

After Recording Return  
Original Signed Covenant to:  
Jeff Newschwander  
Toxics Cleanup Program  
Department of Ecology  
1250 West Alder Street  
Union Gap, WA 98903-0009

### **Environmental Covenant**

**Grantor:** Port of Chelan County, Washington

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

**Brief Legal Description:** WILLOWDALE LOT 13 PARCEL K BLA 2011-118CA, LOT K CE 2009-029 4.2200 ACRES; and T 23N R 19EWM S 05 PARCEL H BLA 2011-118CA, LOT H CE 2009-029 PT SENE 4.3900 ACRES; and T 23N R 19EWM S 05 PARCEL G BLA 2011-118CA, BL AGMT AFN 2325433, LOT G CE 2009-029 PT SENE 1.7400 ACRES; and T 23N R 19EWM S 05 PARCEL I BLA 2011-118CA, BL AGMT AFN 2325433, LOT I CE 2009-029, PT S2NE 4.3500 ACRES

**Tax Parcel Nos.:** Chelan County parcel nos. 231905141200, 231905110150, 231905141250, 231905924070

#### **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 the Cashmere Mill Site (Ecology facility no. 20168). 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	petroleum hydrocarbons and carcinogenic polycyclic aromatic hydrocarbons
Groundwater	arsenic
Surface Water/Sediment	none

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. The Remedial Action Report prepared by GeoEngineers, Inc., dated April 24, 2015, describes the extent of residual contamination.

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

Port of Chelan County, Washington, 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. Groundwater use.**

The groundwater beneath the Property remains contaminated and 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 from the Property for any purpose shall be considered potentially contaminated and any discharge of this water shall be done in accordance with state and federal law.

**b. Land Use.**

The remedial action for the Property is based on a cleanup designed for commercial or industrial property. As such, the Property shall be used in perpetuity only for commercial or 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 any residential uses, childcare facilities, K-12 public or private schools, parks, grazing of animals, growing of food crops, and non-industrial commercial uses.

**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 in any part of the Property, 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 SEPTEMBER \_\_, 2017 AND RECORDED WITH THE CHELAN COUNTY AUDITOR UNDER 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.

Executive Director Port of Chelan County 238 Olds Station Road Suite A Wenatchee, WA 98801 (509) 663-5159	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>
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**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.

c. By signing this agreement, per RCW 64.70.100, the original signatories to this agreement, other than Ecology, agree to waive all rights to sign amendments to and termination of this Covenant.

**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.

The undersigned Grantor warrants he/she holds the title to the Property and has authority to execute this Covenant.

EXECUTED this 6 day of October, 2017.

PORT OF CHELAN COUNTY, WASHINGTON

*Patrick Jones*  
by: Patrick Jones

Title: Executive Director

Dated: 10/6/17

**REPRESENTATIVE ACKNOWLEDGEMENT**

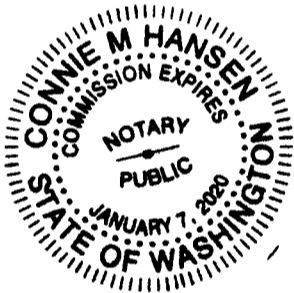
STATE OF WA  
COUNTY OF Chelan

On this 6<sup>th</sup> day of Oct., 2017, I certify that Patrick Jones personally appeared before me, acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument, and acknowledged it as the Executive Director of Port of Chelan County, Washington to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

*Connie M Hansen*  
Notary Public in and for the State of Washington

Residing at Chelan Co

My appointment expires 1/7/20



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

Title: Central Region Section Manager, Toxics Cleanup Program

Dated: 9 Oct 2017

**STATE ACKNOWLEDGMENT**

STATE OF Washington  
COUNTY OF YAKIMA

On this 9 day of October, 2017, I certify that Valerie Bound personally appeared before me, acknowledged that she is the Washington State Department of Ecology Central Region Toxics Cleanup Program 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 she was authorized to execute said instrument for said state agency.



Shelly A. Smith (Shelly A. Smith)  
Notary Public in and for the State of Washington

Residing at Union Gap WA

My appointment expires 3-21-2021

**Exhibit A**

**LEGAL DESCRIPTIONS**



**Parcel #231905141200, also known as Parcel G of BLA #2011-118CA**

A parcel of land located in Northeast quarter of Section 5, Township 23 North, Range 19 East W.M. more particularly described as follows:

Beginning center of said Section 5, a 3 inch aluminum cap in monument case, thence North  $02^{\circ}35'13''$  West along the center section line a distance of 1377.68 feet to a rebar in a monument case located on the North-South center of section line; thence South  $88^{\circ}11'08''$  East a distance of 658.53 feet to the Southwest corner of Lot 13, Willowdale Addition to Cashmere, Chelan County, Washington according to the plat thereof recorded in Volume 3 of Plats, Page 53; thence continuing South  $88^{\circ}11'08''$  East a distance of 608.31 feet to a point on the Southerly right of way of Mill Road; thence along said right of way, South  $68^{\circ}55'10''$  East a distance of 58.21 feet; thence continuing along said right of way, South  $89^{\circ}40'49''$  East 245.48 feet to the True Point of Beginning;

thence continuing along said right of way, South  $89^{\circ}40'49''$  East for a distance of 266.91 feet;

thence leaving said right of way, South  $11^{\circ}17'12''$  West for a distance of 110.39 feet;

thence North  $81^{\circ}26'47''$  West for a distance of 46.52 feet;

thence South  $08^{\circ}55'02''$  West for a distance of 96.39 feet;

thence North  $81^{\circ}03'57''$  West for a distance of 9.03 feet;

thence South  $06^{\circ}47'43''$  West for a distance of 90.68 feet;

thence South  $49^{\circ}40'00''$  West for a distance of 221.28 feet;

thence North  $19^{\circ}53'43''$  West for a distance of 135.42 feet;

thence 104.04 feet along a non-tangent curve to the left, having a radius of 100.00 feet, a central angle of  $59^{\circ}36'33.84''$  with a chord bearing of North  $29^{\circ}55'36''$  East for a chord distance of 99.41 feet;

thence North  $00^{\circ}07'19''$  East for a distance of 216.42 feet to the True Point of Beginning.

**Parcel #231905110150, also known as Parcel H of BLA #2011-118CA**

A parcel of land located in Northeast quarter of Section 5, Township 23 North, Range 19 East W.M. more particularly described as follows:

Beginning center of said Section 5, a 3 inch aluminum cap in monument case, thence North  $02^{\circ}35'13''$  West along the center section line a distance of 1377.68 feet to a rebar in a monument case located on the North-South center of section line; thence South  $88^{\circ}11'08''$  East a distance of 658.53 feet to the Southwest corner of Lot 13, Willowdale Addition to Cashmere, Chelan County, Washington according to the plat thereof recorded in Volume 3 of Plats, Page 53; thence continuing South  $88^{\circ}11'08''$  East a distance of 608.31 feet to a point on the Southerly right of way of Mill Road to the True Point of Beginning;

thence continuing along said right of way, South  $68^{\circ}55'10''$  East for a distance of 58.21 feet;

thence continuing along said right of way, South  $89^{\circ}40'49''$  East for a distance of 245.48 feet;

thence leaving said right of way, South  $00^{\circ}07'19''$  West for a distance of 216.42 feet;

thence, 104.04 feet along a tangent curve to the right with a radius of 100.00 feet, a central angle of  $59^{\circ}36'33.84''$ , a chord bearing of South  $29^{\circ}55'36''$  West for a chord distance of 99.41 feet;

thence South  $19^{\circ}53'43''$  East for a distance of 135.42 feet;

thence South  $34^{\circ}21'29''$  West for a distance of 112.52 feet;

thence South  $30^{\circ}36'35''$  West for a distance of 144.97 feet;

thence South  $39^{\circ}10'25''$  West for a distance of 69.91 feet;

thence North  $72^{\circ}43'24''$  West for a distance of 141.82 feet;

thence North  $00^{\circ}34'35''$  East for a distance of 687.45 feet;

thence South  $68^{\circ}55'10''$  East for a distance of 15.81 feet to the True Point of Beginning.

**Parcel #231905141250, also known as Parcel I of BLA #2011-118CA**

A parcel of land located in Northeast quarter of Section 5, Township 23 North, Range 19 East W.M. more particularly described as follows:

Beginning center of said Section 5, a 3 inch aluminum cap in monument case, thence North  $02^{\circ}35'13''$  West along the center section line a distance of 1377.68 feet to a rebar in a monument case located on the North-South center of section line; thence South  $88^{\circ}11'08''$  East a distance of 658.53 feet to the Southwest corner of Lot 13, Willowdale Addition to Cashmere, Chelan County, Washington according to the plat thereof recorded in Volume 3 of Plats, Page 53; thence continuing South  $88^{\circ}11'08''$  East a distance of 608.31 feet to a point on the Southerly right of way of Mill Road; thence along said right of way, North  $68^{\circ}55'10''$  West for a distance of 15.81 feet to the True Point of Beginning;

thence along said right of way, North  $68^{\circ}55'10''$  West for a distance of 65.62 feet;

thence North  $48^{\circ}49'36''$  West for a distance of 92.30 feet;

thence North  $31^{\circ}39'28''$  West for a distance of 140.82 feet;

thence leaving said right of way, South  $01^{\circ}08'16''$  East for a distance of 336.79 feet;

thence South  $30^{\circ}25'15''$  West for a distance of 346.34 feet;

thence South  $41^{\circ}38'17''$  East for a distance of 122.55 feet;

thence South  $28^{\circ}35'00''$  East for a distance of 43.16 feet;

thence South  $52^{\circ}07'38''$  East for a distance of 77.57 feet;

thence South  $53^{\circ}36'52''$  East for a distance of 95.34 feet;

thence South  $58^{\circ}32'27''$  East for a distance of 64.18 feet;

thence North  $81^{\circ}20'42''$  East for a distance of 72.40 feet;

thence North  $00^{\circ}34'35''$  East for a distance of 687.45 feet to the True Point of Beginning.

**Parcel #231905924070, also known as Parcel K of BLA #2011-118CA**

A parcel of land located in Northeast quarter of Section 5, Township 23 North, Range 19 East W.M. more particularly described as follows:

Beginning center of said Section 5, a 3 inch aluminum cap in monument case, thence North  $02^{\circ}35'13''$  West along the center section line a distance of 1377.68 feet to a rebar in a monument case located on the North-South center of section line ; thence South  $88^{\circ}11'08''$  East a distance of 658.53 feet to the Southwest corner of Lot 13, Willowdale Addition to Cashmere, Chelan County, Washington according to the plat thereof recorded in Volume 3 of Plats, Page 53 and the True Point of Beginning;

thence North  $05^{\circ}55'35''$  West for a distance of 219.75 feet; thence North  $84^{\circ}08'11''$  East for a distance of 86.03 feet to the True Point of Beginning;

thence North  $84^{\circ}08'11''$  East for a distance of 293.40 feet;

thence South  $31^{\circ}39'28''$  East for a distance of 66.13 feet;

thence South  $01^{\circ}08'16''$  East for a distance of 336.79 feet;

thence South  $30^{\circ}25'15''$  West for a distance of 346.34 feet;

thence North  $59^{\circ}52'44''$  West for a distance of 90.16 feet;

thence North  $27^{\circ}30'40''$  West for a distance of 52.13 feet;

thence North  $23^{\circ}25'42''$  West for a distance of 88.02 feet;

thence North  $12^{\circ}16'11''$  West for a distance of 76.96 feet;

thence North 02°59'54" East for a distance of 108.21 feet;  
thence North 06°19'42" East for a distance of 66.93 feet;  
thence North 28°36'23" West for a distance of 47.96 feet;  
thence North 00°17'35" West for a distance of 59.26 feet;  
thence North 02°22'49" East for a distance of 138.43 feet to the True Point of  
Beginning.

**Exhibit B**

**PROPERTY MAP**

# Cashmere Mill Site Covenant Area

