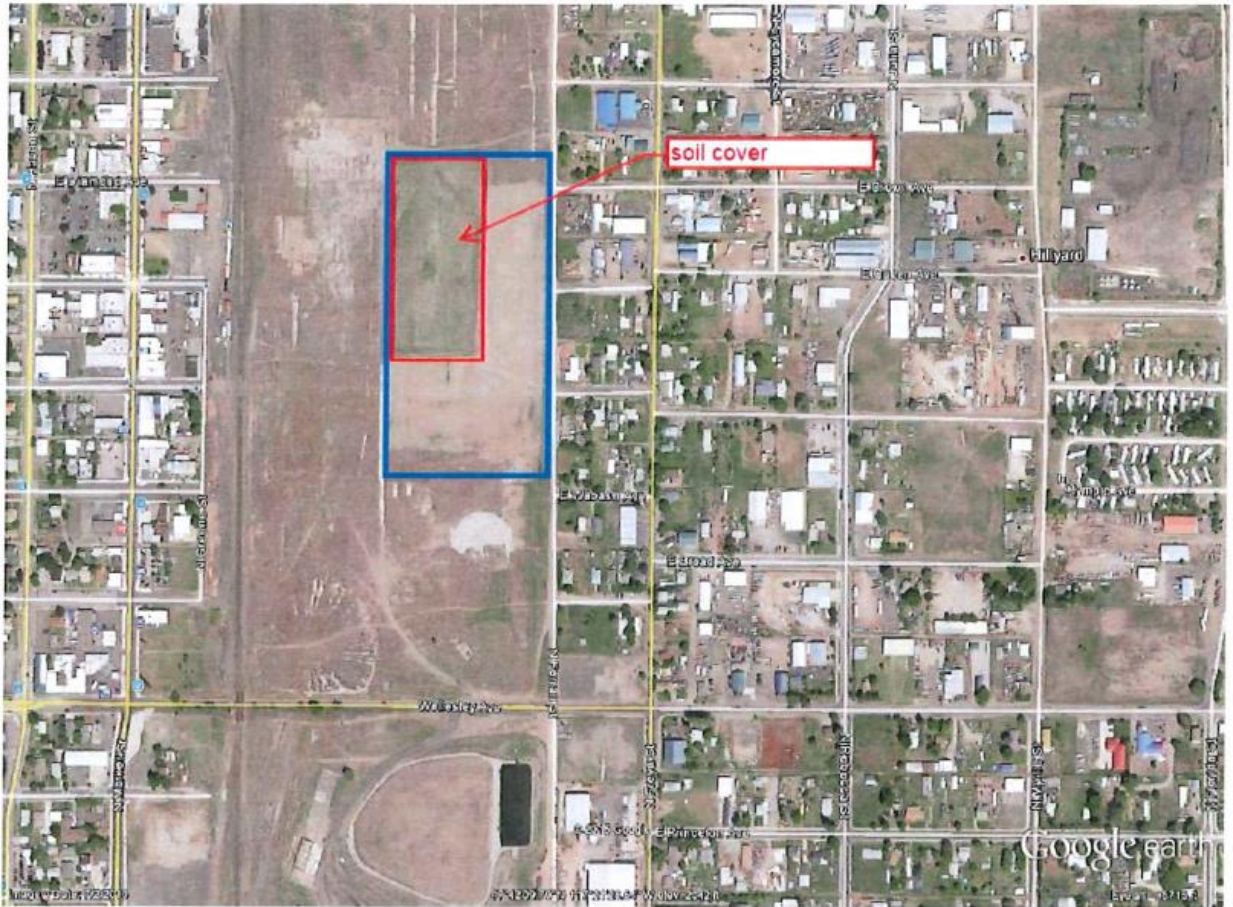
to allow precipitation to drain towards an infiltration basin and fenced with a permanent chain-link fence. Excavated areas outside the fenced area were backfilled with native soil removed during construction of the containment area. The disturbed areas of the Site were hydroseeded with a mixture of native grasses.

Petroleum-contaminated soil (PCS) was encountered in some areas during excavation activities, as well as construction debris (wood, concrete, and steel). PCS, construction debris, and limited amounts of lead-contaminated soil generated after the containment area were disposed at Allied Waste's Roosevelt Regional Landfill (Rabanco) near Roosevelt, Washington.

An Environmental Covenant was recorded with Spokane County on February 28, 2019, to restrict land use at the Site and protect the integrity of the cap and containment area. A copy of this document is included as Enclosure B. The Site is intended to remain as it currently exists until the Washington State Department of Transportation begins development of the North Spokane Corridor. In the case of any future work that may breach the cap, a Soil Management Plan was established with protocols for cap repair and burial or disposal of hazardous materials. This plan is included as Enclosure C.

(Source: GeoEngineers, 2005, 2007, 2008, 2011)

Site Diagrams



COORDINATE SYSTEM: WA N

SCALE: 1 IN = 250 FT

EXHIBIT "A"

JLL T1[®] -
BW Proj. No.: 12195.003
MAP REFERENCE:
STA. = 462133
R/W = -



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 5-11B
SEC. 34, T26N, R43E WILLM
DATE: 2/5/2019
MP 1472.41

Enclosure B

**Environmental Covenant
for Institutional Controls**



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.

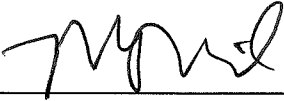
Section 6. Enforcement and Construction.

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.

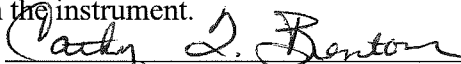


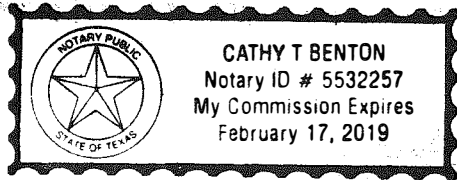
By: Mark Ude

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.


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

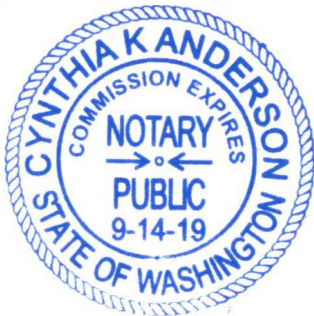


Exhibit A

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;

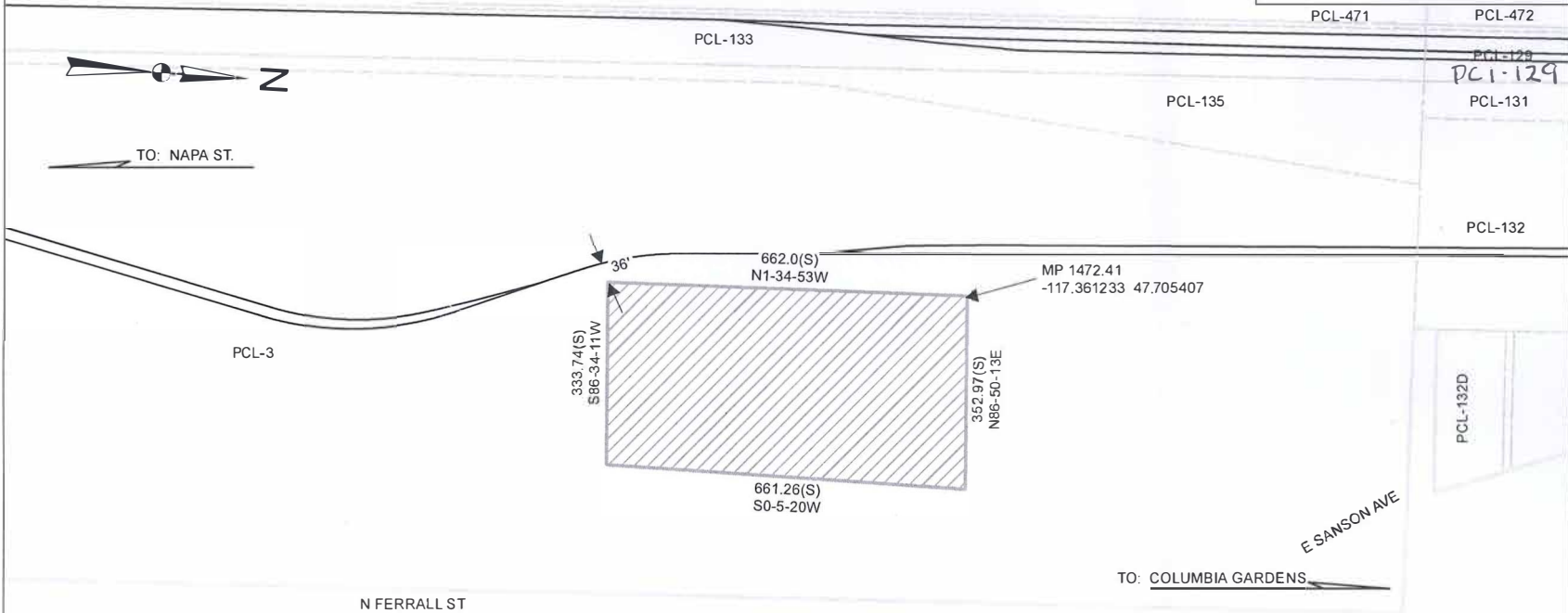
CONTAINING 226,926 SQUARE FEET MORE OR LESS.

COORDINATE SYSTEM: WA N

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





SCALE: 1 IN = 250 FT

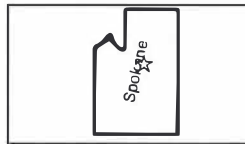
EXHIBIT "B"



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

Shane DeGross
July 23, 2020
Page 14

Enclosure C

Soil Management Plan



32001 32nd Avenue South, Suite 100
Federal Way, Washington 98001
253-835-6400

Soil Management Plan
Hillyard Rail Lead Site
Spokane, Washington

28 June 2019

Prepared for
BNSF Railway Company
605 Puyallup Avenue
Tacoma, Washington 98421

KJ Project No. 1996114.00

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Section 1: Introduction

On behalf of BNSF Railway Company (BNSF), Kennedy/Jenks Consultants, Inc. (KJ) prepared this Soil Management Plan (SMP) for the Hillyard Rail Lead Site (Site) in Spokane, Washington (Figure 1). The Site is the subject of a remedial action conducted under the Washington State Model Toxics Control Act (MTCA), overseen by the Washington State Department of Ecology (Ecology).

This SMP provides procedures to be followed when Site activities will disturb or penetrate the protective cap at the Site.

The Site is contained within Tax Parcel Number 36343.0005, and the Site address is 5201 North Ferrall Street, Spokane, Washington. A legal description of the Site is provided in the Environmental Covenant (Covenant), which was granted by Ecology to BN Leasing Corporation, a wholly owned subsidiary of BNSF, on 11 February 2019. A copy of the recorded environmental covenant is included in Appendix A.

Section 2: Property Description and Remedial Action Summary

The 11.5-acre Site is located between the alignments of East Wabash and East Crown Avenues, just north of East Wellesley Avenue in Spokane, Washington (Figure 2).

The Site was formerly part of the larger former Hillyard Rail Yard. The Hillyard Rail Yard was owned by Great Northern Railroad Company from 1890 to 1960. In 1960, the Burlington Northern Railroad assumed ownership of the Site and operated the Site as a railyard until the 1970s. Site facilities and structures were demolished in the early 1980s, and the Site has remained vacant subsequently. The present owner of the Site is BNSF, a successor company to the Burlington Northern Railroad.

2.1 Investigation

In 2002, BNSF learned that Site soils contained concentrations of lead above the MTCA Method A unrestricted and industrial land use cleanup levels (CULs). Lead-impacted soil present on the Site was observed to be gray to black sandy silt and is believed to consist of fill material from historical Site activities.

Between 2002 and 2008, multiple investigations were performed to characterize the presence and extent of site-related constituents, including lead, arsenic, and polycyclic aromatic hydrocarbons (PAHs) (GeoEngineers 2003, GeoEngineers 2008).

2.2 Remedial Action

Remedial activities were performed under Ecology's Voluntary Cleanup Program (VCP) and were documented in a Remedial Action Report (GeoEngineers 2011). Remedial activities consisted of excavating soil with constituent concentrations above MTCA Method A unrestricted land use CULs, onsite stabilization of soil with lead concentrations above 2,500 milligrams per kilogram (mg/kg) and containing lead-impacted soil onsite in an engineered containment area.

Impacted soils with lead concentrations less than 2,500 mg/kg, soil with lead concentrations above 2,500 mg/kg that had been treated to stabilize potentially leachable constituents, and concrete rubble, were placed in the containment area between 22 October 2008 and 23 June 2009. Approximately 183,300 tons of soil were placed in the containment area.

Approximately 6 inches of clean sand was placed over the constituent-impacted soil in the containment area. A welded 40 millimeter thick high-density polyethylene (HDPE) liner was installed over the sand, extending 10 feet from the containment area extents in all directions. Approximately 6 inches of sand was placed over the HDPE liner, and 18 inches of sand and gravel was placed above the sand layer. The bedding sand, liner, and soils above the liner compose the cap.

The cap was graded to a slope of ½ percent to allow drainage. The soils excavated from the Site to construct the containment area were used to backfill excavated areas of the Site. A

6-foot high chain link fence was installed around the cap. Remedial activities were completed in September 2009. Site areas disturbed by the work were hydroseeded in October 2009 to allow establishment of vegetation.

The location of the containment area is shown on Figure 2. Construction drawings of the containment area and the Site Plan As-built are provided as Appendix B.

Section 3: Impacted Soil Area

Site soils with constituent concentrations above MTCA Method A CULs for unrestricted land use were excavated and either placed directly in the containment area or treated to stabilize leachable lead, then placed in the containment area. Confirmation samples were collected from excavation limits to confirm that remaining soil did not contain constituent concentrations above MTCA Method A CULs. Excavations were backfilled with soil containing constituent concentrations below MTCA Method A CULs.

Impacted soil is contained within the containment area below the cap (Figure 2). The containment area is located in the northwestern corner of the Site and occupies an area of approximately 3.15 acres.

Section 4: Property Use Limitations

A restrictive Environmental Covenant (Covenant) was granted by Ecology to BN Leasing Corporation, a wholly-owned subsidiary of BNSF, on 11 February 2019. The Covenant is filed in the property chain of title and imposes restrictions on activities on the property. The Covenant runs with the land in perpetuity unless or until changes are approved by both the owner of record and Ecology.

The Covenant prohibits any activity on the Site that may interfere with the performance of the remedial cap or that may threaten continued protection of human health or the environment without written prior approval from Ecology. In addition, the Covenant prohibits any activity that may compromise the integrity of the cap without written prior approval by Ecology.

The Covenant requires that the cap be monitored biannually or until otherwise agreed to by Ecology. Within 30 days of each cap monitoring event, Ecology must be notified of the condition of the Cap and any changes to the Cap that could impair its performance.

In the event that damage to the cap is discovered, Ecology must be notified within 48 hours. Unless an alternate plan is approved by Ecology, the cap must be repaired promptly and a report documenting the repairs submitted to Ecology within 30 days of the completion of repairs.

Section 5: Procedures for Ground-Disturbing Activities

5.1 Ecology Advance Approval Required

Pursuant to the recorded Environmental Covenant (Appendix A), advance written approval from Ecology is required for site activities that may disturb or compromise the integrity of the cap.

No activity that could potentially disturb or compromise the integrity of the cap will proceed without prior written approval from Ecology.

5.2 Identification of Potentially Contaminated Soils

Extensive characterization of the Site was performed prior to and during remedial activities. Therefore, it is unlikely that impacted soils will be encountered in areas of the Site outside the cap footprint. However, workers involved in ground-disturbing activities inside the cap footprint should be aware of the presence of impacted soil in the containment area below the cap and aware of the obligations contained in the Environmental Covenant. Observation of potentially-impacted soils outside the footprint of the cap will be reported immediately to BNSF, and work in those areas identified will be temporarily discontinued until the condition of the soils can be assessed. BNSF will notify Ecology of the presence of impacted soils, if identified, and propose actions for further protecting human health and the environment.

Historically, impacted soil observed on the Site during investigative and remedial activities has consisted of gray-black sandy silt that is believed to have been placed on the Site as fill. This material was occasionally observed to contain ash, clinkers, and debris. The impacted material was visually distinct from native Site soil, which consists of brown gravel and sand with varying amounts of silt.

Photographs of impacted fill material and native site soil are included as Appendix C.

5.3 Health and Safety

It is the responsibility of each construction contractor to review the available information to determine the health and safety requirements for their workers. If work is performed within the footprint of the cap or if potentially impacted soils are encountered outside the cap footprint, a health and safety plan must be prepared in accordance with Hazardous Waste Operations and Emergency Response (HAZWOPER) requirements in 29 Code of Federal Regulations (CFR) 1920.120.

5.4 Soil Handling and Disposal

Impacted soils encountered on the Site must be handled in accordance with local, state, and federal regulations. Impacted soil brought to the surface must be stockpiled on impervious plastic sheeting. Stockpiles must be covered with plastic sheeting to prevent the generation of airborne dust. Impacted soil cannot be used as backfill on the Site except within the containment area under the cap. Disturbance of the cap for purposes of placing or replacing

impacted soil in the containment area is subject to notification and requires written approval by Ecology as described in Section 5.1. In the event that impacted soil is transported offsite for disposal, it must be transported in covered trucks to prevent the generation of airborne dust. Care must be taken to prevent trackout of impacted soil by trucks and construction vehicles.

5.5 Liquids Management

Site groundwater is encountered over 100 feet below ground surface (bgs). Therefore, it is unlikely that ground-disturbing Site activities will encounter groundwater. Site groundwater is not impacted by Site constituents.

Liquids that have come into contact with impacted Site soil, such as liquids used to decontaminate equipment or vehicles, will be contained onsite pending laboratory analysis and offsite disposal at an appropriate disposal facility.

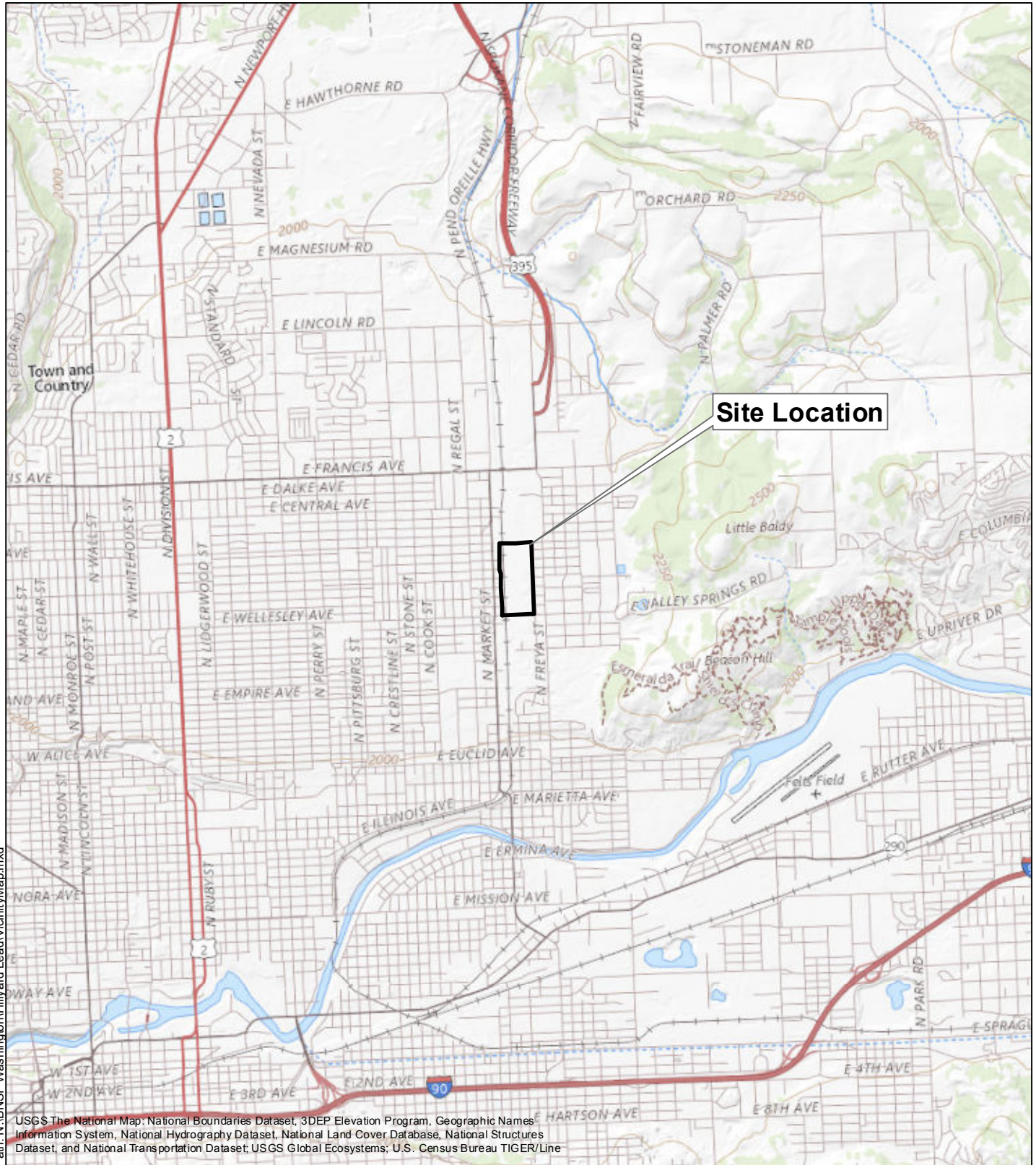
5.6 Record Keeping

A record of ground-disturbing activities completed on the Site, as well as records of impacted soils excavated and removed from the Site, must be maintained and provided to BNSF and Ecology within 30 days of completing the activities that caused the disturbance.


References

- GeoEngineers Inc. 2003. Soil Sampling Report, Hillyard Lead Soil Pile Site, Spokane, Washington. Prepared by GeoEngineers, Inc. for BNSF Railway Company. October 2003.
- GeoEngineers, Inc. 2008. Soil Characterization Sampling, BNSF Hillyard Rail Yard, Spokane, Washington. Prepared by GeoEngineers, Inc. for BNSF Railway Company. April 2008.
- GeoEngineers, Inc. 2011. Remedial Action Report, BNSF Hillyard Rail Yard Lead Site, Spokane, Washington. Prepared by GeoEngineers, Inc. for BNSF Railway Company. December 2011.
- Washington State Department of Ecology. 2007. Model Toxics Control Act Statute and Regulation. Washington State Department of Ecology. Publication No. 94-06. Revised November 2007.

Figures

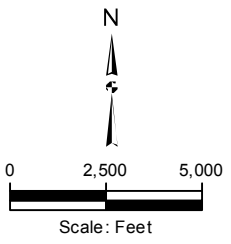


Legend

 Property Boundary

Notes:

1. The locations of all features shown are approximate.



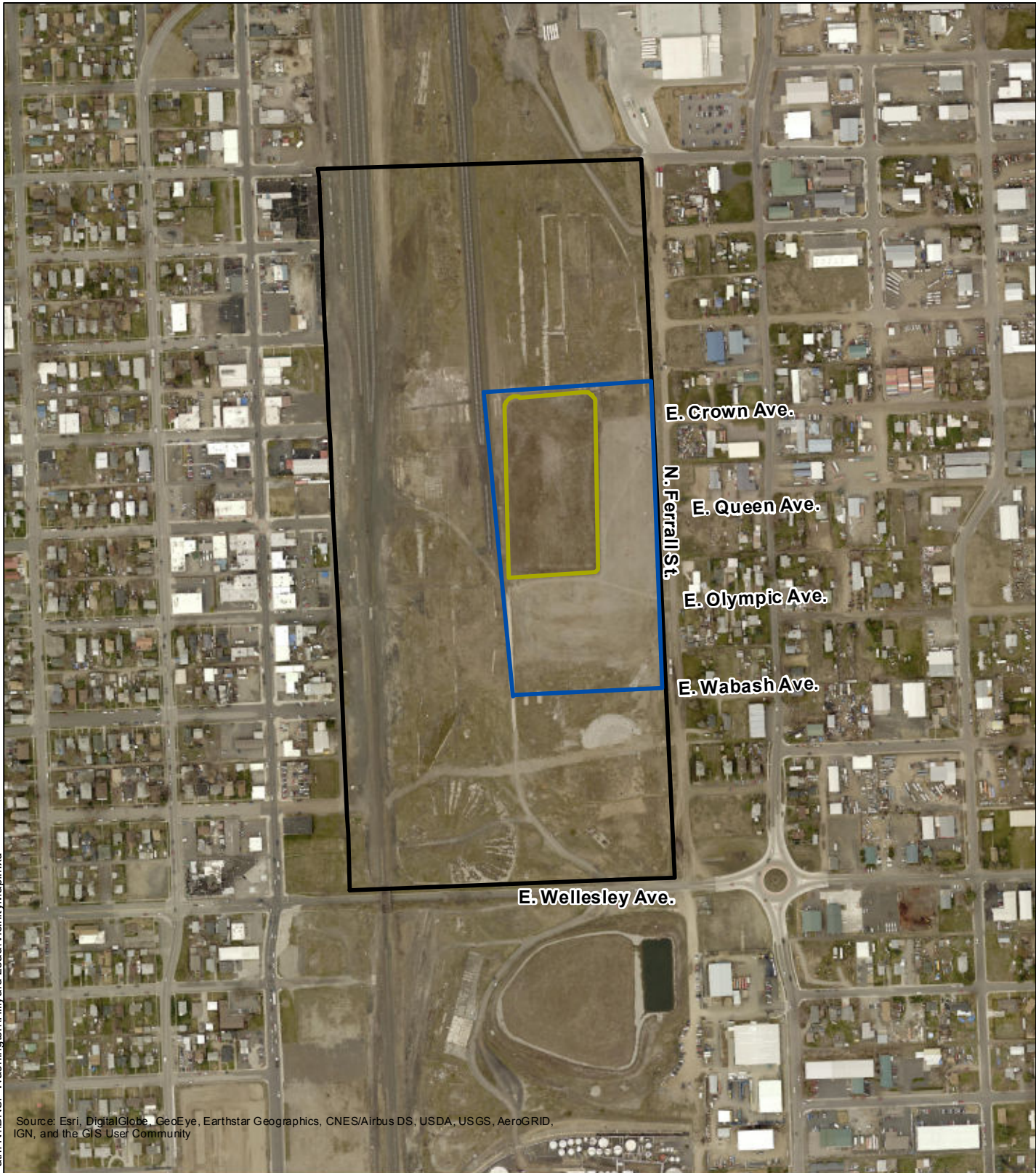
Kennedy/Jenks Consultants

BNSF Hillyard Lead Site
Spokane, Washington

Vicinity Map

Figure 1




K/J 1996114*00



Path: N:\BNSF Washington\Hillyard Lead\VicinityMap.mxd

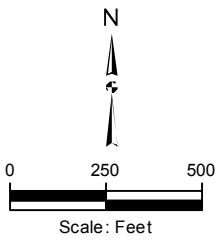
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Legend

-  Property Boundary
-  Approximate Area of Remedial Action
-  Approximate Cap Extent

Notes:

1. The locations of all features shown are approximate.



Kennedy/Jenks Consultants

BNSF Hillyard Lead Site
Spokane, Washington

Site Features

Figure 2

K/J 1996114*00

Appendix A

Environmental Covenant

Spokane County Auditor's Office
Vicky Dalton, Auditor
P.O. Box 2353
Spokane, WA 99210

Receipt: 0482813

Product	Name	Extended
COV	Covenant	\$108.00
# Pages 10, Document # 6784827		
Total		\$108.00
Tender (Check)		\$108.00
Check# 106173, Paid By FOSTER PEPPER PLLC		

Thank You!

2/28/19 8:34 AM soster

COPY
ORIGINAL FILED OR RECORDED

FEB 28 2019

RETURN NAME and ADDRESS

Ted Uecker, Department of Ecology

4601 N. Monroe

Spokane, WA 99205-1295

COUNTY AUDITOR
SPOKANE COUNTY WA

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
---	---

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.

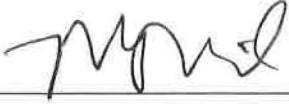
Section 6. Enforcement and Construction.

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.

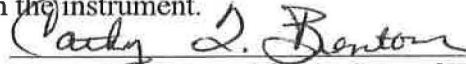


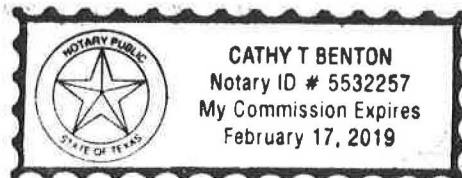
By: Mark Ude

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.


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

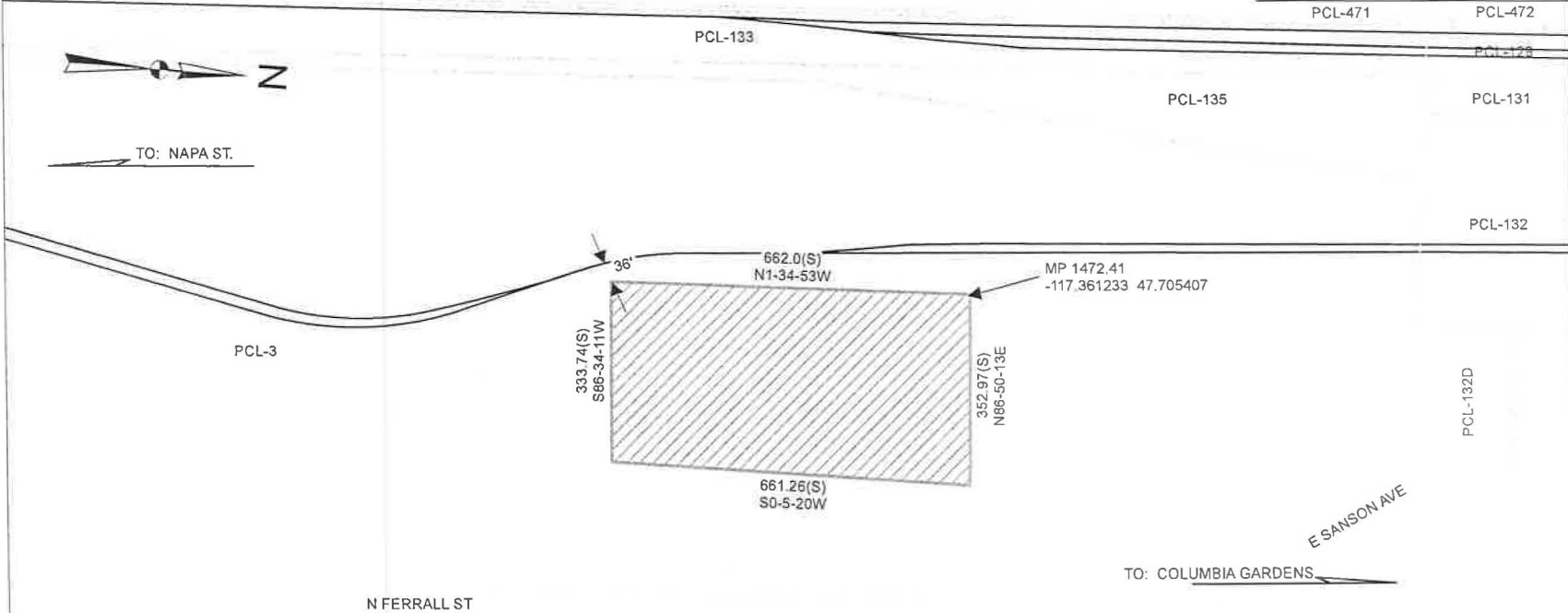
SCALE: 1 IN = 250 FT

EXHIBIT "B"

JLL TI #: -
BW Proj. No.: 12196.003
MAP REFERENCE:
STA. = s62133
R/W = -







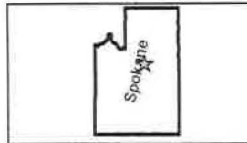
TO: NAPA ST.



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

Appendix B

As-Built Construction Drawing for Cap



BASIS OF BEARING
 GEOENGINEERS SITE CONTROL

TEMPORARY BENCHMARKS
 TD&H CONTROL POINT #9 ("+" IN CONCRETE)

COORDINATE DATA

CONTROL POINT #9
 N 276622.26
 E 2495173.72
 ELEVATION = 2038.94

SITE BENCHMARK #1
 N 275273.59
 E 2495081.45
 ELEVATION = 2040.25

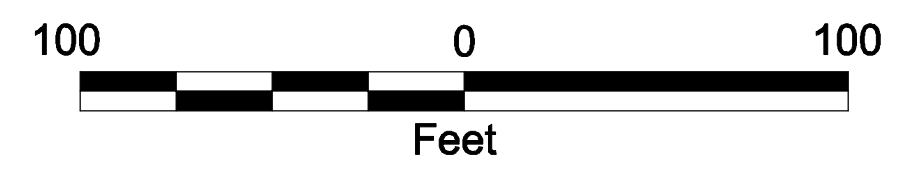
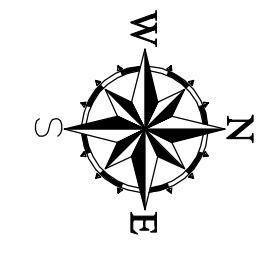
SITE BENCHMARK #2
 N 275139.87
 E 2495692.15
 ELEVATION = 2039.64

NORTH FERRAL STREET

LEGEND	
-----1000-----	EXISTING 5' CONTOUR
-----	EXISTING 1' CONTOUR
△ CP #3	TD&H CONTROL POINT
●	GEOENGINEERS SITE BENCHMARK
○	EXISTING 6' CHAIN LINK FENCE

- 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. can not 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: Base drawing provided by Thomas, Dean and Hoskins titled " BNSF Hillyard Lead Pile (Filled pit), Hillyard, Washington, Topographic Base Map" dated 9/21/09



Site Plan As-built (2009)	
BNSF Hillyard Rail Yard Lead Site Spokane, Washington	
GEOENGINEERS 	Figure 10

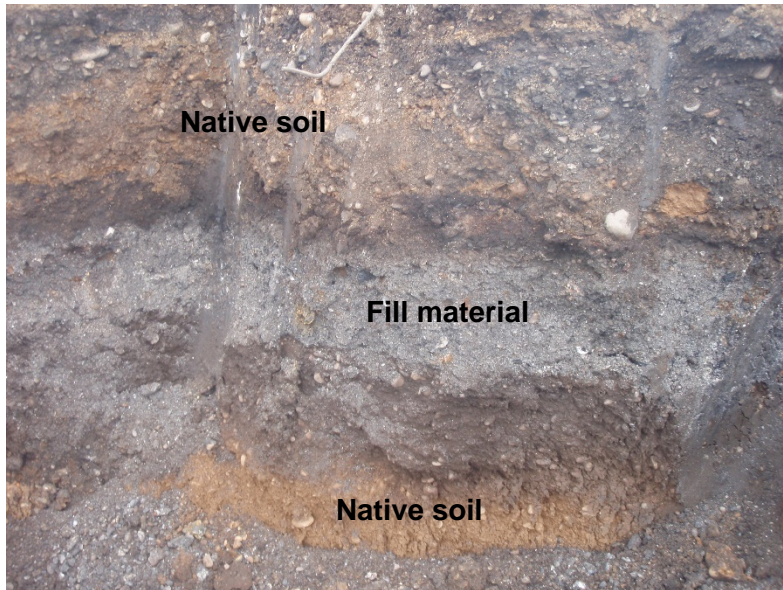
Appendix C

Photographs of Lead-Impacted Soil

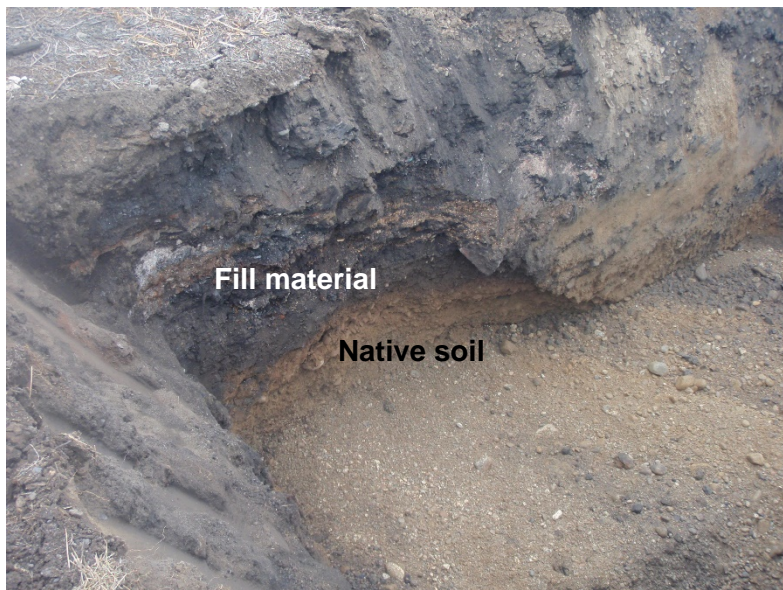
APPENDIX C

PHOTOGRAPHS OF SITE SOIL

**Soil Management Plan
BNSF Hillyard Lead Site**



Photograph 1 – Band of gray potentially constituent-impacted fill material (photograph taken 26 February 2009)

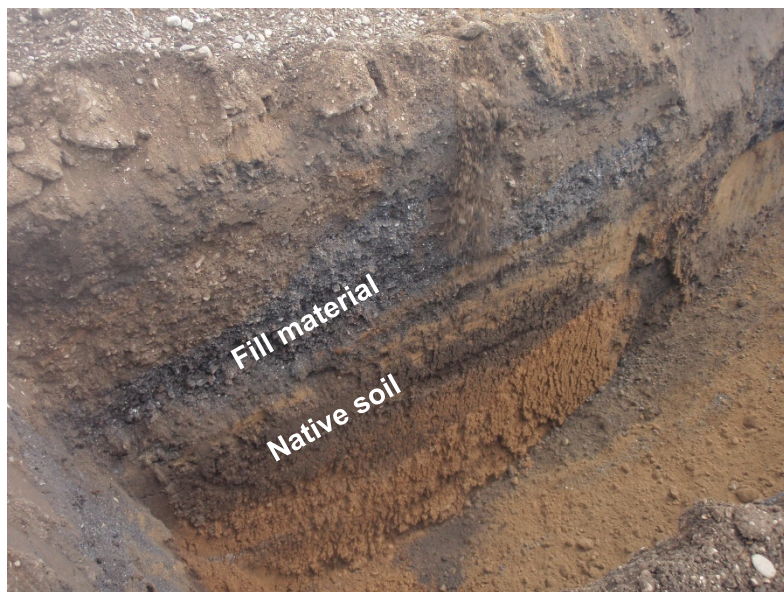


Photograph 2 – Potentially constituent-impacted fill material over native site soil (photograph taken 12 August 2009)

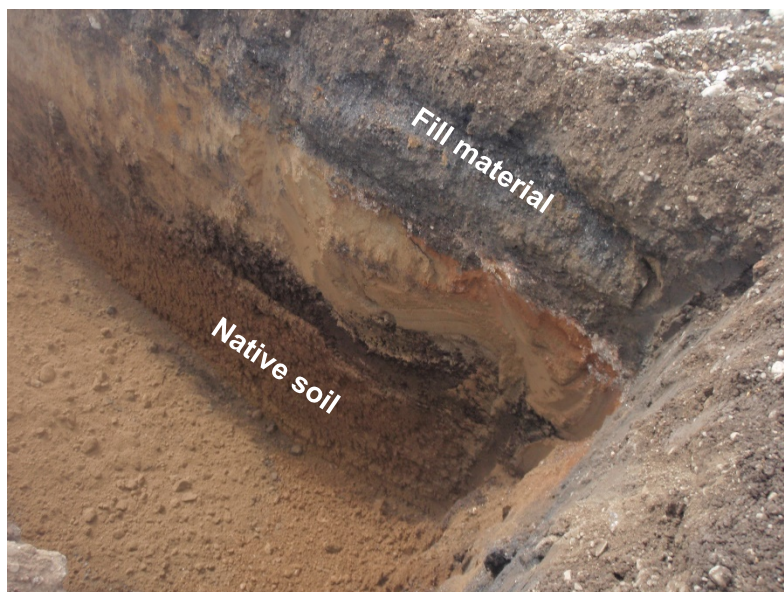
APPENDIX C

PHOTOGRAPHS OF SITE SOIL

Soil Management Plan BNSF Hillyard Lead Site



Photograph 3 – Band of potentially constituent-impacted fill material over native site soil (photograph taken 12 August 2009)



Photograph 4 – Band of potentially constituent-impacted fill material over native site soil (photograph taken 12 August 2009)