

RECEIVED

SEP 15 2003

DEQ-Coeur d'Alene  
Regional Office

21217

212108

UPRR Real Estate Folder No. 2186-94

## DECLARATION OF RESTRICTIONS

This Declaration of Restrictions to Run with the Land (Declaration) made by Union Pacific Railroad Company, a Delaware Corporation, ("UPRR") its successors and assigns, and the State of Idaho Department of Environmental Quality ("Department"), its successors and assigns, sets forth protective provisions, covenants, restrictions, conditions (collectively referred to as "Restrictions") designed to protect natural resources and maintain air and water quality, upon and subject to which the Property (as identified below) and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed.

Each and all of the Restrictions are imposed Pursuant to the Idaho Uniform Conservation Easement Act, Idaho Code 55-2101 through 2109, and the Idaho Environmental Protection and Health Act, Idaho Code 39-101 through 39-130, and Idaho Code 39-7202(1)(Supp. 1996). For purposes of this Declaration, the Department shall be a "holder" as defined in Idaho Code 55-2101(2). UPRR and the Department agree that each and all of the Restrictions are enforceable by the Department, against UPRR.

Ownership. UPRR is the fee owner of certain real property in the City of Bonner's Ferry, County of Boundary, State of Idaho, described as a portion of SE $\frac{1}{4}$  of Section 27, Township 62 North, and is subject to this Declaration ("Property"). The Property is legally described as follows:

The right of way of Spokane International Railroad Company and Lots 1 and 2 of Block 6 of Riverside Second Addition, all situated in the SE $\frac{1}{4}$  of Section 27, Township 62 North, Range 1 East, Boise Meridian, located at Bonners Ferry, County of Boundary, State of Idaho, as recorded in Book 1A of Plats at Page 27, Boundary County Records.

Provisions to Run With the Land. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property.

Concurrence of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants and that their interest in the Property shall be subject to the Restrictions contained herein.

Recording/Filing of Declaration. This Declaration shall be recorded in the county recorder's office in the county where the Property is located within five (5) days of the effective date of this Declaration. UPRR shall provide to the Department a copy of this Declaration evidencing its

recording in compliance with this provision within ten (10) days of the effective date of this Declaration. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property.

Restricted Portion. A portion of the Property ("Restricted Portion") described and depicted in Exhibit "A" attached hereto and made a part hereof was previously used to operate a bulk fuel distribution facility, becoming contaminated with hazardous materials, including, without limitation, nitrates. On June 28, 1999, UPRR entered into a Voluntary Remedial Action with the Department to determine the risk posed by the Restricted Portion. UPRR performed a risk-based corrective action ("RBCA") study of the Restricted Portion. This Declaration is required because the RBCA reported residual concentrations of nitrates in groundwater underlying the Restricted Portion. These concentrations may be at or above risk-based screening levels as determined by the Department and for which future use of the Restricted Portion shall be limited to protect human health and the environment.

Restrictions on Use. By acceptance and recordation of this Declaration, UPRR, and any successors in interest, are hereby restricted from using the Restricted Portion, now or at any time in the future, as set forth below. UPRR, and respective successors in interest, shall be solely responsible for demonstrating that use in the Restricted Portion is in conformity with the following:

1. The Restricted Portion, and any portion thereof, may be used for commercial and industrial uses only. The Restricted Portion shall not be used for residential purposes, agricultural purposes, or any permanently occupied human habitation (including hotels or motels), school, day care or hospital use.
2. There shall be no extraction of ground water under the Restricted Area for any purpose, including, without limitation, drinking by animals or human beings, irrigation or an industrial or commercial use.

The foregoing restrictions on use are herein referred to as the "Restricted Uses."

The Restricted Uses are imposed out of an abundance of caution due to the former use of the Restricted Portion and because certain environmental risk evaluations of the Restricted Portion indicate the presence of nitrates at various locations in the groundwater which may present a risk to public health and the air and water quality at the Property. Further the Restrictions are imposed in furtherance of the public policy as stated in Idaho Code 39-7202(1)(Supp. 1996). UPRR intends further that the Property shall be used in such a manner as to avoid potential harm to persons or property which may result from releases or threatened release of hazardous substances or nitrates.

Variance and Termination. The Restricted Uses set forth above shall apply to the Restricted Portion, or any subdivided portion thereof, unless:

A. The Restricted Portion or subdivided portion thereof is shown in a Department approved risk assessment not to contain nitrates in the groundwater;

B. Contaminated groundwater are remediated to levels the Department deems in writing to be adequate for the Restricted Portion to be developed for any of the Restricted Uses; or

C. UPRR, or its successor in interest, applies to the Department to have this Declaration removed with respect to all or part of the Restricted Portion pursuant to laws, rules and regulations then in effect, and a formal determination is made by the Department in writing to remove the land-use restrictions.

Conveyance of Property. Within thirty (30) days of the closing of any sale, lease, or other conveyance of all or any portion of the Property, the former Owner (in the case of a sale) or Occupant (in the case of a lease) and the then current Owner or Occupant of the Property, or part thereof, conveyed shall provide written notice to the Department of the name and address of all the then Owners and/or Occupants of the Property, or part thereof, conveyed. The Department shall not, by reason of this Declaration, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provided by law, or by administrative order.

Enforcement. Failure of UPRR, or its successor in interest, to comply with any of the Restrictions set forth herein shall be grounds for the Department, or its successor, to require that the Owner modify or remove any improvements, including without limitation, all buildings, regradings and subsurface structures or wells, constructed in violation of this Agreement. Violation of this Declaration shall be grounds for the Department, or its successor, to file civil actions against the Owner as provided by law or in equity, including without limitation, the Uniform Conservation Easement Act, Idaho Code 55-2101, *et. seq.*

Notices. All notices required or permitted to be given hereunder shall be in writing and mailed in the United States Mail postage prepaid by certified or registered mail, return receipt requested, to the appropriate address indicated below or at such other place or places as either UPRR, or its successors, or the Department, or its successors, may, from time to time, respectively, designate in a written notice given to the other. Notices which are deposited in the United States Mail in accordance with the terms of this provision shall be deemed received three (3) days after the date of mailing thereof.

UNION PACIFIC RAILROAD COMPANY:

Union Pacific Railroad Company  
Attn: Law Department  
1416 Dodge Street  
Omaha, NE 68179

THE DEPARTMENT: Idaho Department of Environmental Quality  
2110 Iron Wood Parkway  
Coeur d'Alene, Idaho 83814

Costs and Expenses. All costs of removing this Declaration, including the cost of any remediation or abatement of any environmental condition of or pertaining to the Property, regardless of mechanism used and the frequency thereof, shall be borne by the party seeking such removal. This Declaration shall run with the land and be binding on UPRR and its successors and assigns.

Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such invalidated portion had not been included herein

Headings. Headings at the beginning of each section of this Declaration are solely for the convenience of the parties and are not a part of the Declaration.

Idaho Code References. All references to the Idaho Code sections include successor provisions.

Reservation of Rights. Notwithstanding any provision of this Declaration, the Department retains all of its access and enforcement authorities under any applicable statute or rule. Nothing in this Declaration shall affect the Department's ability to enforce the terms of any voluntary consent order or other agreement relating to remediation of the Property entered into between the Department and UPRR or any other responsible party. Nothing in this Declaration shall affect the obligations of UPRR or any other responsible party under such voluntary consent order or other agreement. The Department's acceptance hereunder is based upon the information presently known or available to the Department with respect to the environmental condition of the Property, and the Department reserves the right to take appropriate action under applicable authorities in the event the Department determines new information warrants such action.

Effective Date. The effective date of this Declaration shall be the date of signature by the Department.

Accepted:

Idaho Department of Environmental Quality - Holder

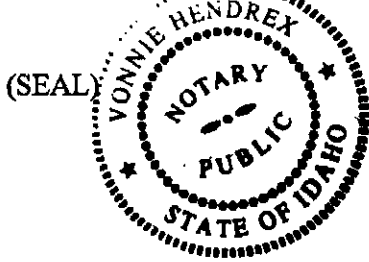
By: GUYEN P. FRANSEN  
Printed: GUYEN P. FRANSEN  
Date: 8/28/03

212178

212108

UPRR Real Estate Folder No. 2186-94

SUBSCRIBED AND SWORN to before me this 28th day of August, 2003.



Vonnie Hendrex

Notary Public for Idaho

Residing at Coeur d'Alene

My Commission Expires: 7-30-99

Property Owner

By: Tony K Love

Printed: TONY K LOVE

Date: AUGUST 4, 2003

(SEAL)



Lisa L. Burnside

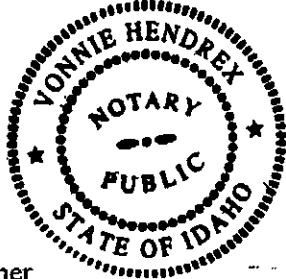
Notary Public for Nebraska

Residing at OMAHA, DOUGLAS COUNTY

My Commission Expires: Dec. 20, 2005

SUBSCRIBED AND SWORN to before me this 28th day of August, 2003.

(SEAL)



Vonnie Hendrex  
Notary Public for Idaho  
Residing at Coeur d'Alene  
My Commission Expires: 7-30-09

Property Owner

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Date: \_\_\_\_\_

(SEAL)

\_\_\_\_\_  
Notary Public for Nebraska  
Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

UNION PACIFIC RAILROAD COMPANY  
Bonners Ferry, Boundary County, Idaho

EXHIBIT "A"

That certain parcel of land lying within the right of way of Spokane International Railroad Company, situate in the SE ¼ of Section 27, Range 62 North, Range 1 East, Boise Meridian, located at Bonners Ferry, County of Boundary, State of Idaho, and more particularly described as follows:

Commencing at a point on the centerline of main track right-of-way within Bonners Ferry and at Railroad Survey Station 2229+27.8 and thence running southeasterly and at right angles to the said centerline a distance of 100 feet to the right-of-way of the main track; thence northeasterly along said right-of-way a distance of 215 feet more or less, to the True Point of Beginning of this description and which is also located 8.5 feet southeasterly of the centerline of spur track No.5; thence from said true point of beginning southeasterly a distance of 70 feet; thence easterly a distance of 25.5 feet; thence southerly a distance of 36.5 feet to a point which is also located 8.5 feet northerly of the centerline of spur track No.6; thence westerly along a line that is 8.5 feet northern of the centerline of spur track No.6, a distance of 165 feet; thence northerly a distance of 15 feet more or less to a point which is also located 8.5 feet southeasterly of the centerline of spur track No.5; thence northeasterly along a line that is 8.5 feet southeasterly of the centerline of spur track No. 5, a distance of 111.6 feet to the True Point of Beginning of this description.

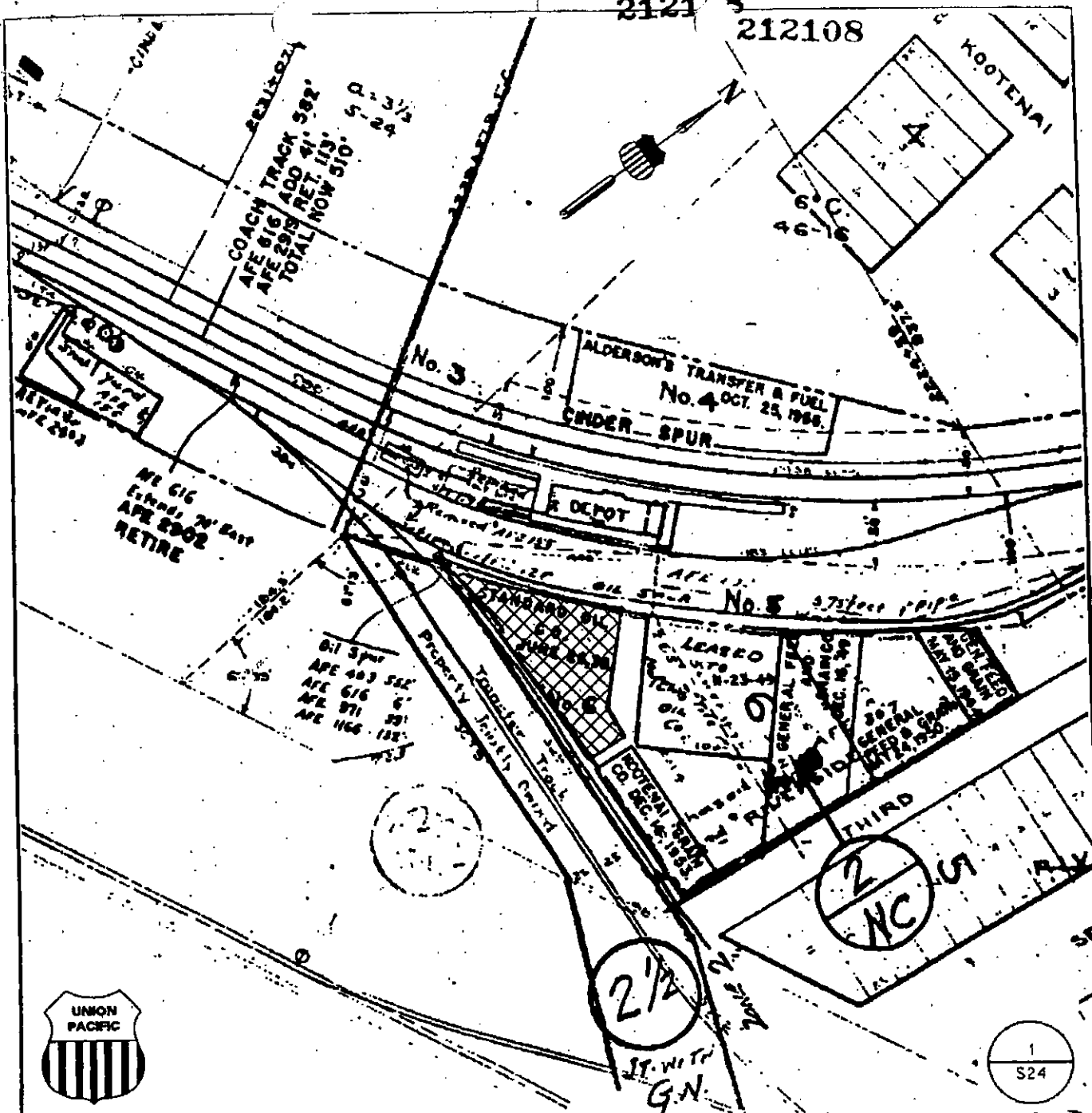
Containing 0.16 Acres more or less.

OFFICE OF REAL ESTATE  
OMAHA, NEBRASKA  
WRITTEN BY: JCO  
June 23, 2003  
866074.leg

STATE OF IDAHO } ss  
County of Boundary }  
Filed By: 1st American Title  
on 9-29-03 at 215  
Diane M. Cartwright  
County Recorder [Signature]  
By Deputy  
Fee \$ 24.00 chg  
Mail to FARCO

STATE OF IDAHO } ss  
County of Boundary }  
Filed By: 1st American Title  
on 9-29-03 at 215  
Diane M. Cartwright  
County Recorder [Signature]  
By Deputy  
Fee \$ 24.00 chg  
Mail to FARCO

212108 212108



**LEGEND:**

RESTRICTED AREA\*   
 UPRRCD. R/W OUTLINED

Area = 0.16 acres more or less

SCAN FILENAME I:\up\id\sirr\1\id1vs24.cit

\* REVISED JD CONSULTING, JWI 8/19/03

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

**UNION PACIFIC RAILROAD COMPANY**

Bonner's Ferry, Boundary, Idaho

M.P. 109.56 - Spokane Sub

TO ACCOMPANY AGREEMENT FOR  
DECLARATION OF RESTRICTIONS\*

SCALE: 1" = 100'

OFFICE OF REAL ESTATE  
DAMA, NEBRASKA DATE: June 23, 2003

JCO FILE: 8660-74