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PIERCE COUNTY, WASHINGTON

23.8.12.3X

Alpha

Totem Marine / Port of
Tacoma

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

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, page 6 of this document
Assessor's Tax Parcel Nos.: 8950000990 and 8950000680

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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Nos. 8950000990 and 8950000680, and is located at 820 and 1005 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 December 20, 2006 from L.R. Westgard and Judy Westgard, husband and wife ("Westgard"), and James Hollingsworth, Personal Representative of the Estate of John A. Paglia, deceased ("Paglia"), the parties 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 Westgard and Paglia prior to their 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 --

[Signature]
By: Robert Emerson
Its: SR Dir IDRS

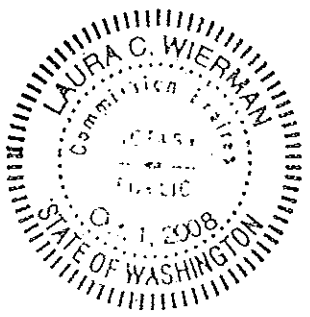
STATE OF WA)

COUNTY OF Pierce)

On this 16th day of March, 2007, personally appeared before me ~~Robert Emerson~~ 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.

[Signature]
Notary Public in and for the State of
Washington, residing at
1705 Duane St Tacoma WA
My appointment
expires Oct 01, 2008.

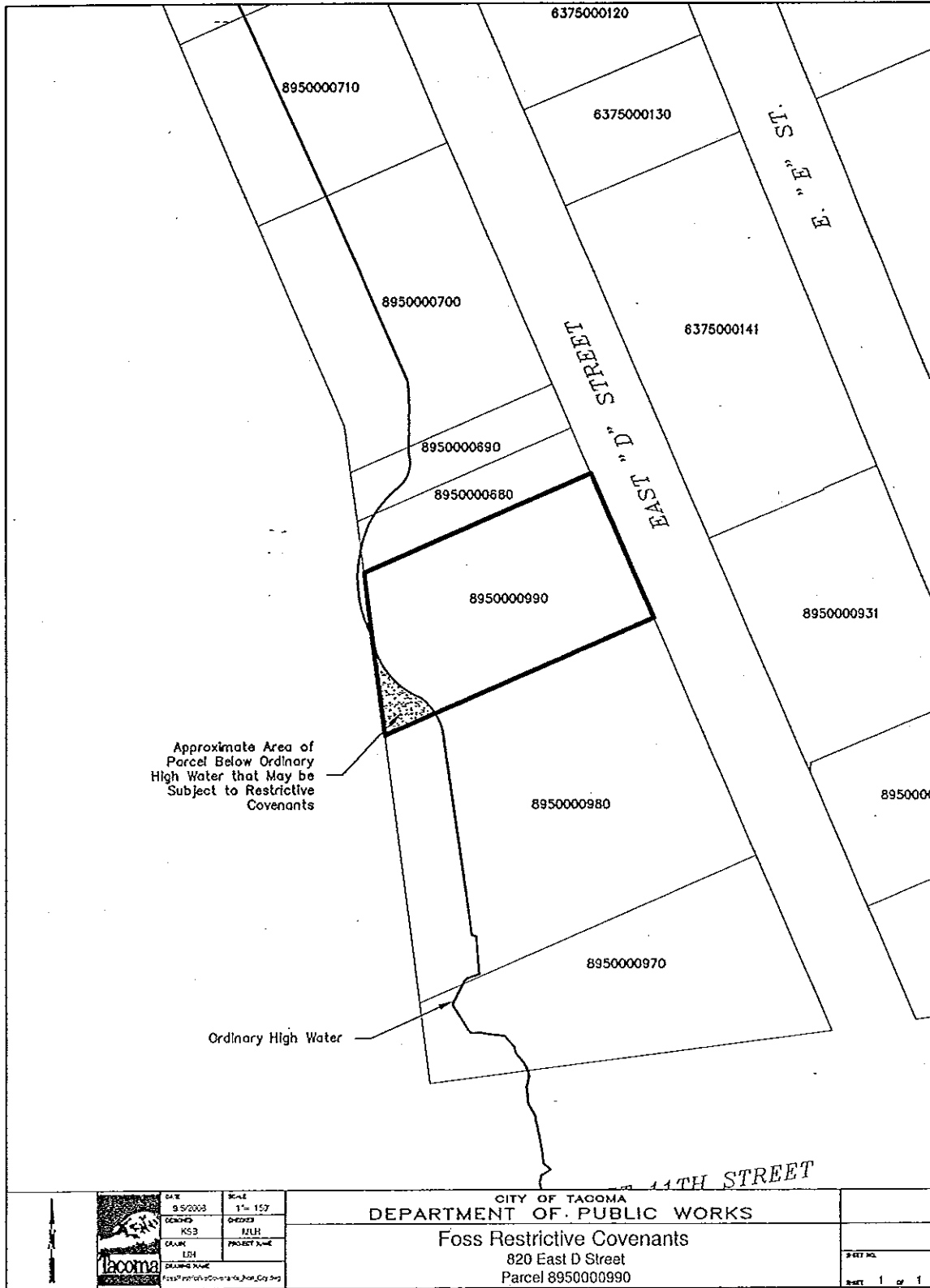


ATTACHMENT 1

LOTS 101 AND 102, ACCORDING TO THE NORTHERN PACIFIC RAILWAY COMPANY'S UNRECORDED PLAT "A" OF TACOMA TIDELANDS, IN PIERCE COUNTY, WASHINGTON, SITUATED IN THE CITY OF TACOMA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE NORTH LINE OF LOWER SOUTH 11TH STREET, WITH THE EAST LINE OF THE CITY WATERWAY AS SHOWN ON THE SUPPLEMENTAL PLAT OF TACOMA TIDELANDS;
THENCE NORTHEASTERLY ALONG THE NORTH LINE OF LOWER SOUTH 11TH STREET, 393.206 FEET;
THENCE NORTHWESTERLY ON A LINE FORMING AN ANGLE OF 73°50'2" WITH THE LAST DESCRIBED COURSE, 434.181 FEET TO THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN DESCRIBED;
THENCE CONTINUING IN THE SAME DIRECTION, 200 FEET;
THENCE SOUTHWESTERLY AT RIGHT ANGLES 225.774 FEET, MORE OR LESS, TO THE EAST LINE OF THE CITY WATERWAY AT A POINT 546.243 FEET DISTANT NORTHERLY FROM THE INTERSECTION OF THE NORTH LINE OF LOWER SOUTH 11TH STREET, AND THE EASTERLY LINE OF SAID WATERWAY;
THENCE SOUTHEASTERLY ALONG THE SAID EAST WATERWAY LINE TO A POINT WHICH IS 338.933 FEET DISTANT NORTHERLY FROM THE INTERSECTION OF THE NORTH LINE OF LOWER SOUTH 11TH STREET, AND THE EAST LINE OF CITY WATERWAY;
THENCE NORTHEASTERLY 283.607 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

ATTACHMENT 2



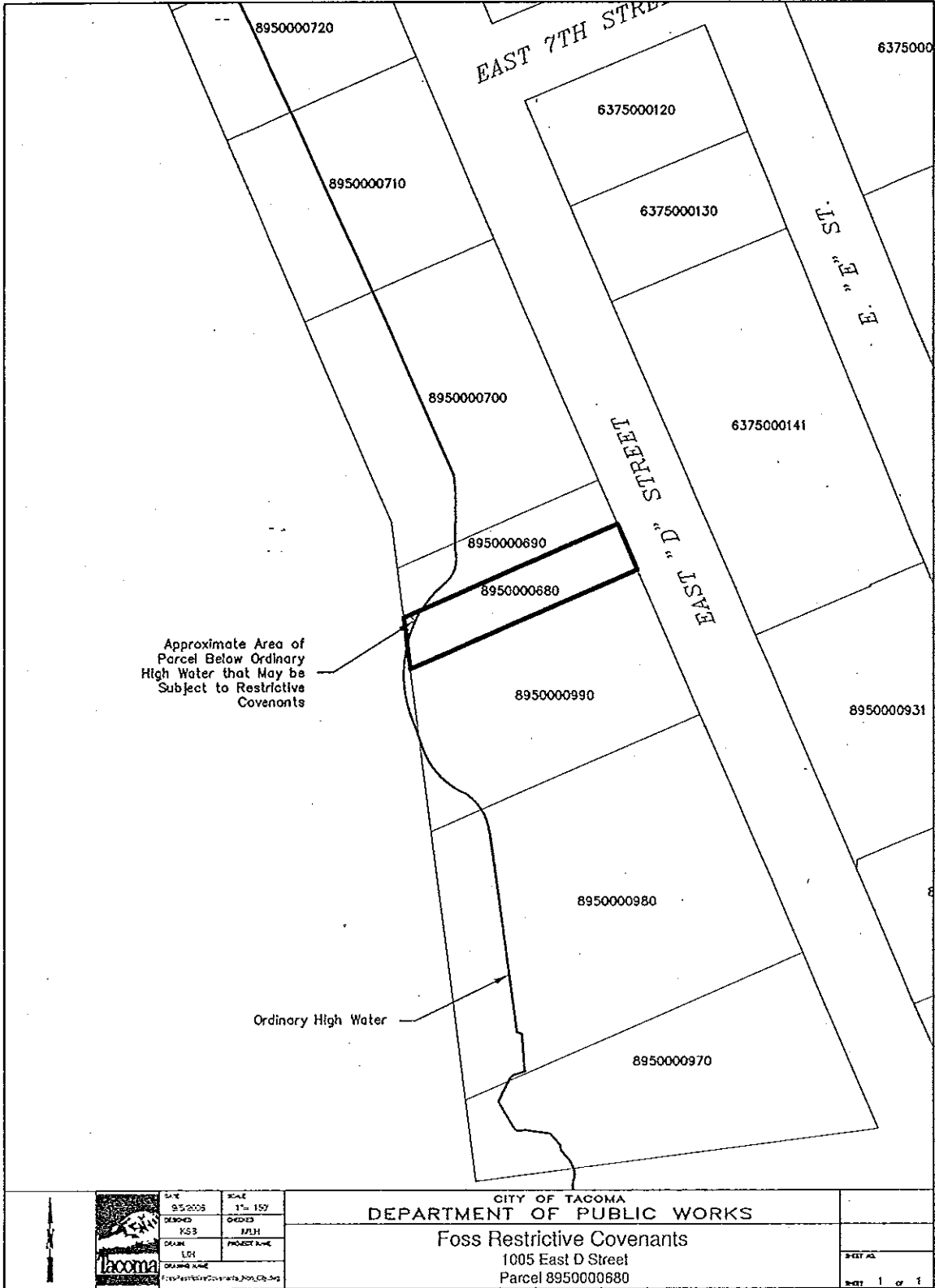
	DATE	SCALE
	8/5/2008	1" = 150'
	DESIGNED	DRAWN
	RSB	MLH
CHECKED	PROJECT NAME	
LSJ		
DRAWING NAME		
Foss Restrictive Covenants, Parcel 8950000990		

CITY OF TACOMA
DEPARTMENT OF PUBLIC WORKS

Foss Restrictive Covenants
820 East D Street
Parcel 8950000990

SHEET NO.
SHEET 1 of 1

ATTACHMENT 2, continued



Approximate Area of Parcel Below Ordinary High Water that May be Subject to Restrictive Covenants

Ordinary High Water

	DATE	SCALE
	DESIGNED	DRAWN
	CHECKED	PROJECT NAME
	DATE	
DRAWN BY		
PROJECT NAME		

CITY OF TACOMA
DEPARTMENT OF PUBLIC WORKS

Foss Restrictive Covenants
1005 East D Street
Parcel 8950000680

SHEET NO.
SHEET 1 of 1