

118 A West Main Street  
Mountain City, TN 37683  
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Fax: (423) 727-0212  
Toll Free: (866) 727-0207  
info@walkertitletn.com

April 22, 2008

Mr. Ken Ellison, Director  
WVDEP, Division of Land Restoration  
601 57<sup>th</sup> Street  
Charleston, WV 25304

**RE: Land Use Covenants for Marshall County-WV**

Dear Mr. Ellison:

Enclosed are copies of the Land Use Covenants as recorded by Marshall County on March 24, 2008.

Should you have any questions whatsoever, or need anything further regarding this transaction, please don't hesitate to call either myself or my Paralegal, Christy Canter.

Very truly yours,

A handwritten signature in cursive script that reads "Jeffrey J. Walker".

Jeffrey J. Walker

JJW/cac  
Enclosure

*Shallen Telle, LLC  
118 A Chestnut St.  
Mountain City, TN  
37683*

LAND USE COVENANT

CSX TRANSPORTATION, INC. has entered into a Voluntary Remediation Agreement (hereinafter referred to as "the Agreement") with the Department of Environmental Protection for the State of West Virginia pursuant to the Voluntary Remediation and Redevelopment Act, W.Va. Code §§ 22-22-1 through 22-22-2 (hereinafter referred to as "the Act"), for certain property, located at the CSXT Benwood Rail Yard in Union District, Marshall County, West Virginia and more particularly described in a deed of record in the office of the Clerk of the County Commission of Marshall County, West Virginia. Paragraph 75 of the Agreement requires CSX Transportation, Inc., as the owner of said property, to file a Land Use Covenant with the Clerk of the Marshall County Commission. The Agreement allows certain levels of contamination to remain on the property and requires a land use covenant be recorded in the office of the Clerk of the Marshall County Commission for the purposes of protecting public health and the environment and to prevent interference with the performance, operation and maintenance of any remedial actions required by the Agreement.

The area of the subject property bound by the Land Use Covenant (Area 2, VRP Project #02421) is more specifically described as follows (site drawing attached):

A tract of land located in the in the community of Benwood, Marshall County, WV. Said parcel lying between the existing CSX rail line and the Ohio River. This tract of land being one of two parcels to be designated as Voluntary Remediation Sites at this location. Said tracts of land being held by the CSX Corporation and graphically shown as Tax Maps 9, 12, and 13 in the Marshall County Assessors Office. The said tract of land being more particularly described as follows:

JAN PEST  
MARSHALL COUNTY 12:52:52 PM  
Instrument No 1250809  
Date Recorded 03/24/2008  
Document Type AGR  
Book-Page 667-209  
Rec./Preserve \$7.00 \$1.00

From the **POINT OF BEGINNING** said point being located 44.8' radially left of the centerline of the CSX mainline.

*Thence* with a right of way line for the access road, North 23° 41' 39" West for a distance of 107.88 feet to a #5 rebar and cap found.

*Thence* with a right of way line for the access road, North 47° 53' 21" West for a distance of 149.93 feet to a point.

*Thence* with a right of way line for the access road, North 70° 48' 10" West for a distance of 101.59 feet to a point.

*Thence* with a right of way line for the access road, South 18° 42' 06" West for a distance of 55.77 feet to a point.

*Thence* with a right of way line for the access road, South 10° 16' 21" East for a distance of 155.11 feet to #5 rebar and cap found being a corner common to the parent parcel, the access road right of way and the Blatner Realty Corporation.

*Thence* with the line common to the Blater parcel, North 85° 36' 58" West for a distance of 111.49 feet to a point.

*Thence* with the line common to the Blater parcel, North 55° 33' 15" West for a distance of 173.34 feet to a point.

*Thence* with the line common to the Blater parcel, North 89° 06' 16" West for a distance of 240.01 feet to a #5 rebar and cap found being a corner common to the Blatner parcel and the OVI&BD parcel.

*Thence* with the OVI&BD parcel, North 04° 45' 39" East for a distance of 1183.38 feet to a #5 rebar and cap found.

*Thence* crossing the CSX property with a line common to the VRP Area #2, South 85° 22' 29" East for a distance of 418.15 feet to a point.

*Thence* South 09° 43' 15" East a distance of 1301.87 feet to the **POINT OF BEGINNING** containing 15.29 acres more or less as surveyed by Joseph L. Crowder, P.S. and Earnest M.

McCarty, Jr., P.S. #1001 of Triad Engineering on April 1st<sup>nd</sup>, 2007 and as shown on the plat of survey titled "Plat Of Survey CSX Real Properties, Benwood Railyard, Voluntary Remediation Area, Benwood, Marshall Co. WV." said plat being of records in Deed Book 5, Page Number 252; Deed Book 35, Page Number 319; Deed Book 133, Page Number 553; and Deed Book 260, Page Number 420 in the Marshall County Clerks Office.

The geographic coordinates (latitude and longitude) for the Site are as follows:

039° 59' 45" N and 080° 44' 02" W.

**NOW THEREFORE**, as CSX Transportation, Inc., hereinafter referred to as "Owner," and the Secretary have provided in the Agreement, the following restrictions shall apply to this property:

1. The Owner shall prohibit all activities on the property which may interfere with the remedial action required by the Agreement.
2. The Owner shall prohibit all activities that may result in human exposures above those specified by the Agreement or that would result in the release of a contaminant that was contained as part of the remedial action. These activities include, but are not limited to:
  - Extraction of groundwater for any potable or nonpotable uses, except for remediation and/or monitoring.
3. The Owner shall restrict the uses of the property to:
  - Non-residential, industrial land use.
4. The Owner shall provide written notice to the Secretary of the Department of Environmental Protection of the intent to transfer any interest in the property.
5. The Owner shall not convey any title, easement, or other interest in the property without adequate and complete provision for the continued implementation, operation and maintenance of any remedial action that has been implemented on the property pursuant to the

Agreement and without assuring prevention of the releases and exposures described in the provisions of paragraph 2, above.

6. The Owner shall grant the West Virginia Department of Environmental Protection and its designated representatives the right to enter the property at reasonable times for the purpose of monitoring compliance with the Agreement, and the Certificate of Completion, including the right to take samples, inspect the operation to evaluate the effectiveness of remedial activities, and inspect records all as provided in the Agreement.

7. The Department of Environmental Protection may enforce the restrictions set forth in this Land Use Covenant by legal action in a court of appropriate jurisdiction.

8. In accordance with the provisions of the Act regarding land use covenants, W. Va. Code §22-22-15 and in addition to any rights or duties contained in the Certificate of Completion, this Land Use Covenant relieves the Owner and any subsequent successors and assigns of the Owner any person identified in W. Va. Code §22-22-18 from all civil liability to the state as provided under the Act so long as the property complies with the applicable standards identified in the Agreement.

9. The restrictions and other requirements described in this Land Use Covenant shall run with the land and shall be binding upon any future owners, successors or assigns and their authorized agents, employees or persons acting under their direction or control. Subject to subsequent written modification or release signed by the Secretary and the owner at the time of such modification or release, and filed in the office of the Clerk of the County Commission of the county where these covenants have been recorded, this Land Use Covenant shall continue in perpetuity.

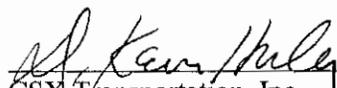
10. If any provision of this Land Use Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof. All such other provisions shall continue unimpaired and in full force and effect.

11. This Land Use Covenant shall not be amended, modified or terminated except by written instrument executed by and between the Owner at the time of the proposed amendment, modification or termination, and the Secretary of the West Virginia Department of Environmental Protection, or his successor in accordance with regulations promulgated by the Secretary or his successor. Within 5 days of executing an amendment, modification or termination of this Land Use Covenant, the Owner shall record such amendment, modification or termination with the Clerk of the Marshall County Commission, and within 5 days thereafter, the Owner shall provide a true copy of the recorded amendment, modification or termination to the Secretary of the Department of Environmental Protection.

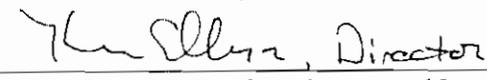
The undersigned persons executing this Land Use Covenant on behalf of the Owner represent and certify that they are duly authorized and have been fully empowered to execute and deliver this Land Use Covenant.

IN WITNESS WHEREOF, the said Owner of the above described property and the Secretary of the Department of Environmental Protection have caused this Land Use Covenant to be executed this 11<sup>th</sup> day of February, 2008

SIGNED:

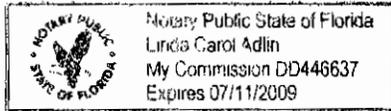
  
CSX Transportation, Inc.

Director  
CSX Real Property, Inc.

  
Secretary, Department of Environmental Protection

I, Linda Carol Adlin, a Notary Public in and for the State and County aforesaid, do hereby certify that Ken Ellison, whose name is signed to the writing above, bearing date the 10<sup>th</sup> day of December, 2007, has this day acknowledged same to be his true act and deed.

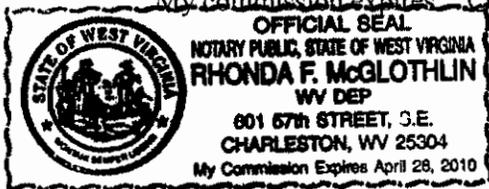
Given under my hand this the 10<sup>th</sup> day of December, 2007  
My commission expires



Notary Public

I, Rhonda F. McGlothlin, a Notary Public in and for the State and County aforesaid, do hereby certify that Ken Ellison, whose name is signed to the writing above, bearing date the 11<sup>th</sup> day of February, 2008, has this day acknowledged same to be his true act and deed.

Given under my hand this the 11<sup>th</sup> day of February, 2008  
My commission expires April 26, 2010



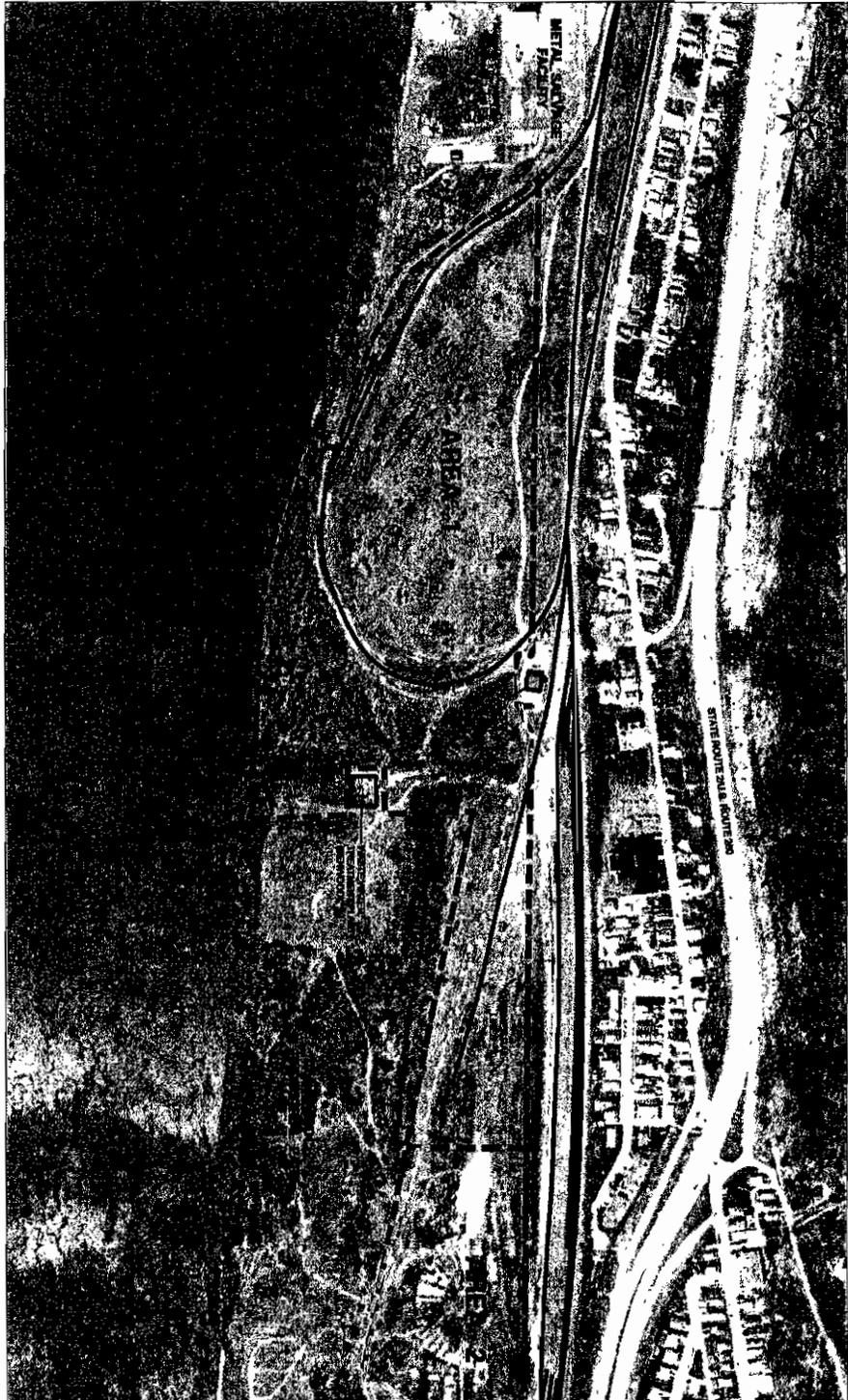
Rhonda F. McGlothlin

Notary Public

Instructions to the Clerk of the County Commission of Marshall County, West Virginia:

Please return the recorded document to:

Mr. Ken Ellison, Director  
Division of Land Restoration  
West Virginia Department of Environmental Protection  
601 57th Street, SE  
Charleston, WV 25304



LEGEND	
	VMP SITE BOUNDARY
	ACTIVE PAUL LINE
	GENERAL JACKSON ROAD



NOTES  
 1) DATE MAP AND PER GANNETT FLEMING JULY 2005  
 2) VMP SITE BOUNDARY AND PER COST TRANSPORTATION AND  
 EXHIBIT "A", PROPOSED SHALE SHAFT 2005.