

After Recordation Return to:

392709

Gerard Sullivan
Union Pacific Railroad Company
1416 Dodge St., Room 830
Omaha, NE 68179

DECLARATION OF RESTRICTIONS

BY

UNION PACIFIC RAILROAD COMPANY

ON

**The NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$, Section 34, Township 48 North, Range 5
East, Boise Baseline Meridian in the City of Mullan, County of Shoshone,
State of Idaho**

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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 Health and Welfare, Division 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 owner of certain real property in the City of Mullan, County of Shoshone, State of Idaho, described as Lots 11, 12, 13 and 14, Block 1 of the Townsite of Mullan ("Property") and is subject to this Declaration. The Property is legally described as follows:

The NE 1/4 of the SW 1/4 of the NE 1/4, Section 34, Township 48 North, Range 5 East, Boise Baseline Meridian, depicted on Exhibit "A."

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 to which the Restriction applies, and shall apply to and bind the respective successors in interest thereof.

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 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 ten (10) 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 twenty (20) 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.

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Restricted Portion. A portion of the Property was previously used to operate various bulk oil facilities, becoming contaminated with hazardous materials, including, without limitation, benzene, toluene, total xylenes, and petroleum hydrocarbons. On June 27, 1996, UPRR entered into a Consent Order with the Department to remediate the contamination. UPRR implemented a corrective action plan ("CAP") to remediate the contamination. This Declaration is required because subsequent to CAP completion, residual concentrations of petroleum contaminants, above minimum risk based concentration levels for subsurface soil volatilization to indoor air established by the state, remained in the subsurface soil (soil at and beneath 3 feet below ground surface) in a portion of the Property ("Restricted Portion"). The Restricted Portion includes the center portions of Lots 12 and 13, Block 1 of the Townsite of Mullan as is described and depicted in Exhibit "B".

The Restricted Portion can also be described as a rectangular-shaped section of land with a length of about 90 feet and a width of about 70 feet oriented northeast to southwest. From the center line of River and 2nd Streets, the northeast corner of the rectangular-shaped Restricted Portion is 165 feet north and 58 feet west; the southeast corner is 120 feet north and 10 feet west; the southwest corner is 58 feet north and 72 feet west; and the northwest corner is 105 feet north and 122 feet west, depicted on Exhibit "C". Exhibits "A", "B", and "C" are attached hereto and made a part hereof this Declaration.

Because subsurface soil in the Restricted Portion of the Property still contained residual concentrations of petroleum contaminants above the minimum risk based concentration levels for subsurface soil volatilization to indoor air, 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 to the Property, are hereby restricted from using the Restricted Portion, now or at any time in the future, as set forth below. UPRR, or its respective successors in interest to the Property, shall be solely responsible for demonstrating that use in the Restricted Portion is in conformity with the following:

1. No buildings of any kind or nature shall be constructed or located on the Restricted Portion, except as approved by the Department
2. The Restricted Portion, and any portion thereof, may be used for commercial, industrial, and outdoor recreation 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.
3. There shall be no removal of subsurface soil from the Restricted Portion of the Property, unless it is part of a remediation action approved by the State. Ground water petroleum compound concentrations over the Property were proven to be protective of human health and the environment based on the CAP, but potentially may pose a nuisance due to odor and taste. Therefore, there shall be no extraction of ground water at the Property for any

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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 Property and because certain environmental risk evaluations of the Restricted Portion indicate the presence of petroleum hydrocarbon compounds in subsurface soil at concentrations exceeding the minimum risk based concentration levels for volatilization of subsurface soil to indoor air established by the state which, as determined by the Department may present a risk to public health and the air 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).

Variance and Termination. The Restricted Uses set forth above shall apply to the Property, 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 petroleum hydrocarbon compounds in subsurface soil at concentrations exceeding the minimum risk based levels for subsurface soil volatilization to indoor air established by the State;

B. contaminated subsurface soils 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 successors 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 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 current 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 successors in interest to the Property, 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

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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.

UPRR: Assistant Vice President – Real Estate
Union Pacific Railroad Company
1416 Dodge Street – WP001
Omaha, NE 68179

THE DEPARTMENT: Idaho Division of Environmental Quality
2110 Ironwood Parkway
Coeur d'Alene, Idaho 83814-2648

Costs and Expenses. All costs of removing the foregoing deed restrictions to the Property, regardless of mechanism used and the frequency thereof, shall be borne by the party seeking such removal.

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.

No Admission. Nothing herein shall be construed as an admission by Union Pacific with respect to: 1) operations of activities on or around the Property; 2) the presence or release of hazardous substances, material, pollutants or contaminants ("hazardous materials") at, in, on, under, around or from the Property; or 3) any actual or potential threat to public health, welfare or the environment arising out of or related to such hazardous materials.

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.

No Precedent. This Declaration applies to this Property only and shall not establish a precedent for any other sites or locations.

No Assignment. The Department may not convey, transfer, or assign its interest as a "holder" without the express written consent of UPRR.

Idaho Code References. All references are to the current Idaho Code.

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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, or of UPRR to contest such an action. 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, and UPRR reserves the right to contest such an action and reserves any rights or defenses it may have.

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

Accepted:

Idaho Division of Environmental Quality- Holder

By: *Gwen P. Fransen*
Printed: Gwen P. Fransen
Its: Regional Administrator
Date: 2/15/2000

Property Owner

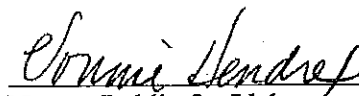
By: *Lawrence E. Wzorek*
Printed: Lawrence E. Wzorek
Its: Assistant Vice President - Law
Date: 2/14/2000

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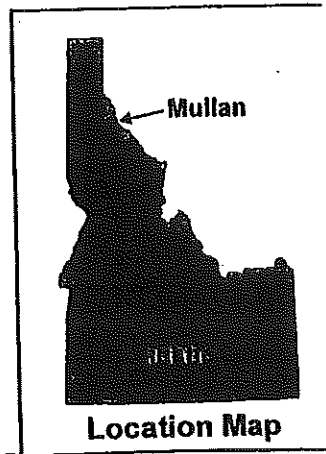
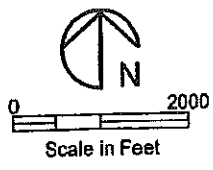
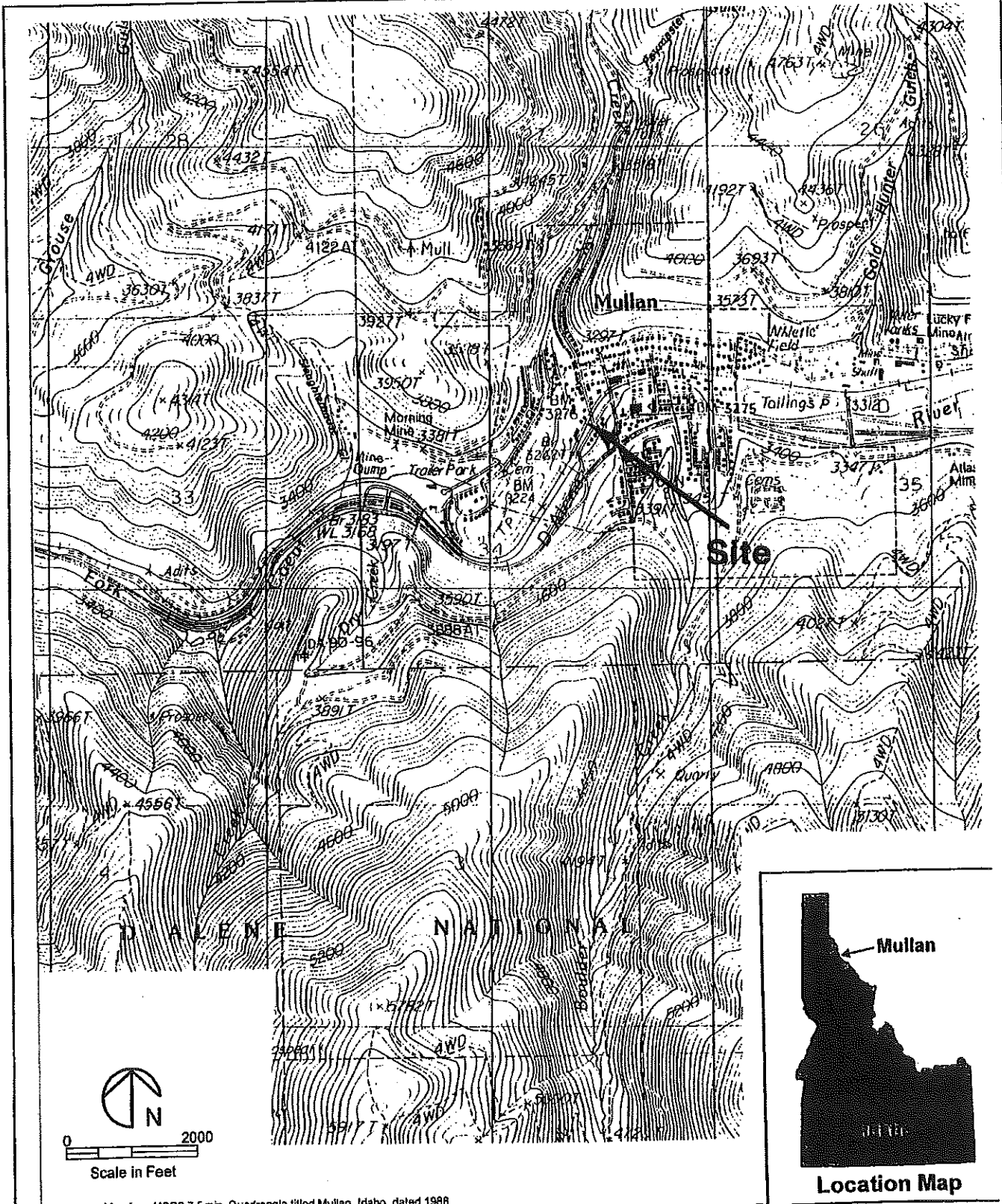
SUBSCRIBED AND SWORN to before me this 18th day of February, 2000.

(SEAL)



Notary Public for Idaho
Residing at Coeur d'Alene
My Commission Expires: 7-15-2003

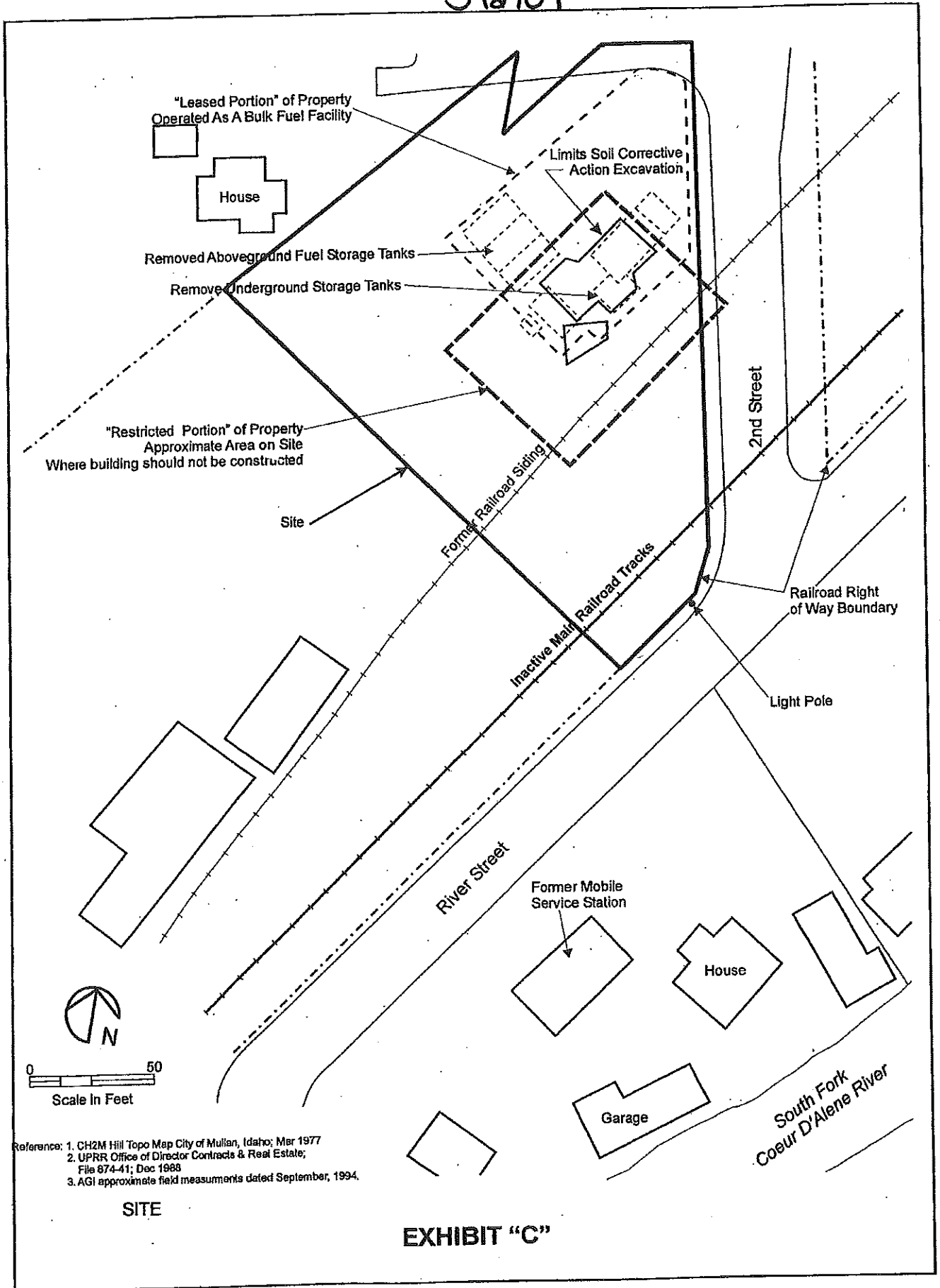
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Reference: Map from USGS 7.5 min. Quadrangle titled Mullan, Idaho, dated 1988.

EXHIBIT "A"

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Reference: 1. CH2M Hill Topo Map City of Mullan, Idaho; Mar 1977
 2. UPRR Office of Director Contracts & Real Estate; File 874-41; Dec 1988
 3. AGI approximate field measurements dated September, 1994.

SITE

EXHIBIT "C"

RECORDED
at the request of

392709

UNION PACIFIC RAILROAD CO.

MISCELLANEOUS

Return to:

GERARD SULLIVAN

UNION PACIFIC RAILROAD CO.

1416 DODGE ST. ROOM 830

OMAHA, NE 68179

'00 FEB 22 PM 2 47

Fee \$ 33.00

MARCIA WINGFIELD
SIOUX CITY RECORDER
BY *[Signature]* DEPUTY