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 PIERCE COUNTY, WASHINGTON

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Washington State
 Department of Ecology

When Recorded, Return To:

Kelly Cole
 Office of Regional Counsel
 U.S. EPA, Region 10
 1200 Sixth Ave. ORC-158
 Seattle, WA 98101

State of Washington
 Department of Ecology
 Toxics Cleanup Program
 Southwest Regional Office
 PO Box 47600
 Olympia, WA 98504-7600

Document Title: **Restrictive Covenant**
 Grantor: **Foss Investors I, LLC**
 Grantee: **WA DEPARTMENT OF ECOLOGY**
 Legal Description: **Section 04, Township 20, Range 03, Quarter 43**
 Additional Legal Description: **SEE ATTACHMENT 1 FOR FULL LEGAL DESCRIPTION**
 Assessor's Tax Parcel Number: **8950001613**

RESTRICTIVE COVENANT

This Restrictive Covenant is made this ^{25th} day of October, 2007, pursuant to RCW 43.21A.440 and RCW 70.105D.030(1)(f), (g) and (j), by Foss Investors I, LLC and its successors and assigns ("Grantor"), and the State of Washington, Department of Ecology, and its successors and assigns ("Grantee" but hereafter "Ecology") for the benefit of the United States Environmental Protection Agency, its successors and assigns, ("EPA"). The restrictions imposed by this covenant are consistent with those required by WAC 340-440(8) and (9) under the Model Toxics Control Act ("MTCA").

A portion of the property referenced above is subject to this Restrictive Covenant because Remedial Action and habitat mitigation work has been undertaken on the property pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601, et. seq., under a Consent Decree entered on May 9, 2003, titled *United States v. Advance Ross Sub Company, et al.*, in the United States District Court for the Western District of

Washington, Civil Action No. C03-5117 RJB, ("Consent Decree"). The objective of the Remedial Action undertaken on the property is to protect human health and the environment. The objective of the habitat mitigation work is to mitigate impacts to the aquatic environment caused by remedial actions undertaken pursuant to the Consent Decree.

The Consent Decree is part of an integrated settlement that includes two other consent decrees. One, *United States v. Atlantic Richfield Company, et al.*, was entered by the federal District Court on May 9, 2003. The other consent decree is between EPA and the State of Washington, Department of Natural Resources, and was entered by the federal District Court on December 17, 2003.

Grantor is the fee owner of real property (hereafter "Property") that is subject to this Restrictive Covenant. The Property is the portion of Tax Parcel 8950001613 that is located at 1940 East "D" Street, Tacoma, in Pierce County, Washington. The Property is legally described in Attachment 1, which is incorporated by reference into this Restrictive Covenant, and is generally depicted by the cross-hatched area on the map attached as Attachment 2. Grantor, as holder of legal title, does hereby declare that it has authority to enter into this Restrictive Covenant.

This Restrictive Covenant is required because Remedial Action capped and/or left residual contamination in place. The purpose of this Restrictive Covenant is to reduce potential exposure of marine organisms to contaminated sediments confined by capping, and to reduce potential exposure of marine organisms to contaminated sediments left in place in the Thea Foss and Wheeler-Osgood Waterways. The purpose of this Restrictive Covenant is also to protect habitat mitigation work undertaken on the Property.

Grantor makes the following declarations as to limitations, restrictions, and uses on the Property. Furthermore, it is the intent of Grantor that such declarations shall constitute covenants that run with the land, as provided by law, and be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the property.

Section 1. The Remedial Action undertaken on the Property includes a cap (i.e., placement of capping material over contaminated sediment.)

Section 2. Grantor shall not conduct, or allow to be conducted any activity on the Property that may result in the release or exposure to the environment of the hazardous substances contained by the Remedial Action, or that may create a new exposure pathway, unless the proponent of the activity obtains the prior written authorization from EPA and secures all necessary local, state, and federal permits and approvals for the activity in question. Activities prohibited unless otherwise approved include, but are not limited to:

- 2.1 Any activity that alters, modifies, or removes the Remedial Action undertaken on the Property.
- 2.2 Piling removal and installation.

- 2.3 Dredging and excavation.
- 2.4 Harvest of shellfish embedded in aquatic lands.
- 2.5 Anchoring.

Section 3. Any other activity on the Property that may interfere with the Remedial Action, Operation and Maintenance, monitoring, or other measures to assure the integrity of the cleanup action and continued protection of human health and the environment is prohibited without prior notice to and approval by EPA.

Section 4. Grantor shall give thirty (30) days advance written notice to EPA and Ecology of Grantor's intent to convey any interest in the Property. No conveyance of title, easement, lease or other interest in the Property shall be consummated by the Grantor without adequate and complete provision for the continued compliance with all required institutional controls, including this Restrictive Covenant.

Section 5. Grantor shall notify EPA and Ecology and obtain approval from EPA before any use of the Property that is inconsistent with the terms of the Restrictive Covenant, or the Consent Decree.

Section 6. Grantor shall allow authorized representatives of EPA, Ecology, the City of Tacoma, and the Utilities the right to enter the Property at reasonable times for the purpose of evaluating compliance with the Consent Decree and other required plans, including the right to undertake Operation and Maintenance activities required under the Consent Decree, which includes gathering samples on the Property, and to confirm compliance with this Restrictive Covenant.

Section 7. Grantor shall restrict leases of the Property to uses and activities consistent with this Restrictive Covenant and shall notify all lessees of the restrictions on the use of the Property. Grantor shall include a copy of this Restrictive Covenant in any instrument conveying any interest in any portion of the Property, including conveyance of title, a lease, a license, an easement or other use authorizations.

Section 8. Within ten (10) days of the date this Restrictive Covenant is fully executed, Grantor shall record this Restrictive Covenant with the Auditor's Office, Pierce County, State of Washington. Conformed copies of such recordings shall be forwarded to EPA, Region 10, Office of Regional Counsel at 1200 Sixth Avenue, ORC-158, Seattle, Washington 98101, and Department of Ecology, Toxics Cleanup Program, Southwest Regional Office, PO Box 47600, Olympia, WA 98504-7600. Grantor shall include a copy of this Restrictive Covenant in any instrument conveying any interest in any portion of the Property.

Section 9. If requested by EPA and/or the City of Tacoma, Grantor shall allow, at no cost, the placement and maintenance of signs on the Property regarding prohibited activities, vessel

size and speed, and Waterway navigational buoys, markers and visual aids, to the extent such activities do not unreasonably interfere with the public's use and enjoyment of the Property.

Section 10. Grantor reserves the right to record an instrument that provides that this Restrictive Covenant shall no longer limit the use of the Property or be of any further force or effect. However, such an instrument may be recorded only if EPA concurs.

Section 11. Grantor hereby confirms that this Restrictive Covenant is enforceable at law by EPA and Ecology.

Section 12. The parties that must be notified by the terms of this Restrictive Covenant are:

Environmental Protection Agency
Office of Environmental Cleanup
1200 Sixth Avenue, ECL-111
Seattle, WA 98101

State of Washington
Department of Ecology
Toxics Cleanup Program
Southwest Regional Office
PO Box 47600
Olympia, WA 98504-7600

City of Tacoma
Office of City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767

Puget Sound Energy – Thea Foss Waterway Cleanup
c/o Loren Dunn
Riddell Williams
1001 Fourth Avenue
Suite 4500
Seattle, WA 98154-1192

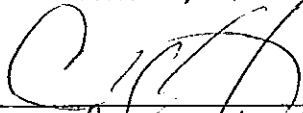
PacifiCorp – Thea Foss Waterway Cleanup
c/o Richard Gleason
Stoel Rives
900 SW Fifth Avenue
Suite 2600
Portland, OR 97204

If a proposed activity is within state-owned aquatic lands, then notice shall also be provided to:

State of Washington
Department of Natural Resources
Aquatic Resources Program
1111 Washington St. SE
PO Box 47027
Olympia, WA 98504-7027

This Restrictive Covenant is executed by:

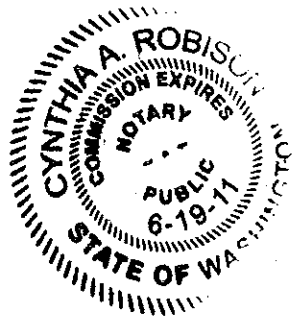
Foss Investors I, LLC

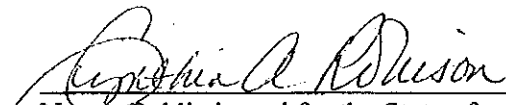

By: Chris Highsmith
Its: MANAGER

STATE OF Washington)
COUNTY OF Pierce)

On this 25th day of October, 2007, ~~January~~ Chris Highsmith personally appeared before me and on oath acknowledged that he was authorized to sign this instrument as the manager for Foss Investors I, LLC, and further acknowledged that his signature was a free and voluntary act on behalf of Foss Investors I, LLC, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.




Notary Public in and for the State of
Washington, residing at University Place.
My appointment expires 6/19/2011.

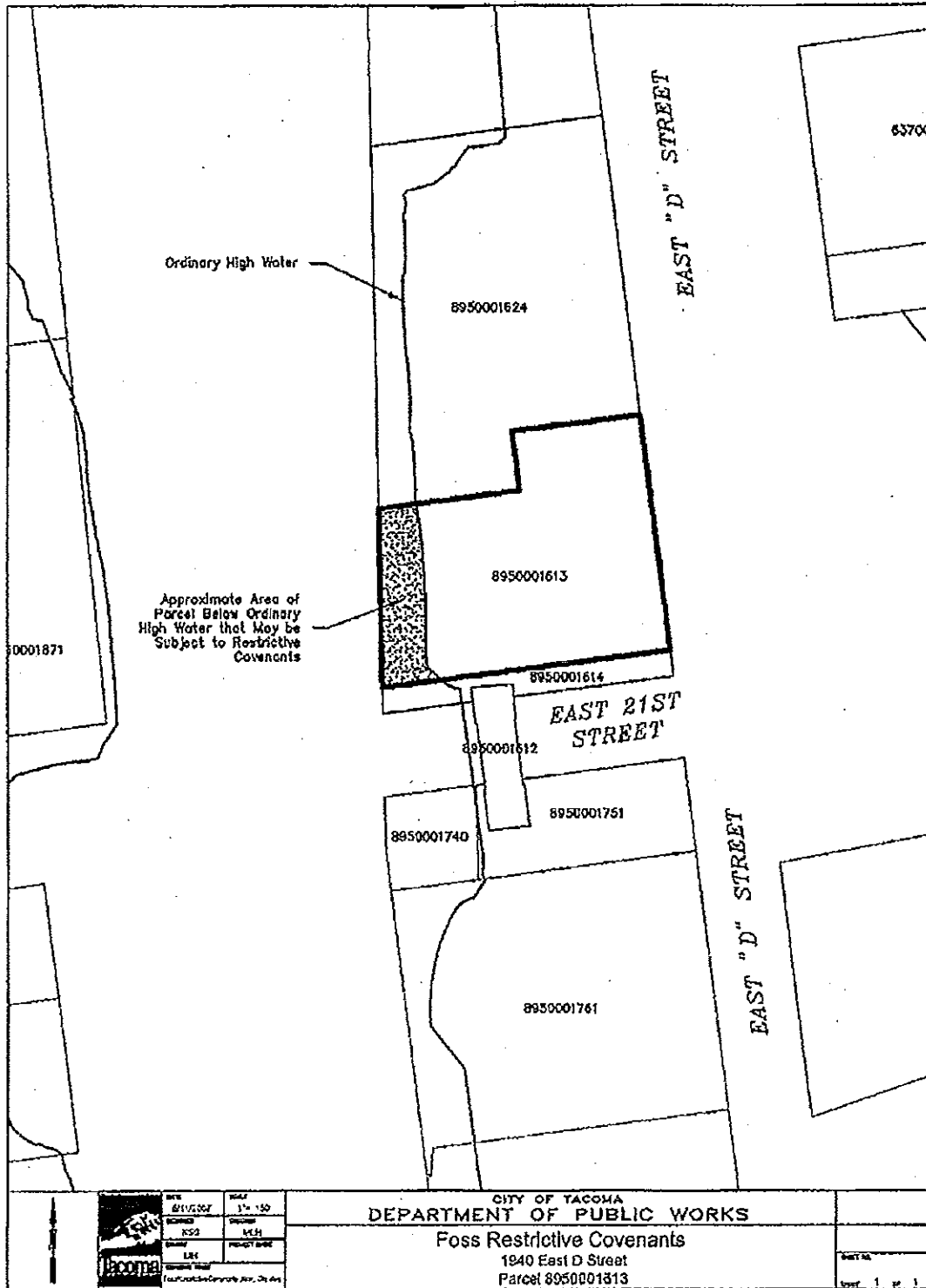
ATTACHMENT 1

[Legal Description]

REVISED PARCEL B OF CITY OF TACOMA BOUNDARY LINE ADJUSTMENT
RECORDED AUGUST 31, 2006 UNDER RECORDING NO. 200608315001.

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

ATTACHMENT 2



4819-5121-6385.01
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