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PIERCE COUNTY, WASHINGTON

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Recorded at Request of:
When Recorded Return To:

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

Alpha
Wattles / Port of Tacoma

RESTRICTIVE COVENANT

Grantor: Port Of Tacoma
Grantee: Washington State Department Of Ecology
Legal Description: Portion of Section 4, Township 20N, Range 3E
Additional Legal Description: Attachment 1, pages 6 – 7 of this document
Assessor's Tax Parcel No.: 8950001052

This Restrictive Covenant is made this 21 day of March, 2007, pursuant to RCW 43.21A.440 and RCW 70.105D.030(1)(f), (g) and (j), by the Port of Tacoma 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 real property referenced above is subject to this Restrictive Covenant because Remedial Action 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. Atlantic Richfield 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 Consent Decree is part of an integrated settlement that includes two other consent decrees. One is between EPA and Puget Sound Energy, Advance Ross Sub Company and PacifiCorp ("Utilities"), and 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, which was entered by the federal District Court on December 17, 2003.

Grantor is the fee owner of real property (hereafter "Property") a portion of which is subject to this Restrictive Covenant. The Property is identified as Assessor's Tax Parcel

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No. 8950001052, and is located at 1203 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. The portion of the Property affected by this Restrictive Covenant is that portion of the Property below ordinary high water, as generally depicted by the cross-hatched area on the map attached as Attachment 2, which is incorporated by reference herein. Grantor purchased the Property on January 18, 2007 from The Wattles Company, the party to the Consent Decree as it relates to the Property. In the absence of a Restrictive Covenant having been executed and recorded pursuant to the Consent Decree by The Wattles Company prior to its sale of the Property, Grantor, as the current owner of the Property, is executing this Restrictive Covenant at the request of the United States Environmental Protection Agency. 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.

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 (hereafter "Owner").

Section 1. The Remedial Action undertaken on the Property included a cap (i.e., placement of capping materials over contaminated sediments), natural recovery, and slope rehabilitation.

Section 2. Owner 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, including Operation and Maintenance activities, is prohibited without prior notice to and approval by EPA.

Section 4. Owner shall give thirty (30) days advance written notice to EPA and Ecology of Owner'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 Owner without adequate and complete provision for the continued compliance with all required institutional controls, including this Restrictive Covenant.

Section 5. Owner 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. Owner shall allow authorized representatives of EPA, Ecology, the Utilities, and the City of Tacoma 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. Owner 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. Owner 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, Owner 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. Owner 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, the Utilities, and/or the City of Tacoma, Owner 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. Owner 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. Owner 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

Utilities – Thea Foss Waterway Cleanup
c/o Loren Dunn
Riddell Williams
1001 Fourth Ave.
Suite 4500
Seattle, WA 98154-1192

If a proposed activity is within state-owned aquatic lands, then Owner shall also notify:

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

SIGNATURE APPEARS ON FOLLOWING PAGE

This Restrictive Covenant is executed by:

PORT OF TACOMA --

Robert Emerson
By: *Robert Emerson*
Its: *SA DIR FOLE*

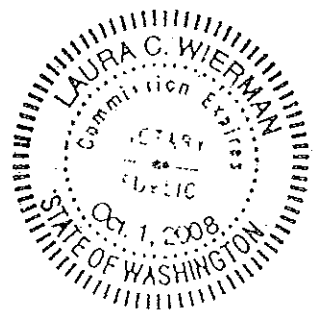
STATE OF WA)

COUNTY OF Pierce)

On this 16th day of March, 2007, personally appeared before me Robert Emerson to me known to be the Senior Director of Real Estate of the corporation that executed the within and foregoing instrument, and acknowledged 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 he/she/was they were authorized to execute said instrument for said corporation and that the seal affixed is the corporate seal of the said corporation.

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

Laura C. Wiernan
Notary Public in and for the State of
Washington, residing at
1765 Dock St. Tacoma WA
My appointment
expires 10.01.08



ATTACHMENT 1

PARCEL A

THOSE PORTIONS OF BLOCK 40 AND 40A AS SHOWN ON SUPPLEMENTAL SHEET 5A OF MAP OF TACOMA TIDELANDS, AS SURVEYED AND PLATTED BY THE BOARD OF TIDELAND APPRAISERS FOR PIERCE COUNTY, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 14, 1895 IN THE OFFICE OF THE COUNTY AUDITOR, AND OF SECTION 4, TOWNSHIP 20 NORTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE EAST LINE OF THE CITY WATERWAY 689.02 FEET SOUTHERLY MEASURED ALONG THE EAST LINE OF CITY WATERWAY FROM ITS INTERSECTION WITH THE SOUTH LINE OF EAST 11TH STREET (FORMERLY SOUTH 11TH STREET);
THENCE NORTH 02°38'08" WEST ALONG SAID EAST LINE 301.35 FEET;
THENCE PARALLEL WITH THE SOUTH LINE OF SAID EAST 11TH STREET NORTH 81°14' EAST 402.312 FEET;
THENCE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 401.92 FEET A DISTANCE OF 203.11 FEET TO THE EASTERLY LINE OF A TRACT OF LAND CONVEYED TO THE PUGET SOUND IRON & STEEL WORKS BY DEED RECORDED UNDER RECORDING NUMBER 296522 AND THE TRUE POINT OF BEGINNING;
THENCE ON SAID EASTERLY LINE SOUTH 24°51'32" EAST 112.453 FEET TO A LINE PARALLEL WITH AND DISTANCE 375 FEET NORTHERLY, MEASURED AT RIGHT ANGLES FROM THE CENTERLINE OF WHEELER-OSGOOD WATERWAY;
THENCE SOUTH 77°05'14" EAST ALONG SAID PARALLEL LINE A DISTANCE OF 546.07 FEET TO A POINT OF CURVE;
THENCE ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 286.28 FEET, THROUGH A CENTRAL ANGLE OF 53°08'48" A DISTANCE OF 265.55 FEET;
THENCE NORTH 23°56'26" WEST TO A POINT ON SAID SOUTH LINE OF EAST 11TH STREET 1039.72 FEET EASTERLY OF SAID EAST LINE OF CITY WATERWAY;
THENCE WESTERLY ON SAID SOUTH LINE OF EAST 11TH STREET 580.884 FEET;
THENCE SOUTH 24°51'32" EAST ALONG SAID EASTERLY LINE OF THE PUGET SOUND IRON & STEEL WORKS TRACT TO THE POINT OF BEGINNING;

TOGETHER WITH THAT PORTION OF VACATED EAST 11TH STREET ADJOINING OR ABUTTING THEREON, WHICH UPON VACATION ATTACHED TO SAID PREMISES BY OPERATION OF LAW, AS VACATED BY CITY OF TACOMA ORDINANCE NO. 21230 AND RECORDED UNDER RECORDING NUMBER 2789313;

EXCEPT THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT A POINT ON THE SOUTH LINE OF SOUTH 11TH STREET IN THE CITY OF TACOMA, 1039.72 FEET EASTERLY OF ITS POINT OF INTERSECTION WITH THE EAST LINE OF THE CITY WATERWAY;
THENCE WESTERLY ALONG SAID SOUTH LINE OF SOUTH 11TH STREET 247.82 FEET;
THENCE SOUTHEASTERLY ON A LINE FORMING AN ANGLE OF 73°54'02" WITH SAID SOUTH LINE 158.4 FEET;
THENCE NORTHEASTERLY AT RIGHT ANGLE 236.66 FEET;
THENCE NORTHWESTERLY 89.69 FEET TO THE POINT OF BEGINNING;

ALSO EXCEPT THE FOLLOWING DESCRIBED PROPERTY:

COMMENCING AT A POINT ON THE SOUTH LINE OF EAST 11TH STREET (FORMERLY SOUTH 11TH STREET), 791.9 FEET EASTERLY OF ITS POINT OF INTERSECTION WITH THE EAST LINE OF THE CITY WATERWAY;
THENCE SOUTHEASTERLY ON A LINE HEREINAFTER REFERRED TO AS LINE "A", FORMING AN ANGLE OF 73°54'02" TO THE RIGHT WITH SAID SOUTH STREET LINE, 208.4 FEET TO THE TRUE POINT OF BEGINNING;
THENCE NORTHWESTERLY RETRACING SAID LAST NAMED LINE "A" 50 FEET;
THENCE NORTHEASTERLY AT RIGHT ANGLES 236.66 FEET;

ATTACHMENT 1, continued

THENCE SOUTHEASTERLY ON AN ANGLE OF $90^{\circ}55'11''$ TO THE RIGHT, 50.02 FEET;
THENCE SOUTHWESTERLY ON A STRAIGHT LINE 235.86 FEET, MORE OR LESS, TO THE
TRUE POINT OF BEGINNING.

PARCEL B:

THOSE PORTIONS OF BLOCKS 39, 40, 40A, 50, 50A AND 50B, AS SHOWN ON
SUPPLEMENTAL SHEET 5A OF MAP OF TACOMA TIDELANDS, AS SURVEYED AND PLATED
BY THE BOARD OF TIDELAND APPRAISERS FOR PIERCE COUNTY, ACCORDING TO THE
PLAT THEREOF RECORDED SEPTEMBER 14, 1895 IN THE OFFICE OF THE COUNTY
AUDITOR, AND OF SECTION 4, TOWNSHIP 20 NORTH, RANGE 3 EAST OF THE
WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF THE CITY WATERWAY 689.02 FEET
SOUTHERLY MEASURED ALONG SAID EAST LINE OF CITY WATERWAY, FROM ITS
INTERSECTION WITH THE SOUTH LINE OF EAST 11TH STREET (FORMERLY SOUTH 11TH
STREET);
THENCE NORTH $02^{\circ}38'08''$ WEST ALONG SAID EAST LINE, 301.35 FEET;
THENCE PARALLEL WITH THE SOUTH LINE OF SAID EAST 11TH STREET, NORTH $81^{\circ}14'$
EAST 402.312 FEET;
THENCE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 401.92 FEET, A DISTANCE
OF 203.11 FEET TO THE EASTERLY LINE OF A TRACT OF LAND CONVEYED TO THE
PUGET SOUND IRON & STEEL WORKS BY DEED RECORDED UNDER RECORDING NUMBER
296522;
THENCE ON SAID EASTERLY LINE SOUTH $24^{\circ}51'32''$ EAST 112.453 FEET TO A LINE
PARALLEL WITH AND DISTANT 375 FEET NORTHERLY, MEASURED AT RIGHT ANGLES
FROM THE CENTERLINE OF WHEELER-OSGOOD WATERWAY;
THENCE SOUTH $77^{\circ}05'14''$ EAST ALONG SAID PARALLEL LINE A DISTANCE OF 546.07
FEET TO A POINT OF CURVE;
THENCE ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 286.28 FEET,
THROUGH A CENTRAL ANGLE OF $53^{\circ}08'48''$ A DISTANCE OF 265.55 FEET;
THENCE SOUTH $23^{\circ}56'26''$ EAST 4.95 FEET;
THENCE SOUTH $23^{\circ}56'26''$ EAST TO A POINT IN THE MOST SOUTHERLY LINE OF THE
EASTERLY END OF SAID WHEELER-OSGOOD WATERWAY, AS DESCRIBED IN DEED
EXECUTED BY THE NORTHERN PACIFIC RAILWAY COMPANY, RECORDED UNDER
RECORDING NUMBER 1799168;
THENCE SOUTHWESTERLY ALONG SAID MOST SOUTHERLY LINE TO ITS INTERSECTION
WITH THE CENTERLINE TO ITS INTERSECTION WITH OSGOOD WATERWAY;
THENCE WESTERLY ALONG SAID CENTERLINE TO ITS INTERSECTION WITH THE
EXTENDED EASTERLY LINE OF SAID TRACT CONVEYED TO THE PUGET SOUND IRON &
STEEL WORKS;
THENCE NORTH $77^{\circ}05'09''$ WEST 851.374 FEET TO THE POINT OF BEGINNING.

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

ATTACHMENT 2

