This instrument prepared by:

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INDEXED ✓
RECORDED ✓
COMPARED ✓
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STATE OF SOUTH DAKOTA)
COUNTY OF BEADLE) SS
Filed March 28 20 08
11 o'clock — minutes AM
recorded in Disk 19 # 259R
of the records in my office.
Barb Riley
Register of Deeds

WHEN RECORDED MAIL TO:

Dakota, Minnesota & Eastern Railroad Corp.
140 N. Phillips Ave.
Sioux Falls, SD 57104
ATTN: Tim Carlson – Real Estate

Union Pacific Railroad Company
1400 Douglas Street, STOP 1690
Omaha, Nebraska 68179
ATTN: Tony K. Love
Assistant Vice President – Real Estate

And:

Carolyn L. McIntosh
Patton Boggs LLP
1801 California Street, Suite 4900
Denver, CO 80202

To be recorded with:
Beadle Country
Register of Deeds

SDCL § 34A-17-8

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by Dakota, Minnesota and Eastern Railroad Corporation ("Owner") and the South Dakota Department of Environment and Natural Resources ("SDDENR") pursuant to the Uniform Environmental Covenants Act (South Dakota Code §§ 34A-17-1 *et seq.*) for the purpose of subjecting the Property described in paragraph 2, below, to the activity and use limitations set forth herein.

Notice ("Notice") is hereby given to all potential and subsequent owners, operators, and any person or entity that may hereafter acquire an interest in the Property, that the Property is or may be contaminated with hazardous materials as described below, that the Property is subject to remediation under: 1) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601, *et seq.*)("CERCLA"), pursuant to an Administrative Order on Consent ("AOC") between the United States of America, through the United States Environmental

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Protection Agency ("EPA"), the Dakota, Minnesota and Eastern Railroad Corporation ("DM&E") and Union Pacific Railroad Company ("Union Pacific"), EPA Docket Number CERCLA-VIII-96-28 and 2) South Dakota State laws. This environmental covenant must be imposed to mitigate the risk to the public health, safety and/or the environment from the following contamination left in place on the Property:

a. polynuclear aromatic hydrocarbons ("PAHs") which exceeded residential risk-based concentrations, including one benzo(a)anthracene; two benzo(a)pyrene; one dibenzo(a,h)anthracene;
b. semi-volatile organic compounds; and
c. total petroleum hydrocarbons (TPH).

Additional information regarding contamination on the Property is available for review at the public document repository for the Property, CERCLA-8-99-12, at the EPA Superfund Record Center, located at 1595 Wynkoop St., Denver, CO 80202-1129. SDDENR will also maintain a copy of this covenant and other assessment and remediation data in the Environmental Events Database located in the Joe Foss Building in Pierre, SD 57501. Pursuant to South Dakota Code § 34A-17-12, a copy of this Environmental Covenant must also be filed with the South Dakota Secretary of State's office. The Office of the Secretary of State maintains a public registry of all environmental covenants, amendments and terminations of covenants.

Now therefore, Owner and SDDENR agree to the following:

1. ENVIRONMENTAL COVENANT. This instrument is an environmental covenant developed and executed pursuant to South Dakota Code §§ 34A-17-1 *et seq.*

2. PROPERTY. This Environmental Covenant concerns real property, owned by DM&E located at 56 Dakota Street, Huron, in Beadle County, South Dakota 57350, and more particularly described in **Attachment A** and shown in **Attachment B**, both of which are attached hereto and hereby incorporated by reference herein ("Property").

3. OWNER. Dakota, Minnesota & Eastern Railroad Corporation, located at 140 N. Phillips Avenue, Sioux Falls, South Dakota 57104 is the owner of the Property.

4. HOLDER. Owner, whose address is listed above, is also the holder of this Environmental Covenant.

5. ACTIVITY AND USE LIMITATIONS. As part of the AOC, Owner hereby imposes and agrees to comply with the following activity and use limitations on the Property:

a. Prohibition on Use of Groundwater. The installation of drinking water wells on the Property, or the use of groundwater for the purpose of drinking water is

prohibited, except as consistent with the AOC for implementation or monitoring of remediation activities as provided herein.

b. Health and Safety Plan Required. Excavations below ground surface and production or de-watering of any groundwater must be conducted under an appropriate Health and Safety Plan that includes provisions for worker protection, work area monitoring, appropriate testing, and appropriate disposal of contaminated soil and groundwater removed from the excavation. Any such excavations must not directly or indirectly impact the engineered remedial controls implemented by Union Pacific and DM&E as required under the AOC. All excavations shall comply fully with 29 CFR Part 1926 OSHA Subpart P Excavations and Trenches requirements.

c. Produced Water Management Plan. Any use of the Property that will or may result in dewatering, pumping or other production of groundwater is prohibited unless Owner or its successor in interest ("Transferee") has first submitted a Produced Water Management Plan to SDDENR and Owner and obtained approval from SDDENR. Produced water must be managed consistent with the approved Produced Water Management Plan and in compliance with all pertinent federal and state environmental laws. Management of produced water in a manner that expands the area of contamination on, under or near the Property is also prohibited.

d. Soil Management Plan. Any use of the Property that will or may result in drill cuttings, excavation or other production of soil from depths below eight (8) feet below ground surface is prohibited unless the Owner or Transferee has first submitted a Soil Management Plan to SDDENR and Owner and obtained approval from SDDENR. Soil must be managed consistent with the approved Soil Management Plan and in compliance with all pertinent federal and state environmental laws. Management of soil in a manner that expands the area of contamination on, under or near the Property is also prohibited.

e. Interference with Remedy Prohibited. Any use of the Property, including management or disposal of produced water or soil, in any manner that may interfere with or adversely affect the implementation, integrity, or protectiveness of remediation activities required under CERCLA and the AOC is prohibited.

f. Restrictions Do Not Apply to Remediation. The use restrictions do not apply to excavation, drilling, or other activities performed to implement remediation activities required under CERCLA, the AOC and state laws.

6. SUBSEQUENT PROPERTY INTEREST OWNER OBLIGATIONS. In addition to the above restrictions, any person or entity that may hereafter acquire an

interest in the Property has the following continuous, affirmative obligations to EPA, SDDENR, DM&E and Union Pacific:

a. To provide EPA, DM&E, SDDENR, Union Pacific and their representatives, and contractors, irrevocable, permanent, and continuing right of access at all reasonable times to the Property, subject to advance notice to Owner or Transferee, as necessary for implementation or enforcement of this Environmental Covenant and for any purpose related to the AOC including but not limited to:

    i. Verifying any data or information submitted to the United States or South Dakota;

    ii. Conducting investigations relating to contamination at or near the remediated area, as identified in the AOC;

    iii. Obtaining samples;

    iv. Assessing the need for, planning, or implementing additional response actions at or near the Property;

    v. Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plan;

    vi. Implementing the Work pursuant to the conditions set forth in Paragraph A.46 of the AOC;

    vii. Assessing compliance with the AOC;

    viii. Determining whether the Property, or other adjacent area is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the AOC; and

    ix. Conducting remediation activities required under CERCLA and the AOC or under South Dakota law.

b. To comply with the activity and use limitations set forth in Paragraph 5.

7. **FACILITATION OF REMEDIAL ACTIONS.** EPA, SDDENR, DM&E, and Union Pacific shall have irrevocable, permanent and continuing rights of access at all reasonable times to the Property, subject to advance notice to Owner or Transferee, for purposes of:

a. Conducting remediation activities required under CERCLA and the AOC by the EPA or under South Dakota law;

b. Constructing, inspecting, maintaining, repairing, operating, closing, or removing any remediation component or equipment including but not limited

to monitoring wells or treatment equipment on the Property required under CERCLA and the AOC by the EPA or under South Dakota law;

c. Verifying any data or information obtained from monitoring on the Property;

d. Verifying that no action is being taken on the Property in violation of the terms of this Environmental Covenant, or any federal or state environmental laws or regulations;

e. Monitoring remediation and post-remediation activities under CERCLA and the AOC, or South Dakota law, on the Property and conducting investigations relating to contamination on or near the Property, including, without limitation, sampling of air, water, sediments, soils, as authorized or required by any federal or state environmental laws or regulations and specifically, without limitation, obtaining split or duplicate samples; and

f. Conducting the activities set forth in Paragraph 6 above.

8. RUNNING WITH THE LAND. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land and the Institutional Controls described herein shall be maintained in perpetuity, pursuant to South Dakota Code § 34A-17-5, subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

9. COMPLIANCE ENFORCEMENT. Compliance with this Environmental Covenant may be enforced by Owner, SDDENR, EPA, DM&E, Union Pacific or any entity entitled to enforce compliance under South Dakota Code § 34A-17-11. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict Owner, SDDENR, EPA, DM&E or Union Pacific from exercising any authority under applicable law.

10. RIGHTS OF ACCESS. Owner (or subsequent Transferee) hereby grants to the EPA, its agents, contractors, and employees, SDDENR, its agents, contractors, and employees, Union Pacific, its agents, contractors, and employees, and DM&E, its agents, contractors, and employees the right of access at all reasonable times to the Property for implementation or enforcement of activities related to the AOC including but not limited to the activities set forth in paragraphs 6 and 7 above and implementation or enforcement of this Environmental Covenant.

11. NOTICE UPON CONVEYANCE. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

> THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED_____, 200_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE BEADLE COUNTY REGISTER OF DEEDS ON _____, 200_, IN [DOCUMENT ____, *or* BOOK___, PAGE ____,]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS: *[Insert the language from Paragraph 5, herein, exactly as it appears in the Environmental Covenant.]*

Owner shall notify the SDDENR, EPA, DM&E and Union Pacific within thirty (30) days after each conveyance of an interest in any portion of the Property. Owner's notice shall include the name and address of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and an un-surveyed plat that shows the boundaries of the property being transferred.

12. REPRESENTATIONS AND WARRANTIES. Owner hereby represents and warrants:

a. that the Owner is the sole owner of the Property;

b. that the Owner holds fee simple title to the Property;

c. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder; and

d. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.

13. AMENDMENT OR TERMINATION. This Environmental Covenant may only be amended or terminated by consent of all of the following: Owner, a Transferee, EPA, DM&E, Union Pacific and the SDDENR,[1] pursuant to South Dakota Code § 34A-

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[1] *See South Dakota Code § 34A-17-10, which allow for "limitations on amendment or termination."*

17-10 and other applicable law. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Department Secretary of the SDDENR, the EPA, DM&E, Union Pacific and the Owner or Transferee(s) of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner or Transferee shall file such instrument for recording with the Beadle County Register of Deeds, and shall provide a file- and date-stamped copy of the recorded instrument to SDDENR, EPA, DM&E and Union Pacific. Pursuant to South Dakota Code § 34A-17-12, a copy of this Environmental Covenant must also be filed with the South Dakota Secretary of State's office. The Office of the Secretary of State maintains a public registry of all environmental covenants, amendments and terminations of covenants.

14. SEVERABILITY. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

15. GOVERNING LAW. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of South Dakota.

16. RECORDATION. Within thirty (30) days after the date of the final required signature on the Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Beadle County Register of Deeds. Once the Environmental Covenant is recorded, the Owner shall deliver a copy of the Environmental Covenant to the South Dakota Office of the Secretary of State.

17. EFFECTIVE DATE. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a document of record for the Property with the Beadle County Register of Deeds.

18. DISTRIBUTION OF ENVIRONMENTAL COVENANT. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: the EPA; the SDDENR; and Union Pacific.

19. NOTICE. Unless otherwise notified in writing by or on behalf of the

Owner, SDDENR, EPA, or Union Pacific, any document or communication required by this Environmental Covenant shall be submitted to:

Owner:

Dakota, Minnesota & Eastern Railroad Corp.:
Mr. Michael Ball
Sr. Manager, Safety/Training/Haz-Mat
420 Commercial St. NE
Huron, SD 57350
Phone: 605-353-7010
Mobile: 605-321-8411
Fax: 605-352-6083
Email: mball@cedaramerican.com

Union Pacific Railroad Company:
Mr. Gary L. Honeyman
Manager of Environmental Site Remediation
221 Hodgeman
Laramie, WY 82072
Phone: 307-745-6532
Mobile Phone: 307-760-0117
Fax: 307-745-3042
Email: glhoneym@up.com

U.S. Environmental Protection Agency:
Duc Nguyen
On-Scene Coordinator
U. S. EPA Region 8
Mail Code 8EPR-SA
999 18th Street, Suite 500
Denver, CO 80202
Email: nguyen.duc@epa.gov

South Dakota Office of the Secretary of State
Teresa Bray
Capitol Building
500 East Capitol Avenue Ste 204
Pierre, SD 57501-5070
Phone: 605-773-3537
Email: teresa.bray@state.sd.us

And

South Dakota Department of Environment and Natural Resources
Kim McIntosh
SDDENR
PMB 2020
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182
Phone: 605-773-3296
Email: kim.mcintosh@state.sd.us

The undersigned representative of Owner represents and certifies that he is authorized to execute this Environmental Covenant.

IT IS SO AGREED:

Dakota, Minnesota and Eastern Railroad Corporation:

By: _____

Title: Sr. Mgr. Safety / Training / Haz Mat

STATE OF South Dakota)
) ss.
County of Beadle)

Subscribed and sworn to and acknowledged before me this 20th day of March, 2008, by Michael R. Ball, Sr. Mgr. Safety of Dakota, Minnesota & Eastern Railroad Corporation, or his/her designated representative.

Notary Public

My Commission expires: 4-15-11

South Dakota Department of Environment and Natural Resources

Steven M. Pirner, Department Secretary of the SDDENR, or his designated representative, hereby approves the foregoing Institutional Controls pursuant to South Dakota Code Section 34A-17-3.

By: _____
Title: Secretary,
South Dakota Department of Environment and Natural Resources

STATE OF SOUTH DAKOTA)
) ss.
County of Hughes)

Subscribed and sworn to and acknowledged before me this 21 day of March, 2008 by Steven Pirner, Department Secretary of the SDDENR, or his designated representative.

NOTARY PUBLIC

Brenda Anderson
Notary Public

BRENDA ANDERSON, Notary Public
My Commission Expires
October 26, 2010

My Commission expires: _____

ATTACHMENT A

Legal Description of the Property Subject to the Environmental Covenant

DM&E Lot 1, a Replat of Kasperson Lot 2 in NW ¼ of Section 6, Township 110 North, Range 61 West of the 5th Principal Meridian, City of Huron, Beadle County, South Dakota

And

A parcel of land described as follows:

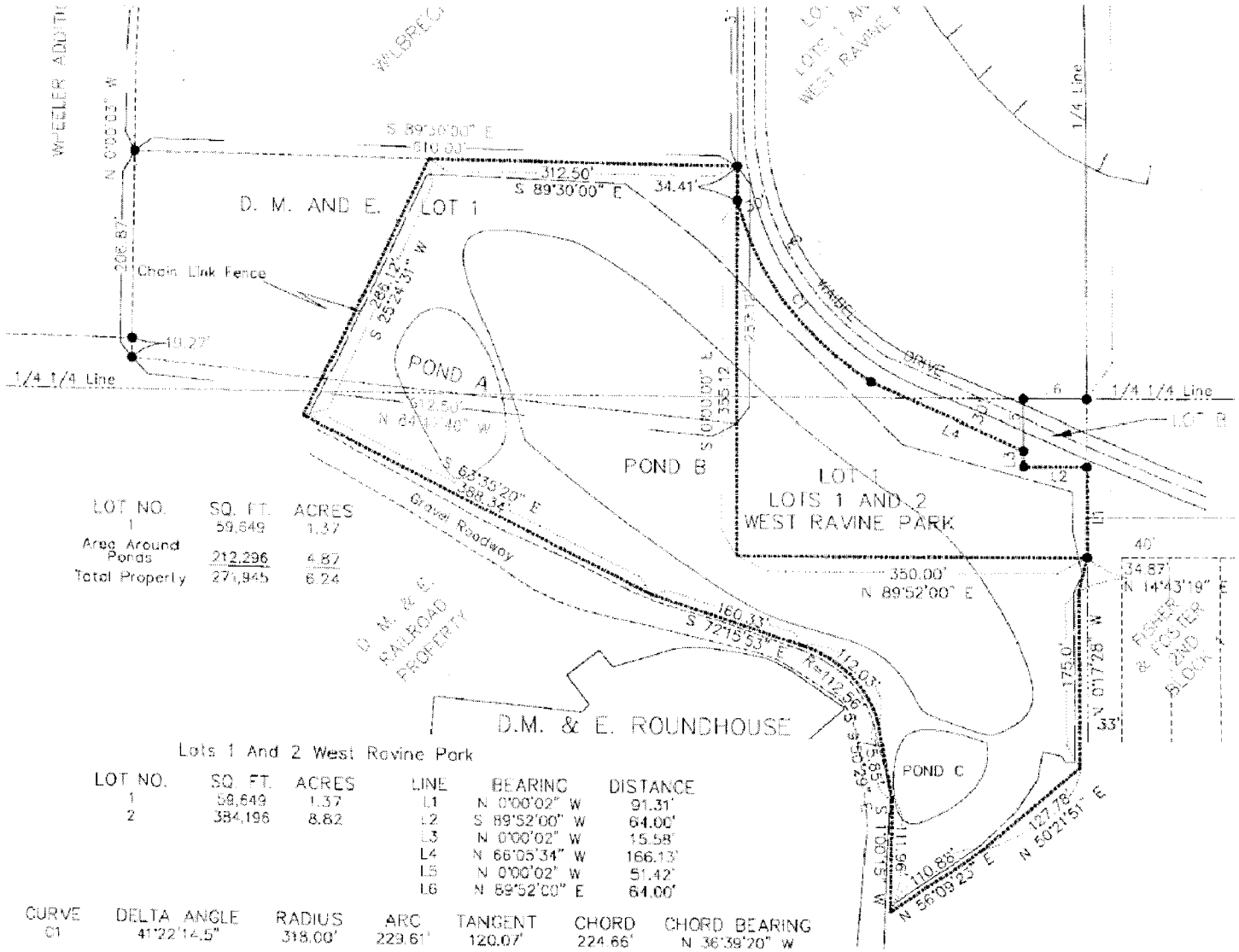
Beginning at the North East corner of D.M. and E. Lot 1 thence 312.50 feet on a bearing of S. 80° 30' 00" E. to a point, then 286.12' on a bearing of S. 25° 24' 31" W. to a point, then 388.34' on a bearing of S. 63° 35' 20" E. to a point 160.33' on a bearing of S. 72° 15' 53" E. to the beginning of a radius, then South Easterly on the arc with a radius of 112.56' for 112.03', then 75.85' on a bearing of S. 9° 50' 29" E. to a point, then 111.96' on a bearing of S 1° 00' 15" to a point then 110.88' on a bearing of N. 56° 09' 25" E. to a point, then 127.78' on a bearing of N. 50° 21' 51" E. to a point then 175.0' on a bearing of N. 0° 17' 28" W. to a point, then 34.87' on a bearing of N. 14° 43' 19" E. to a point, then 350.0' on a bearing of S. 89° 52' 00" W. to a point then 389.53' N. 0° 00' 00" E. to the point of beginning and Lot 1 of Lots 1 and 2 West Ravine Lake Park, City of Huron, Beadle County, S.D. Total acres 6.24 more or less.

Randall V. Hoscheid, P.E. & L.S.

REGISTERED PROFESSIONAL ENGINEER & LAND SURVEYOR
REG. NO.
3506
RANDALL V.
HOSCHEID
SOUTH DAKOTA

ATTACHMENT B

Map of the Property Subject to the Environmental Covenant



LOT NO.	SQ. FT.	ACRES
1	59,649	1.37
Area Around Ponds	212,296	4.87
Total Property	271,945	6.24

Lots 1 And 2 West Ravine Park

LOT NO.	SQ. FT.	ACRES
1	59,649	1.37
2	384,196	8.82

LINE	BEARING	DISTANCE
L1	N 0°00'02" W	91.31'
L2	S 89°52'00" W	64.00'
L3	N 0°00'02" W	15.58'
L4	N 66°05'34" W	166.13'
L5	N 0°00'02" W	51.42'
L6	N 89°52'00" E	64.00'

CURVE	DELTA ANGLE	RADIUS	ARC	TANGENT	CHORD	CHORD BEARING
C1	41°22'14.5"	318.00'	229.61'	120.07'	224.66'	N 36°39'20" W