

After Recording Return  
Original Signed Covenant to:  
Frank Winslow

Skip Moore, Auditor, Chelan County, WA. AFN # 2530305  
Recorded 11/23/2020 at 12:09 PM  
COVEN Pages: 11  
Filing Instrument \$113.50  
BNSF

Toxics Cleanup Program  
Department of Ecology  
1250 West Alder Street  
Union Gap, WA 98903-0009

## Environmental Covenant

**Grantor:** BNSF Railway Company (BNSF)  
**Grantee:** State of Washington, Department of Ecology (hereafter "Ecology")  
**Brief Legal Description:** T 23N R 19EWM S 05 BN LEASE 250 477 0.3400 ACRES  
**Tax Parcel Nos.:** 231905120070  
**Cross Reference:** Facility/Site No. 3154383, Cleanup Site No. 2149, Agreed Order No. DE 15694

### 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 BNSF John Michael Lease Site with Facility Site ID Number 3154383. 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	Total Petroleum Hydrocarbons as Gasoline-range organics (GRO), Diesel-range organics (DRO), and Oil-range organics (ORO); benzene, carcinogenic Polynuclear Aromatic Hydrocarbons (cPAHs), and Naphthalenes.
Groundwater	DRO and ORO
Surface Water/Sediment	N/A

- 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 documents:

- Supplemental Remedial Investigation Report (TRC, 2020)

- First Quarter 2020 Progress Report (TRC, 2020)
- Fourth Quarter 2019 Groundwater Monitoring Status Report and Data Gap Analysis (TRC, 2019)
- Groundwater Monitoring Status Report and Data Gap Analysis (TRC, 2019)
- Final Second Quarter Supplemental Groundwater Data Report (TRC, 2019)
- Draft First Quarter Supplemental Groundwater Data Report (TRC, 2019)
- Supplemental Groundwater Data Collection Work Plan (TRC, 2018)
- Supplemental Soil and Groundwater Investigation Report (Farallon, 2016)
- First Semi-Annual 2013 Groundwater Monitoring Report (Farallon, 2013)
- Second Semi-Annual 2012 Groundwater Monitoring Report (Farallon, 2013)
- Letter Report Regarding Cleanup Status Report (TRC, 2012)
- Subsurface Investigation Report (Farallon, 2009)
- Letter Report Regarding Phase II Assessment Report (EMR, 2005)

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

BNSF, as Grantor and 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, any permits obtained as part of 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 area of the Property illustrated in Exhibit B is based on a clean-up designed for commercial property. As such, the Property shall be used in perpetuity only for commercial land 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 domestic animals, and growing of food crops.

### **b. Groundwater Use.**

The groundwater within the area of the Property illustrated in C shall not be extracted for any purpose other than temporary construction dewatering, investigation, monitoring or remediation. Drilling of a well for any water supply purpose is strictly prohibited. Groundwater extracted within this area for any purpose shall be considered potentially contaminated and any discharge of this water shall be done in accordance with state and federal law.

No activity is allowed that may change the hydrologic conditions and cause the movement of contaminants in soil or groundwater to areas outside the Property.

Monitoring wells on the Property shall, upon approval from Ecology, be property abandoned.

## **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 for security and safety purposes and subject to Ecology and its authorized representatives' compliance with railroad safety procedures, 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 Exhibit B, 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 CHELAN 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.

BNSF Railway Company 2500 Lou Menk Drive, AOB-3 Fort Worth, TX 76131-2828 Attn: Director Environmental Project Controls	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 – 7600 (360) 407-6000 <a href="mailto:ToxicsCleanupProgramHQ@ecy.wa.gov">ToxicsCleanupProgramHQ@ecy.wa.gov</a>
AND	
BNSF Railway Company 605 Puyallup Avenue Tacoma, WA 98421 Attn: Manager of Environmental Remediation	

**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 to the extent not preempted by applicable federal law. BNSF is a common carrier by rail and the property to which these restrictions and covenants apply are an integral part of the interstate transportation system. By adopting this restriction, BNSF does not waive preemption under the ICC Termination Act of 1995 49 U.S.C. Section 10501(b), or other applicable federal law.

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.

The undersigned Grantor warrants BNSF Railway Company holds the title to the Property and has authority to execute this Covenant.

EXECUTED this 6<sup>th</sup> day of October, 2020.

BNSF Railway Company

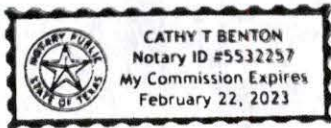
Blaine Bilderback

By: Blaine Bilderback  
Title: Director Real Estate

**CORPORATE ACKNOWLEDGMENT**

STATE OF TEXAS  
COUNTY OF TARRANT

On this 6<sup>th</sup> day of October, 2020, I certify that **Blaine Bilderback** personally appeared before me, acknowledged that **he** is the **Director Real Estate** 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.



Cathy T. Benton

Notary Public in and for the State of Texas  
Residing at Weatherford, Texas  
Cathy T. Benton  
My appointment expires February 22, 2023

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

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Valerie Bound

By: VALERIE BOUND  
(Print Name)

Title: Section Manager

Dated: 11/2/20

**STATE ACKNOWLEDGMENT**

STATE OF WASHINGTON

COUNTY OF Yakima

On this 2nd day of November, 2020, I certify that Valerie Bound personally appeared before me, acknowledged that **he/she** is the section manager 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.

Alexis Shaw

Notary Public in and for the State of Washington

Residing at mail N more Yakima

My appointment expires July 16, 2022



**Exhibit A**

**LEGAL DESCRIPTION**





SURVEYING | PLANNING | ENGINEERING | GIS

250 Simon Street SE  
East Wenatchee, WA 98802

Phone: 509.884.2562  
Fax: 509.884.2814

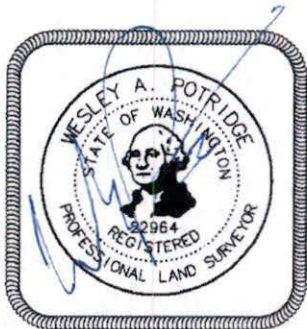
www.erlandsen.com

## DESCRIPTION

That portion of the Burlington Northern Santa Fe Railroad located in the Southwest quarter of the Southeast quarter of Section 32, Township 24 North, Range 19 East, Willamette Meridian and Government Lot 2 of Section 5, Township 23 North, Range 19 East, Willamette Meridian, Chelan County, Washington described as follows:

Beginning at the Northwest corner of said Government Lot 2; thence South  $87^{\circ}18'06''$  East along the North line of said Government Lot 2 a distance of 306.93 feet to a  $5/8''$  iron pin as shown on survey recorded under Auditor's File No. 2339244, records of Chelan County, Washington, said pin set on the Westerly right of way for the Burlington Northern Santa Fe Railroad; thence South  $38^{\circ}50'01''$  East along said right of way a distance of 60.85 feet and the True Point of Beginning for this description; thence continue South  $38^{\circ}50'01''$  East along said right of way a distance of 235.24 feet to a point on the Northeasterly right of way for Sunset Highway; thence along said right of way along a non-tangent curve to the right with a radius of 1190.00 feet a length of 189.22 feet the chord bearing South  $46^{\circ}18'52''$  East a distance of 189.02 feet; thence continuing along said right of way South  $41^{\circ}45'33''$  East a distance of 110.00 feet; thence North  $50^{\circ}32'10''$  East a distance of 70.06 feet; thence North  $41^{\circ}45'33''$  West a distance of 110.00 feet; thence North  $49^{\circ}50'53''$  East a distance of 36.52 feet to the approximate bank of the Wenatchee River; thence following the said bank the following courses; North  $36^{\circ}49'32''$  West for 6.58 feet; North  $31^{\circ}18'24''$  West for 27.63 feet; North  $28^{\circ}06'16''$  East for 13.29 feet; North  $31^{\circ}53'18''$  West for 95.82 feet; North  $25^{\circ}49'09''$  West for 33.07 feet; North  $12^{\circ}01'29''$  West for 16.40 feet; thence leaving said bank North  $34^{\circ}25'58''$  West a distance of 230.92 feet; thence South  $84^{\circ}06'24''$  West a distance of 22.04 feet; thence South  $50^{\circ}23'35''$  West a distance of 172.92 feet to the True Point of Beginning.

Date: July 7, 2020



**Exhibit B**

**PROPERTY MAP**



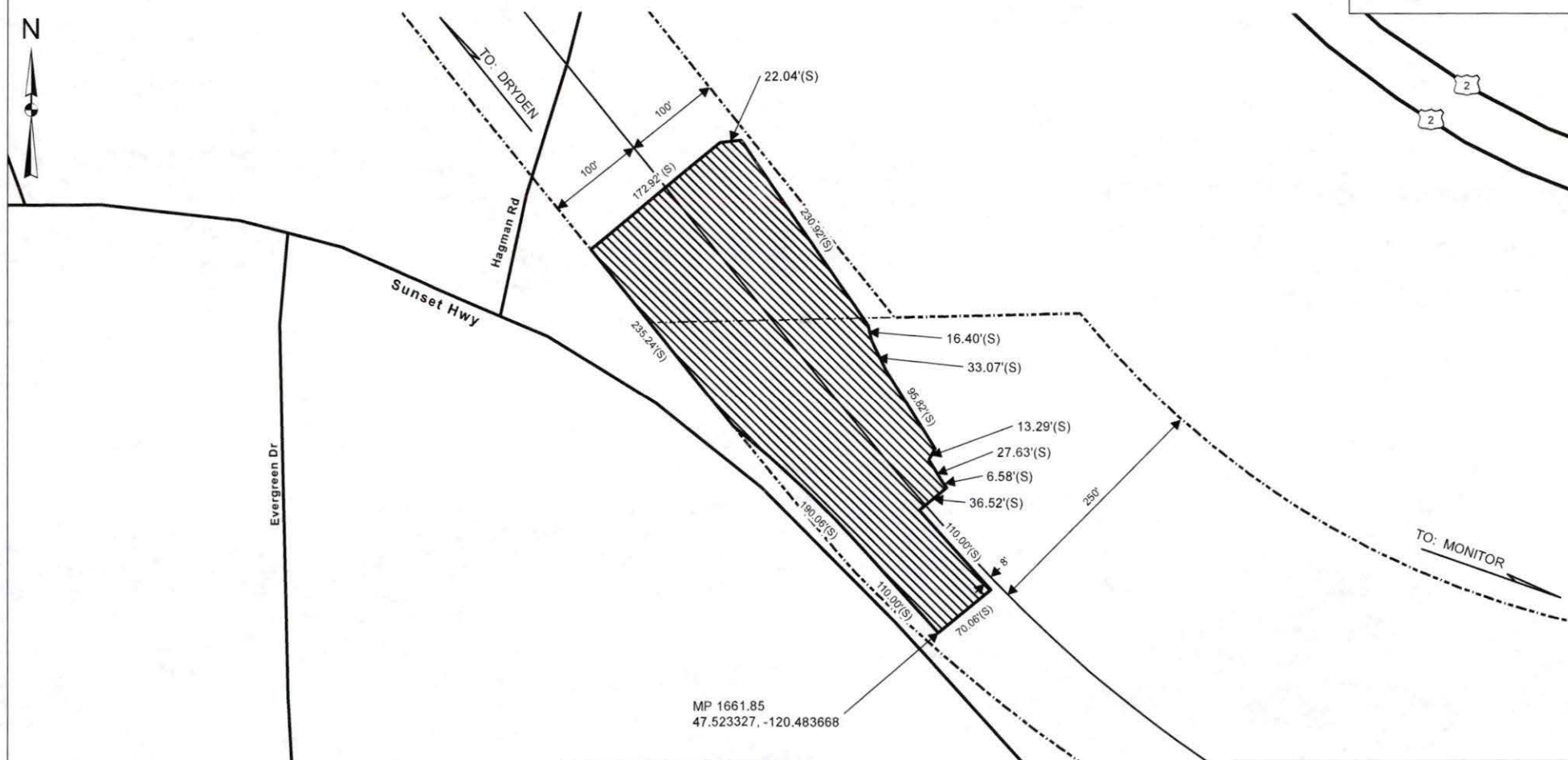
COORDINATE SYSTEM: WA\_N

# EXHIBIT "B"

SCALE: 1 IN = 100 FT

JLL T1<sup>2</sup> -  
BW Proj. No.: 12196.003  
MAP REFERENCE:  
STA. =  
R/W = R62453

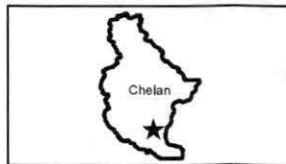
This map used by BNSF RAILWAY COMPANY in the ordinary course of business, but it is subject to audit and should be used only with the expressed understanding the BNSF make no representations whatsoever about the quality, accuracy, errors or omissions relating to this map.



MP 1661.85  
47.523327, -120.483668

TO: STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY  
AT: CASHMERE  
CHELAN 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

NORTHWEST DIVISION  
SCENIC SUBDIVISION - L.S. 0037-6  
VAL.SEC. 51003  
GN RY CO WA-03, MAP 22  
SEC. 32, T24N, R19E WILLM  
DATE: 7/10/2020  
MP 1661.85

REVISION 1

DRAWN BY: JNC DRAWING NO. 78952