



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region8

October 14, 2020

Ref: SEMD-C

Martha Williams, Director
Montana Department of Fish, Wildlife & Parks
1420 East Sixth Avenue
P.O. Box 200701
Helena, Montana 59620-0701

RE: Burlington Northern (Somers Plant) Superfund Site (Site) Comfort/Status Letter

Dear Martha:

Thank you for contacting the U.S. Environmental Protection Agency about the plans of the Montana Fish Wildlife and Park (FWP) concerning property described as follows: County Tax Assessor Parcels 0000006026 and 0000799150; Legal Description S25, T27 N, R21 W, 15283-2&4, PARCEL 000, TR 1A IN NW4NW4 & L3, L4 & L5 TR 4AA IN L4 & L5 and 10564-G, PARCEL N/A, TR 2E IN NW4NW4 & L5 (Property). The Property is adjacent to the Burlington Northern (Somers Plant) Superfund Site, in Flathead County, Montana. EPA understands that FWP intends to purchase approximately 106 acres of land along the north shore of Flathead Lake, east of the community of Somers and adjacent to the Site. FWP has requested that EPA provide a Superfund comfort/status letter before acquiring the Property.

Under the federal Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA," commonly referred to as "Superfund"),¹ the Agency's mission is to protect human health and the environment from actual or potential risks posed by exposure to contaminated or potentially contaminated land and other media. A Superfund cleanup can help return lands to productive reuse. We are providing this letter consistent with the Agency's 2019 Comfort/Status letter guidance.² This letter will provide you with information that may be relevant to the potential CERCLA liability concerns at the Property and summarize relevant information about the Site currently available to EPA. We hope this information will enable you to make informed decisions regarding the Property's cleanup status and CERCLA's liability protections as you move forward with a decision about the Property.

Property Status

Information on sites that are or may be contaminated with hazardous substances and may warrant action under Superfund, including site-specific documents and fact sheets, is recorded in the EPA's Superfund Enterprise Management System (SEMS). SEMS includes a public access database with information about sites EPA is addressing, which may be accessed at

¹ 42 U.S.C. §§ 9601, *et seq.*

² See [2019 Policy on the Issuance of Superfund Comfort/Status Letters](#).

<https://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>. Specific information about the Site is at <https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0800390>. Additional site-specific information can also be obtained at the EPA Region 8 Montana Office, Federal Building, Suite 3200, 10 West 15th Street, Helena, Montana 59626, hours: Mon-Fri 8 a.m. to 5 p.m. 1-866-457-2690 (toll free).

The Property is located adjacent to the Site in unincorporated Somers, Flathead County, Montana. For the reasons stated below, EPA is addressing the Site under Superfund authority.

History and Status of the Site

The Site operated as a railroad-tie- and wood-treatment facility by the Burlington Northern Santa Fe Railway Company (BNSF) and its predecessors between 1901 and 1986. The primary wood treating constituent was creosote. Historical operations resulted in impacts to soil and groundwater, as well as sediments in Flathead Lake. During historical operations, wastewater was disposed of in a cistern now referred to as the CERCLA lagoon. Overflow was directed via drainage ditch to an area adjacent to Flathead Lake, referred to as the Swamp Pond, close to Flathead Lake.

The Site was proposed for listing on the National Priorities List (NPL) in October 1984. The proposed listing cited potential negative effects on Flathead Lake and the water supply for the town of Somers, which drew water from the lake at the time. In 1985, BNSF performed an emergency removal action and removed approximately 3,000 cubic yards (cy) of impacted soil and over 100,000 gallons of water from the Swamp Pond and a portion of the drainage ditch that drains into the Swamp Pond and armored the Flathead Lake shoreline in front of the Swamp Pond with rip rap.

In 1988, a small area of creosote was noticed on the surface of the beach sediment near the Swamp Pond. On further investigation, BNSF found that the impacted area of beach sediment ran approximately 30 feet along the riprap wall and 20 feet out into the beach in a semicircular pattern. Creosote impacts were limited to the surface of the sediment and were not encountered at a depth greater than 1.5 feet. The area was excavated to a depth of 24 to 30 inches at the center and 12 to 18 inches at the edges. Approximately 40 cubic yards of creosote-impacted sediment were removed. The excavation was backfilled with clean material. Following the beach excavation and removal, a test pit 20 feet long by 6 to 8 feet deep was excavated alongside the riprap wall on the inland side. An area of creosote-impacted soil was found in the eastern portion of the test pit, and a groundwater seep appeared to enter from the west. To prevent further migration along this seep, a high-density polyethylene liner was placed along the lakeside wall of the test pit. Soil borings were also completed in 1988 on BNSF beach-front property during low water, and the borings indicated the presence of creosote-impacted sediments. The evidence of contamination began at two feet below ground surface and extended to a depth over eight feet and over an area of 22,500 ft². Contamination is not continuous but appeared to be limited to decayed root channels.

EPA issued a Record of Decision (ROD) in 1989 selecting the remedy to address the contamination at the Site. The soils and sediments treatment components of the ROD included excavation and onsite biological treatment of the impacted media as well as restoration and/or replacement of wetlands lost during cleanup activities. The ROD also provided that contaminated beach sediments were only exposed during low water and the two feet of clean sand on top of the impacted beach sediments acted as a protective cap. The groundwater treatment components of the remedy included installation and operation of a water treatment system to remove and treat available free creosote contamination from the water table aquifer in the CERCLA lagoon and Swamp Pond areas as well as in-situ biological treatment to degrade both contaminants adsorbed onto the aquifer matrix and residual contaminants dissolved in

the groundwater. The ROD also established soil/sediment and groundwater cleanup levels for the contaminants of concern at the Site (polycyclic aromatic hydrocarbon (PAH) compounds, phenols, benzene, and zinc). Institutional Controls (ICs) placement was also required on impacted properties.

BNSF and EPA entered into a Consent Decree in 1991 for the implementation of the remedy specified in the ROD. EPA subsequently removed its proposal to include the Site on the NPL in 1992. This does not affect EPA's authority under CERCLA and all response actions at the Site are being conducted by BNSF under CERCLA and the Consent Decree.

In 1992, EPA modified the selected soil and groundwater remedies through an Explanation of Significant Differences (ESD). The ESD presented a practicability determination for innovative bioremediation technology. The ESD also required additional excavation of creosote-impacted soil and increased the estimated timeframe for groundwater restoration from 10 to 15 years to 50 years. The period of 50 years was considered the maximum reasonable period.

A second ESD was issued in 1998. During the first 5-year review conducted by EPA in 1997, new toxicity information and resulting impacts to ROD cleanup levels and treatment goals were evaluated in accordance with the National Contingency Plan. The 1998 ESD revised the risk-based levels for soil and groundwater in the ROD using new toxicity information. The revised cleanup levels were determined to be as protective as the 1989 levels based on new understanding that several PAH compounds are less toxic than assumed in 1989.

Following issuance of the 1992 ESD, impacted soil and sediment exceeding the ROD soil cleanup levels were excavated from the drip track, retort building, CERCLA lagoon, drainage ditch, slough bank, and Swamp Pond from 1992 through 1993. Site excavation activities resulted in the removal of approximately 53,360 cubic yards of soil, which were placed in an on-site land-treatment unit. EPA concluded that the soil excavation component of the remedy at the CERCLA lagoon, Swamp Pond, drip track, and retort building was complete in 1996.

The second component of the soil and sediment remedy specified in the ROD was the restoration and/or replacement of wetlands. To meet this requirement, BNSF rehabilitated the former Swamp Pond to a functional wetland and acquired wetland acreage on the north shore of Flathead Lake.

BNSF recorded deed restrictions on its property on February 26, 2020, as part of the final soil and sediment remedy component. The covenants, conditions and restrictions that apply to the use of BNSF's property include restrictions on excavation, a well prohibition, residential use restrictions, protection of the integrity of the remedial action, and evaluation of new structures for vapor intrusion potential. No deed restrictions have been filed or are anticipated to be filed on the Property that FWP is interested in acquiring. Additional regulations that pertain to the Property were adopted by Flathead County in 1982 as provided for under 75-7-207 Montana Code Annotated (MCA) for protection of Flathead Lake. These additional regulations also encompass the Swamp Pond and areas where impacted sediments remain.

In 2017, EPA was notified of sheens along the Swamp Pond shoreline during low water. Sample results indicated that the sheen was biological in nature. However, observations near the Swamp Pond prompted concerns that shoreline erosion may have the future ability to compromise the remedy in this area. The northern shoreline of Flathead Lake, including the Property and BNSF-owned portions of the shoreline, appears to be especially susceptible to erosional processes since 1985. To address these concerns, BNSF constructed a shoreline stabilization project on the BNSF-owned shoreline of Flathead Lake in early 2018. Based on existing conditions and applicable design guidance, an offshore gravel beach, a restored emergent wetland, and an expanded riparian buffer were constructed on BNSF

property for shoreline stabilization. EPA understands that additional erosion protection measures will be constructed along the shoreline of the Property adjacent to the BNSF-owned shoreline prior to FWP acquiring the Property. EPA supports these measures.

Groundwater treatment operations began in 1994. The groundwater remedial action consisted of installation of 6 extraction and 14 injection wells, and construction of facilities to treat and enrich extracted groundwater prior to reinjection. Groundwater extraction and treatment operations terminated in 2007 when BNSF demonstrated that insufficient creosote could be removed from the subsurface due to the low permeability aquifer matrix. Manual recovery of residual creosote in the subsurface has occurred at the Site since 2011 through pumping and the use of sorbent socks.

A controlled groundwater area (CGA) designation was approved by the Montana Department of Natural Resources and Conservation in 2003 and revised in 2018. The CGA includes the alluvial and underlying bedrock aquifer and prohibits the installation of groundwater supply wells or the extraction of groundwater for any purpose other than remediation. The revised CGA expanded the lateral boundaries to encompass the current groundwater impacts at the Site and includes portions of the Property that FWP is interested in acquiring.

Because waste has been left in place above levels that do not allow for unlimited use and unrestricted exposure, five-year reviews must be conducted. The latest five-year review, completed in 2017, determined that the remedy currently protects human health and the environment because remedial actions (including ICs) have addressed Site risk.

Reuse of the Property

Based on the information provided, EPA understands that FWP intends to create a new state park at the Property for inclusion in the Montana State Park system. EPA also understand from the conceptual design submitted on July 10, 2020, that the development of the Property includes, but may not be limited to, the following:

- Potential rental cabins with reserved parking spaced 100 feet apart and from adjacent residences
- Potential hand launch for non-motorized boats (no parking)
- Comfort station with flush toilets
- Day use parking
- Hardened trail system
- A primitive camping loop that includes shared day use/tent camp, comfort station, tent sites, hardened path to all sites and dedicated parking
- Administrative ranger and contact station
- Administrative maintenance building
- Individual camping loop that includes a comfort station with flush toilets and showers, playground, RV sites, electrical hookup, two full-service host pads and maintenance storage

Please note that, to ensure the remedy remains protective of human health and the environment, any development must be compatible with EPA cleanup actions and ICs designed to protect the remedy and prevent unacceptable exposure to residual contamination. Several examples of reasonable steps that FWP can take to ensure the remedy remains protective are identified below in the reasonable steps section of this letter. As you plan to develop the Property further, please continue to discuss the development with EPA and the Montana Department of Environmental Quality (DEQ).

CERCLA's Bona Fide Prospective Purchaser Liability Protection

EPA understands that you are interested in information regarding the bona fide prospective purchaser (BFPP) provision of CERCLA. Congress amended CERCLA in 2002 to exempt certain parties who buy contaminated or potentially contaminated properties from CERCLA liability if they qualify as BFPPs. The BFPP provision provides that a person meeting the criteria of CERCLA §§ 101(40) and 107(r)(1), and who purchases the property after January 11, 2002, will not be liable as an owner or operator under CERCLA.

The Agency has issued guidance discussing some of the BFPP criteria. See *Enforcement Discretion Guidance Regarding Statutory Criteria for Those Who May Qualify as CERCLA Bona Fide Prospective Purchasers, Contiguous Property Owners, or Innocent Landowners* ("Common Elements") (Common Elements Guidance) (July 29, 2019), available at <https://www.epa.gov/enforcement/common-elements-guidance>. Based upon your representation of your situation, the BFPP provision may apply. Note that a court, rather than EPA, ultimately determines whether a landowner has met the criteria for BFPP status.

You have also asked what actions may constitute reasonable steps for the Property. Based on the information evaluated to date, EPA believes that the following may be reasonable steps related to the hazardous substance contamination found at the Site:

- 1) Allow EPA, DEQ, BNSF and their authorized representatives continued access to the Property for groundwater monitoring, five-year reviews, remedy evaluation, and monitoring compliance with Institutional Controls.
- 2) If necessary, coordinate with EPA and DEQ to place a Declaration of Restrictive Covenants on the Property (Institutional Controls) pursuant to Section 101(40)(B)(vi) of CERCLA and Section § 75-10-727, MCA, with the approval of EPA and the DEQ, third-party beneficiaries of these ICs. Restrictive covenants may include, but may not be limited to, excavation restrictions, well prohibitions, residential use restrictions, continued protection of the integrity of the remedial action, and consideration of the potential for vapor intrusion of any enclosed building or structure constructed within the Property. An example of a deed restriction that has been placed on adjacent BNSF properties along Somers Road is attached to this letter.
- 3) Call EPA's Region 8 Emergency Response Center hotline at 303-293-1788 to report the discovery or release of any hazardous substances.
- 4) Continue to work with BNSF, DEQ and EPA on any proposed redevelopment.
- 5) Do not construct any structures or perform any activities or allow any visitors to perform any activities that will or may interfere with BNSF's cleanup or exacerbate contaminated conditions at the Site.

Any reasonable steps suggested by EPA are based on the nature and extent of contamination currently known to the Agency and are provided as a guide to help you as you seek to reuse the Property. Because a final determination about which steps are reasonable would be made by a court rather than EPA, and because additional reasonable steps may later be necessary based on site conditions, this list of reasonable steps is not exhaustive. You should continue to identify reasonable steps based on your

observation and judgment and take appropriate action to implement any reasonable step whether or not EPA regional staff have identified any such steps.³

State Actions

We can only provide you with information about federal Superfund actions at the Site, federal law and regulations, and EPA guidance. For information about potential state actions and liability issues, please contact Dick Sloan, DEQ Project Officer, at rsloan@mt.gov (406) 444-6442.

Conclusion

EPA remains dedicated to facilitating the cleanup and reuse of contaminated properties and hopes the information contained in this letter is useful to you. Please note that the letter does not offer conclusive statements about Site conditions or liability. EPA strongly recommends you consult your own environmental professional, legal counsel, and your state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or redevelop the Property. These consultations may help you obtain a greater level of comfort about the compatibility of the proposed use and ensure compliance with any applicable federal, state, local, and/or tribal laws or requirements. If you have any additional questions or wish to discuss this information further, please feel free to have your staff contact me at hoogerheide.roger@epa.gov (406) 457-5031 or Andy Lensink at lensink.andy@epa.gov (303) 312-6908.

Sincerely,

Roger Hoogerheide
Remedial Project Manager

Enclosure (Example of a Declaration of Restrictive Covenants placed on BNSF Property)

cc: Andy Lensink, EPA
Joe Vranka, EPA
Dick Sloan, DEQ
Jessica Wilkerson, DEQ
Carolina Balliew, DEQ

³ CERCLA § 101(40)(B)(iv) provides that “The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to (i) stop any continuing release; (ii) prevent any threatened future releases; and (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.”



CERTIFIED

After Recording Return To:

Doug McCreynolds
Director Environmental Project Controls
BNSF Railway Company
2500 Lou Menk Drive, AOB3
Fort Worth, Texas, 76131

0066220, 6192301, 0192150, 0561610, 0136600
**

DECLARATION OF RESTRICTIVE COVENANTS ON REAL PROPERTY

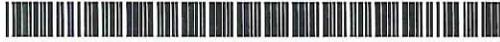
1. This Declaration of Restrictive Covenants on real property ("Institutional Controls") is made this 16th day of January, 2020, by BNSF Railway Company ("BNSF", which term includes its successors and assigns), pursuant to Section § 75-10-727, Montana Code Annotated ("MCA"), with the approval of the United States Environmental Protection Agency ("EPA") and the Montana Department of Environmental Quality ("DEQ"), third-party beneficiaries of these Institutional Controls.
2. WHEREAS, BNSF is the owner of real property located in the County of Flathead, State of Montana that includes County Tax Assessor parcels #66220, #192301, #192150, #561610, and #136600 hereinafter referred to as the "Property." The Property is part of the Burlington Northern (Somers Tie Plant) Superfund site (Site) [EPA ID No. #MTD053038386] and is located in northwestern Montana in the unincorporated town of Somers, Flathead County more particularly described by its attached Legal Description;
3. WHEREAS, EPA and BNSF entered into a Consent Decree to resolve claims related to cleanup of hazardous substances on or near the Property. *United States of America v. Burlington Northern Railroad Company et al.*, U.S. District Court Case No. CV-91-32-M-CCL entered by the Court on or about December 20, 1991. EPA consults with DEQ prior to making significant decisions under the Consent Decree, however, DEQ is not a party to the Consent Decree.
4. WHEREAS, creosote consisting of polycyclic aromatic hydrocarbons (PAHs), tar acids, tar bases, petroleum derivative compounds and phenolic compounds may be present in the soil and are present in groundwater beneath portions of the Property above levels that allow for unlimited use and unrestricted exposure;



5. WHEREAS, BNSF agrees to place this Declaration of Restrictive Covenants on the use of the Property to mitigate potential risk posed to the public health, safety, and welfare and the environment; and

NOW, THEREFORE, BNSF hereby agrees and declares:

6. Restrictions on Use: The provisions of these Institutional Controls of the Property shall run with the land and bind all holders, owners, lessees, occupiers, and purchasers of the Property. The following covenants, conditions and restrictions apply to the use of the Property:
- a) **RESTRICTIONS ON EXCAVATION:** No excavation is allowed without prior consultation with EPA and DEQ. No excavation shall be allowed on the Property where the excavation reaches saturated soil, groundwater, or at depths beyond five feet, whichever is shallowest, except as otherwise requested by BNSF and authorized by EPA and DEQ in writing.
 - b) **WELL PROHIBITION:** No wells may be drilled within the boundaries of the Property without the express prior written approval of EPA and DEQ. Groundwater within the Property may not be used for any purpose other than sampling except as otherwise authorized by EPA and DEQ in writing. Nothing shall be done to disturb the function of any new and existing groundwater monitoring wells on the Property except as otherwise authorized by EPA and DEQ in writing.
 - c) **NO RESIDENTIAL USE:** No residential use may occur on the Property. Residential use includes, but is not limited to permanent residential use; temporary residential use; limited residential use; short-term residential use; children's day care; mobile homes with or without footings; mobile home with or without a pad; or camping.
 - d) **PROTECTION OF THE INTEGRITY OF REMEDIAL ACTION:** BNSF and any future Property Owner shall not take, allow, or permit action on the Property if such action is reasonably likely to create an excessive risk of migration of hazardous or deleterious substances or a potential hazard to public health, safety, or welfare or the environment or will result in a disturbance of the structural integrity of any engineering controls designed or utilized at the Site to contain hazardous or deleterious substances or to limit human or environmental exposure to the hazardous or deleterious substances, except as otherwise authorized by EPA and DEQ in writing.



- e) **VAPOR INTRUSION POTENTIAL:** Excepting structures necessary for environmental investigations or remediation, any enclosed building or structure constructed within this area requires consideration of the potential for Vapor Intrusion. Such consideration may be through: monitoring, acceptable to EPA and DEQ, to confirm that Vapor Intrusion potential is not at or exceeding acceptable levels of risk; constructing with a sealed foundation; or constructing with a vapor control system installed and maintained to prevent the migration of vapors into the building or structure.
7. BNSF and any future Property Owner agree to provide DEQ and EPA (including their representatives and contractors, and all representatives and contractors of any person conducting DEQ or EPA-approved response actions on the Property) access at reasonable times to the Property. When possible, DEQ and EPA shall provide the Property Owner with reasonable notice of access pursuant to this section. Nothing in this document shall limit or otherwise affect EPA's or DEQ's rights of entry and access or EPA's or DEQ's authority to take response actions under CERCLA, the National Contingency Plan, or other federal or state law.
8. Any conveyance of all or a portion of the Property must clearly state that BNSF shall remain an intended beneficiary of these Institutional Controls. The conveyance shall specify that the remedy of "specific performance" will be available to BNSF for violations of these Institutional Controls. The conveyance shall also specify that at all times after Owner conveys its interest in the Property and no matter what person or entity is in title to or in possession of the Property, BNSF and its agents shall retain the right to enter the Property at reasonable intervals and at reasonable times of the day in order to inspect for violations of the Institutional Controls contained herein.
9. Property Owner and/or BNSF shall notify DEQ and EPA within thirty (30) days or less of Property Owner and/or BNSF, its agents, representatives, successors in interest, or assignees, receiving actual or constructive notice of any violation or potential violation of these Institutional Controls.
10. Property Owner will notify DEQ and EPA of any proposed conveyance of all or a portion of the Property at least thirty (30) days prior to any such conveyance. DEQ and EPA need not be notified of conveyances of easements that are solely overhead (e.g., easements for utility lines) and do not involve any prohibited activities specified in Section 6 of these Institutional Controls, and such conveyances do not need to include notice of these Institutional Controls.
11. The rights provided to DEQ and EPA in these Institutional Controls include any successor agencies of DEQ and EPA.



12. Filing and Notice Requirement. Owner must cause these Institutional Controls and any EPA and DEQ approved modifications to be recorded in the office of the Clerk and Recorder of Flathead County, Montana. These Institutional Controls apply in perpetuity and every subsequent instrument conveying an interest in all or any portion of the Property, including, but not limited to, deeds, leases and mortgages, must include a notice of the existence of these Institutional Controls and their recording reference. The notice must be in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN INSTITUTIONAL CONTROL. Because of the presence of creosote consisting of polycyclic aromatic hydrocarbons (PAHs), petroleum compounds, and phenolic compounds in soils and groundwater, soil excavation reaching saturated soils or groundwater is prohibited without the prior written approval of DEQ and EPA. Groundwater wells are prohibited on the Property because of the potential for these same contaminants.

The full restrictions must be reviewed within the original Institutional Control, which is DATED _____ 2020, RECORDED IN THE PUBLIC LAND RECORDS ON _____ 2020, IN BOOK [insert recording reference all in bold], PAGE _____, IN FLATHEAD COUNTY, DOCUMENT _____.

Within sixty (60) days of the date any such instrument or conveyance is executed, Owner must provide EPA and DEQ with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference. Any conveyance of all or a portion of the Property must include a requirement to include the language in this Section in all future conveyances.

13. Enforcement of Institutional Controls. BNSF has agreed to enforce the requirements of these Institutional Controls and take prompt action to correct any violations of these Institutional Controls. BNSF is entitled to enforce these Institutional Controls as an intended beneficiary thereof. BNSF specifically agrees that the remedy of "specific performance" of these Institutional Controls will be available to BNSF in such proceedings.
14. EPA and DEQ are entitled to enforce the terms of these Institutional Controls as third-party beneficiaries including, but not limited to, the authority provided by the Comprehensive Environmental Cleanup and Responsibility Act (CECRA) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). BNSF specifically agrees that the remedy of "specific performance" of these Institutional Controls shall be available to DEQ and EPA in such proceedings. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including



CERCLA and CECRA. Any forbearance, delay or omission to exercise rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver of such term or of any subsequent breach of the same or any other term, or of any of the rights under this instrument. Venue for enforcement of these Institutional Controls by EPA and/or DEQ shall be in the First Judicial District Court, Montana.

15. Notices. Any notice, demand, request, consent, approval or communication that any party desires or is required to give to the others shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

Owner:	<p>BNSF Railway Company Environmental Department/Real Estate 2500 Lou Menk Dr., AOB-3 Fort Worth, TX 76131</p> <p>BNSF Railway Company Attn: Manager of Environmental Remediation 800 North Last Chance Gulch, Suite 101 Helena, MT 59601-3351</p>
EPA:	<p>Superfund Branch Chief, Montana Operations Office U.S. Environmental Protection Agency Baucus Federal Building 10 West 15th Street, Suite 3200 Helena, MT 59620</p>
DEQ:	<p>Bureau Chief, Federal Superfund Bureau Montana Department of Environmental Quality Attn: Burlington Northern Somers Plant Superfund Site P.O. Box 200901 Helena, MT 59620-0901</p> <p>Legal- Waste Management & Remediation Division Montana Department of Environmental Quality Attn: Burlington Northern Somers Plant Superfund Site P.O. Box 200901 Helena, MT 59620-0901</p>

16. Controlling Law. The interpretation and performance of this instrument shall be governed by the laws of the United States and the laws of the State of Montana.



- 17. Where approval in writing is required herein by DEQ and EPA for some action on the Property, BNSF and the third-party beneficiaries of this Restriction agree and acknowledge that to the extent such action is required by EPA pursuant to the Consent Decree and any subsequent amendments, written approval from EPA only would be needed to take any such action otherwise restricted herein.

- 18. These Institutional Controls were approved by EPA and DEQ's signed approval follows. These Institutional Controls shall run with the land and be binding on all successors in interest to the Property until the Institutional Controls are removed in whole or in part or modified in accordance with Section § 75-10-727 MCA and recorded in the land records referenced in Section 12 above.

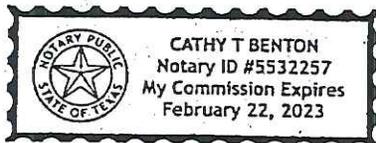
BNSF RAILWAY COMPANY

By: *Blaine Bilderback*
Blaine Bilderback, solely in his capacity as Director
Real Estate, and not his individual capacity.

STATE OF TEXAS
COUNTY OF TARRANT

The foregoing instrument was acknowledged before me this 16th day of January, 2020, by Blaine Bilderback on behalf of BNSF Railway Company, a Delaware Corporation, and not in his individual capacity, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year written above



Cathy T Benton
Notary Public
Address: *Weatherford, TX*
My commission expires: *Feb. 22, 2023*



MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY APPROVAL OF INSTITUTIONAL CONTROLS

Upon execution by the authorized signatory below, in accordance with Montana Code Annotated Section § 75-10-727, the Montana Department of Environmental Quality approves the institutional controls for BNSF Railway Company Properties as set forth in the Declaration of Restrictive Covenants on Real Property for County Tax Assessor parcels #978433 and #12991, and a portion of County Tax Assessor parcel #978432, more particularly described in the accompanying instrument, for the Burlington Northern Somers Tie Plant Superfund Site:

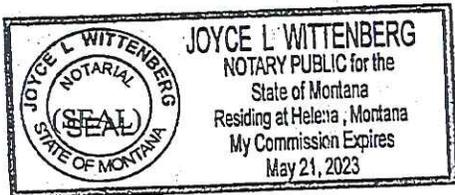


By: Jenny Chambers
DEQ Waste Management & Remediation Division Administrator

STATE OF MONTANA)
COUNTY OF LEWIS AND CLARK)

On this the 18th day of February, 2020, before me, a Notary Public in and for the State of Montana, personally appeared Jenny Chambers, the Waste Management & Remediation Division Administrator of DEQ. Known to me or satisfactorily proven to be the person(s) who executed this Montana Department of Environmental Quality Approval of Institutional Controls, and acknowledged that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my notarial seal on the day and year first above written.



Notary: 
Printed Name: _____
Notary Public for the State of Montana

My Commission Expires: _____

Attachments

- 1 Property Overview Map
- 2 Property Legal Description



- Legend**
- Somers Road Parcels
 - BNSF Property Outline
 - Approximate LTU Boundary

Note: Imagery is Georeferenced
Approximately 18.5 feet off of true,
at a 20° Azimuth (Magnetic North).



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

DESCRIPTION

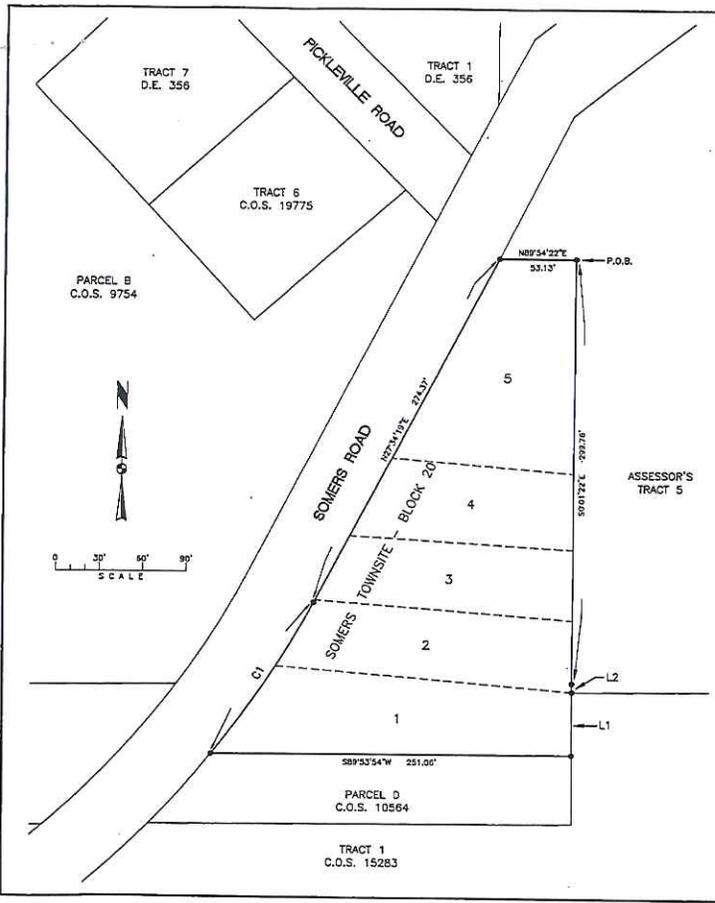
A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24, AND IN THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 27 NORTH, RANGE 21 WEST, PALM, FLATHEAD COUNTY, MONTANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
 COMMENCING AT THE NORTHEAST CORNER OF BLOCK 20 OF SOMERS TOWNSITE, RECORDS OF FLATHEAD COUNTY, AND THE POINT-OF-BEGINNING; THENCE S0°12'22"E ALONG THE EAST BOUNDARY OF SAID BLOCK, 299.75 FEET; THENCE S0°08'56"E ALONG SAID BOUNDARY, 6.01 FEET; THENCE S70°05'43"E ALONG SAID BOUNDARY, 45.25 FEET TO THE SOUTHWEST CORNER OF SAID BLOCK; THENCE S89°33'54"W ALONG THE SOUTH BOUNDARY OF SAID BLOCK, 251.06 FEET TO THE SOUTHWEST CORNER OF SAID BLOCK; THENCE ALONG THE WEST BOUNDARY OF SAID BLOCK ON A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 661.62 FEET, A CENTRAL ANGLE OF 11°12'34", A CHORD BEARING OF N33°10'36"E AND A CHORD DISTANCE OF 129.23 FEET, AN ARC LENGTH OF 129.44 FEET; THENCE N27°34'19"E ALONG SAID BOUNDARY, 274.37 FEET TO THE NORTHWEST CORNER OF SAID BLOCK; THENCE N89°54'22"E ALONG THE NORTH BOUNDARY OF SAID BLOCK, 33.13 FEET TO THE POINT-OF-BEGINNING.



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 FOR NO. [blank] BY: [blank]
 FILE NO. [blank]

BURLINGTON NORTHERN & SANTA FE RAILWAY
 SOMERS, MONTANA
 DEED RESTRICTION EXHIBIT
 SOMERS ROAD PARCELS

SOMERS RD. PARCELS
 SHEET 1



LINE LABEL		
LINE #	BEARING	DISTANCE
L1	S0°05'43"E	45.25'
L2	S0°08'56"E	6.01'

CURVE TABLE					
CURVE	RADIUS	DELTA	ARC LENGTH	CHORD BEARING	CHORD LENGTH
C1	661.62'	11°12'34"	129.44'	N33°10'36"E	129.23'

202000005100
 Page: 9 of 9
 Fees: \$63.00
 2/26/2020 9:02 AM



STATE OF MONTANA)
COUNTY OF FLATHEAD)

I, Debbie Pierson County Clerk and Recorder,
in and for said county of Flathead, State of
Montana hereby certify the annexed and
following to be a full, true, and correct copy of
a certain Decl CCR

together with the endorsement therefor as the
same appears of record in this office, witness
my hand, and seal of said Flathead County,
Montana, affixed this

24 day of February, A. 2020

Debbie Pierson
COUNTY CLERK

BY: K. Dauvenport
DEPUTY