|  |  |
| --- | --- |
| After Recording Return Original Signed Covenant to: **[[1]](#footnote-2)****[**Ecology Site Manager**]**Toxics Cleanup ProgramDepartment of Ecology**[**Ecology Office address**]**  |  |

# Environmental Covenant

**(For MTCA Sites – August 20, 2015 Version)**

**Grantor:** **Frito-Lay, Inc.**

**Grantee:** State of Washington, Department of Ecology (hereafter “Ecology”)

**Brief Legal Description:**

**Tax Parcel Nos.:**

**Cross Reference: None**

## 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 of a site commonly known as **Frito-Lay Vancouver, Facility/Site ID No. 81587474, VCP Project No. SW1024.** 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: **[[2]](#footnote-3)**

|  |  |
| --- | --- |
| **Medium** | **Principal Contaminants Present** |
| Soil | Petroleum hydrocarbons |

**d.** 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 document: Frito-Lay Vancouver Facility Hydraulic Lift Area Petroleum Release Monitoring and Analysis Plan.***

**e.** 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’ right as a holder, are not an interest in real property.

## COVENANT

 **Frito-Lay, Inc**, 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 supersede any prior interests the GRANTOR has in the property and 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. Land Use. The remedial action for the Property is based on a cleanup designed for industrial property. As such, the Property shall be used in perpetuity only for industrial uses, as that term is defined in the rules promulgated under Chapter 70.105D RCW. Prohibited uses on the Property include but are not limited to residential uses, childcare facilities, K-12 public or private schools, parks, grazing of animals, growing of food crops, and non-industrial commercial uses.

b. Monitoring. TBD.

c. Other. TBD.

## 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.

**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 **within the area of the Property described and illustrated in Exhibits B and C**, including but not limited to title, easement, leases, and security or other interests, must:

1. Provide written notice to Ecology of the intended conveyance at least thirty (30) days in advance of the conveyance.**[[3]](#footnote-4)**

**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 CLARK 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 thirty (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.

|  |  |
| --- | --- |
| **[*insert contact name, address, phone number and e-mail for Grantor*]** | Environmental Covenants CoordinatorWashington State Department of EcologyToxics Cleanup ProgramP.O. Box 47600Olympia, WA 98504 ~~–~~ 7600(360) 407-6000ToxicsCleanupProgramHQ@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. **[[4]](#footnote-5)** For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction at the site: [[5]](#footnote-6)

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.

**[GRANTOR’S SIGNATURE BLOCK FOR ORIGINAL COVENANTS]**

***Each person who signs must have a separate signature block and applicable notary acknowledgment. Repeat as many times as necessary.***

***Holders of other property interests must either sign the amended Covenant as a GRANTOR or sign the subordination agreement in Exhibit D.***

The undersigned has authority to execute this Covenant on behalf of Grantor.

 EXECUTED this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_ [Signature] \_\_\_\_\_\_\_\_\_\_\_

by: \_\_\_\_\_\_\_\_ [Printed name] \_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CORPORATE ACKNOWLEDGMENT

**CORPORATE ACKNOWLEDGMENT**

STATE OF

COUNTY OF

 On this day of , 20\_\_, I certify that personally appeared before me, acknowledged that **he/she** is the of the corporation that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that **he/she** was authorized to execute said instrument for said corporation.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public in and for the State of Washington **15**

Residing at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My appointment expires \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 **[ECOLOGY’S SIGNATURE BLOCK]**

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

STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

\_\_\_\_\_\_\_\_\_\_\_\_ [Signature] \_\_\_\_\_\_\_\_\_\_\_

by: \_\_\_\_\_\_\_\_ [Printed name] \_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**STATE ACKNOWLEDGMENT**

STATE OF

COUNTY OF

 On this day of , 20\_\_, I certify that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ personally appeared before me, acknowledged that **he/she** is the 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.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public in and for the State of Washington

Residing at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My appointment expires \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## Exhibit A

**Legal Description**

**(Required)**

## Exhibit B

**Property Map**

**(Required)**

## Exhibit C

**Map Illustrating Location of Restrictions**

## Exhibit D

**SUBORDINATION AGREEMENT**

KNOW ALL PERSONS, That \_\_ [holder’s Name] \_\_, the owner and holder of that certain \_\_[Instrument – e.g. Easement/ROW/Mortgage/etc.]\_\_ bearing the date the \_\_\_\_\_\_\_ day of \_\_[Month]\_\_, \_\_ [Year] \_\_, executed by \_\_[Name of Person that Granted the Interest being Subordinated] \_\_, \_\_[Legal Status of Original Grantor – e.g. Landowner, Corporate Officer, etc.]\_\_, and recorded in the office of the County Auditor of \_\_[County]\_\_ County, State of Washington, on \_\_[Date]\_\_, under Auditor’s File Number \_\_\_\_\_\_\_\_\_\_\_\_, does hereby agree that said Instrument shall be subordinate to the interest of the State of Washington, Department of Ecology, under the environmental (restrictive) covenant dated \_\_[Date]\_\_, executed by \_\_[Name of Person Signing this Subordination Agreement]\_\_, and recorded in \_\_[County]\_\_ County, Washington under Auditor’s File Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_ [Signature] \_\_\_\_\_\_\_\_\_\_\_

by: \_\_\_\_\_\_\_\_ [Printed name] \_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Insert one of the following, as applicable. See example format on next page:**

INDIVIDUAL ACKNOWLEDGMENT

CORPORATE ACKNOWLEDGMENT

REPRESENTATIVE ACKNOWLEDGEMENT

**INDIVIDUAL ACKNOWLEDGMENT**

STATE OF

COUNTY OF

 On this day of , 20\_\_, I certify that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ personally appeared before me, acknowledged that **he/she** is the individual described herein and who executed the within and foregoing instrument and signed the same at **his/her** free and voluntary act and deed for the uses and purposes therein mentioned.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public in and for the State of Washington **[[6]](#footnote-7)**

Residing at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My appointment expires \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**CORPORATE ACKNOWLEDGMENT**

STATE OF

COUNTY OF

 On this day of , 20\_\_, I certify that personally appeared before me, acknowledged that **he/she** is the of the corporation that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that **he/she** was authorized to execute said instrument for said corporation.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public in and for the State of Washington **16**

Residing at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My appointment expires \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**REPRESENTATIVE ACKNOWLEDGEMENT**

STATE OF

COUNTY OF

 On this day of , 20\_\_, I certify that personally appeared before me, acknowledged that **he/she** signed this instrument, on oath stated that **he/she** was authorized to execute this instrument, and acknowledged it as the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [type of authority] of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [name of party being represented] 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 **16**

Residing at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My appointment expires \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Some counties keep the original Covenant, others don’t. If the signed original is available, it must be sent to Ecology. If the signed original is not available, send a legible copy to Ecology. [↑](#footnote-ref-2)
2. List the contaminants for the associated media. If more than a few are present, list the top three to five for each medium. [↑](#footnote-ref-3)
3. Ecology may waive this notice provision for some units at a Property where the anticipated use is a multi-tenant/owner building where some owners or tenants are unlikely to be exposed to residual contamination. For example: upper story apartments or condominiums, or commercial tenants in a strip mall, with limited rights to use the grounds under and around the building (such as for parking).

If Ecology agrees to such a waiver, the circumstances of the waiver must be detailed in paragraph 4.a.i. In addition to the specific circumstances, this provision must include the following statement: “Waiver of this advance notice to Ecology for these transactions does not constitute waiver of this notice for the entire Property nor a waiver of the requirement in Section 4.a.ii. to include this notice in any document conveying interest in the Property.” [↑](#footnote-ref-4)
4. Example of inconsistent uses are using the Property for a use not allowed under the covenant (i.e. mixed residential and commercial use on a property restricted to industrial uses), OR drilling a water supply well when use of the groundwater for water supply is prohibited by the covenant. [↑](#footnote-ref-5)
5. An example of an activity that is unlikely to be considered a permanent modification is a proposal to disturb a cap to repair an existing underground utility that passes through the site. However, installing a new underground utility within a capped area would be a permanent change. [↑](#footnote-ref-6)
6. Where landowner is located out of state, replace with appropriate out-of-state title and location. [↑](#footnote-ref-7)