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 PIERCE COUNTY, WASHINGTON

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When Recorded, Return To:

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

**COURTESY REORDING ONLY
 NO LIABILITY FOR VALIDITY
 AND/OR ACCURACY ASSUMED BY
 LANDAMERICA COMMERCIAL SERVICES**

Document Title: Restrictive Covenant
 Grantor: BNSF Railway Company
 Grantee: WA DEPARTMENT OF ECOLOGY
 Legal Description: PTN GOV'T LOTS 8 AND 11 OF SEC 4, TWN 20 N, R 3 E, ,
 W/M, AND PTN LOT 50 OF THE TACOMA TIDE LANDS
 Additional Legal Description: SEE ATTACHMENT 1 FOR FULL LEGAL DESCRIPTION
 Assessor's Tax Parcel Numbers: 0320041028 and 8950001601

RESTRICTIVE COVENANT

This Restrictive Covenant is made this 24th day of January, 2007, pursuant to RCW 43.21A.440 and RCW 70.105D.030(1)(f), (g) and (j), by BNSF Railway Company 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 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") that is subject to this Restrictive Covenant. The Property is the portions of Tax Parcels 0320041028 and 8950001601 that are located at 1125 East D Street and 401 East 15th 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 maps 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.

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 sediment), 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

This Restrictive Covenant is executed by:

BNSF Railway Company

Blaine Bildarback [Signature]

By: Blaine Bildarback [Name]

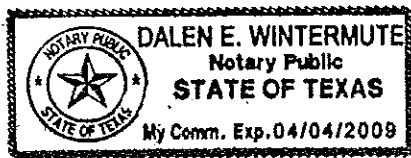
Its: Director Facilities [Title]

STATE OF TEXAS)

COUNTY OF TARRANT)

On this 24th day of January, 2007, personally appeared before me Blaine Bildarback to me known to be the Director Facilities 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.



Dalen E. Wintermute
Notary Public in and for the State of
Texas, residing at H. Worth, TX
My appointment expires 04/04/2009.

ATTACHMENT 1

[Legal Description]

Those portions of Government Lots 8 and 11 of Section 4, Township 20 North, Range 3 East of Willamette Meridian, Pierce County, Washington, also being a portion of Lot 50 of the Tacoma Tide Lands, and a portion of the Wheeler-Osgood Waterway, described as follows, to-wit:

Commencing at the intersection of the East line of Thea Foss Waterway (City Waterway) with the centerline of Wheeler-Osgood Waterway, according to the recorded plat of Tacoma Tide Lands; thence Southeasterly along the centerline of Wheeler-Osgood Waterway a distance of 1,360 feet, more or less, to the most Southerly corner of a certain parcel of land described in deed dated September 24, 1957 from Northern Pacific Railway Company (predecessor to BNSF Railway Company) to Northwest Door Company; thence Easterly along the Southerly line of said parcel of land, 135 feet, more or less, to the intersection with the Southeasterly extension of the Easterly line of said parcel of land; thence South $23^{\circ} 56' 26''$ East (deed) along said Southeasterly extension a distance of 240 feet, more or less, to the Northerly right of way line of East 15th Street; thence South $73^{\circ} 48'$ West along said Northerly right of way to the point of intersection of the Northerly line of East 15th Street with a line running parallel with and 8.5 feet Southwesterly of the centerline of the first Railroad Track on the arc of a curve as now constructed, lying Southwesterly of the Southwesterly line of Wheeler-Osgood Waterway, said point being the most Easterly corner of a certain parcel of land described in quitclaim deed dated December 2, 1997 from The Burlington Northern and Santa Fe Railway Company to DGK, L.L.C.; thence Northwesterly along the arc of a curve having a radius of 369.38 feet a distance of 102.52 feet to appoint of tangency, said curve being 8.5 distant and parallel to the centerline of said existing Railroad Track; thence on said parallel line North $76^{\circ} 51' 59''$ West 167.50 feet to the beginning of a curve to the left, the radius point of which bears South $13^{\circ} 08' 01''$ West a distance of 1014.00 feet from said beginning; thence continuing parallel with said Railroad Track along the arc of said curve 106.44 feet to a point of tangency; thence continuing on said parallel line North $82^{\circ} 52' 51''$ West 133.63 feet to the most Northerly corner of said DGK, L.L.C. property and being a point on the Easterly boundary of a certain parcel of land described in quitclaim deed dated November 21, 1997 from the Burlington Northern and Santa Fe Railway Company to Starting Step Properties, L.L.C.; thence North $02^{\circ} 25' 21''$ East (deed) 28 feet, more or less, to the bulkhead line of Wheeler-Osgood Waterway; thence North $76^{\circ} 31' 20''$ West along said bulkhead line 391.12 feet to the Northeast corner of a certain parcel of land described in deed dated November 24, 1998 from the Burlington Northern and Santa Fe Railway Company to Gary Lyden, et ux; thence North $76^{\circ} 31' 20''$ West along said bulkhead line a distance of 285.80 feet to the Northwest corner of said "Lyden" property; thence South $30^{\circ} 32' 07''$ West along Westerly line of said "Lyden" property a distance of 213.89 feet to the intersection with a distant line drawn parallel and concentric with and 25.0 feet normally distant Northeasterly from the centerline of said Railway Company's old Drawbridge Line, as originally located and constructed; thence Southeasterly along said parallel and concentric line, and along the Southerly boundary of said "Lyden" property and said "Starting Step" property a distance of 671.9 feet, more or less, to the Northerly right of way line East of 15th Street; thence South $73^{\circ} 48'$ West along said Northerly right of way to the point of intersection with a line drawn parallel and concentric with 21.0 feet normally distant Southwesterly from the centerline of said old

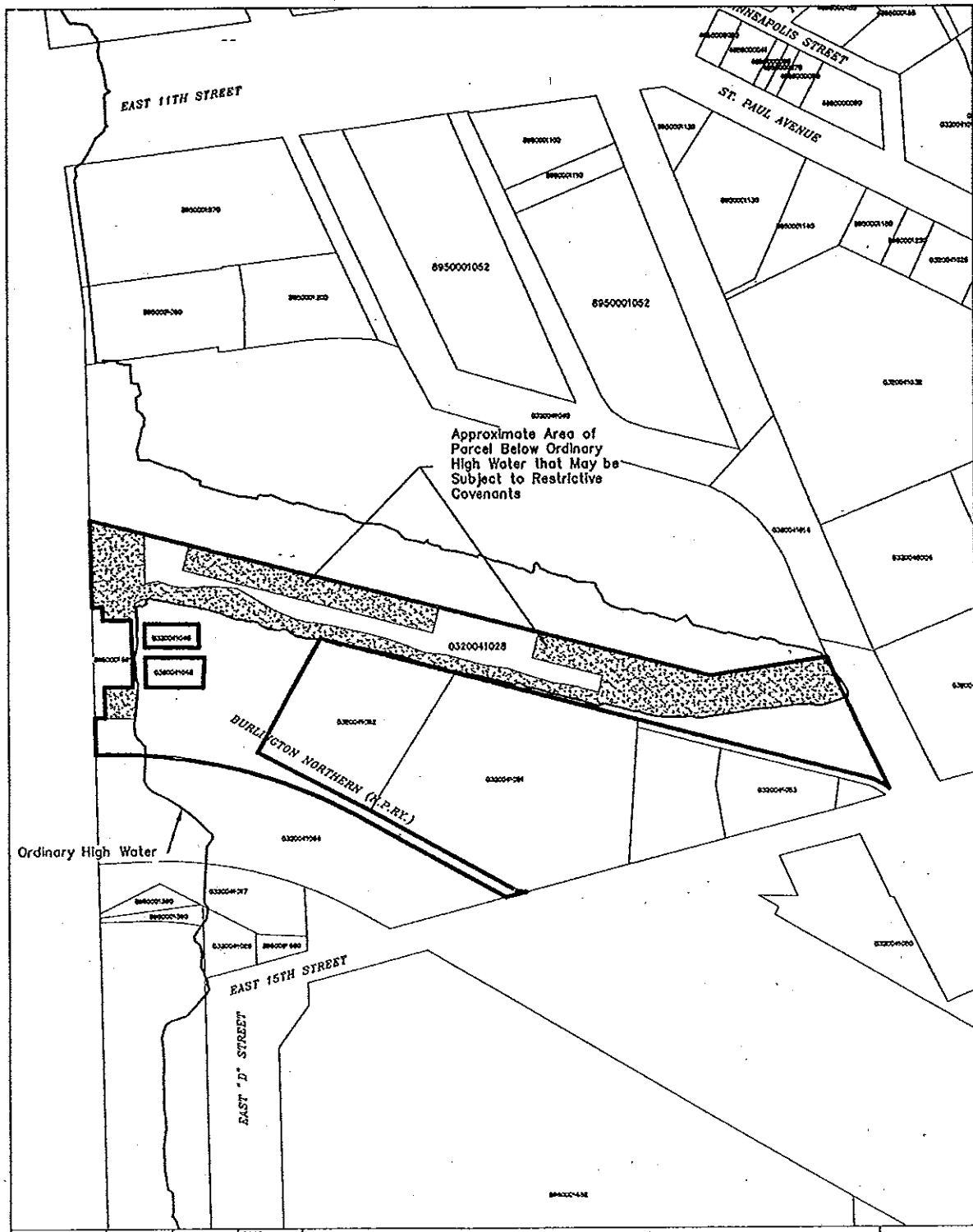
Drawbridge Line; thence Northwesterly along the last described parallel and concentric line, and along the Northerly bōoundary of a certain parcel of land described in deed dated November 4, 1997 from The Burlington Northern and Santa Fe Railway Company to J. M. Martinac Shipbuilding Corporation and filed for record as Document No.9711140809, a distance of 911 feet, more or less, to the East line of Thea Foss Waterway (City Waterway); thence Northerly along said East line 430 feet, more or less, to the Point of Beginning.

ATTACHMENT 2

(Survey Depicting Area of Parcel Affected by Restrictive Covenant)

**Auditor's notation
to facilitate
scanning process**

[Faint, illegible text]



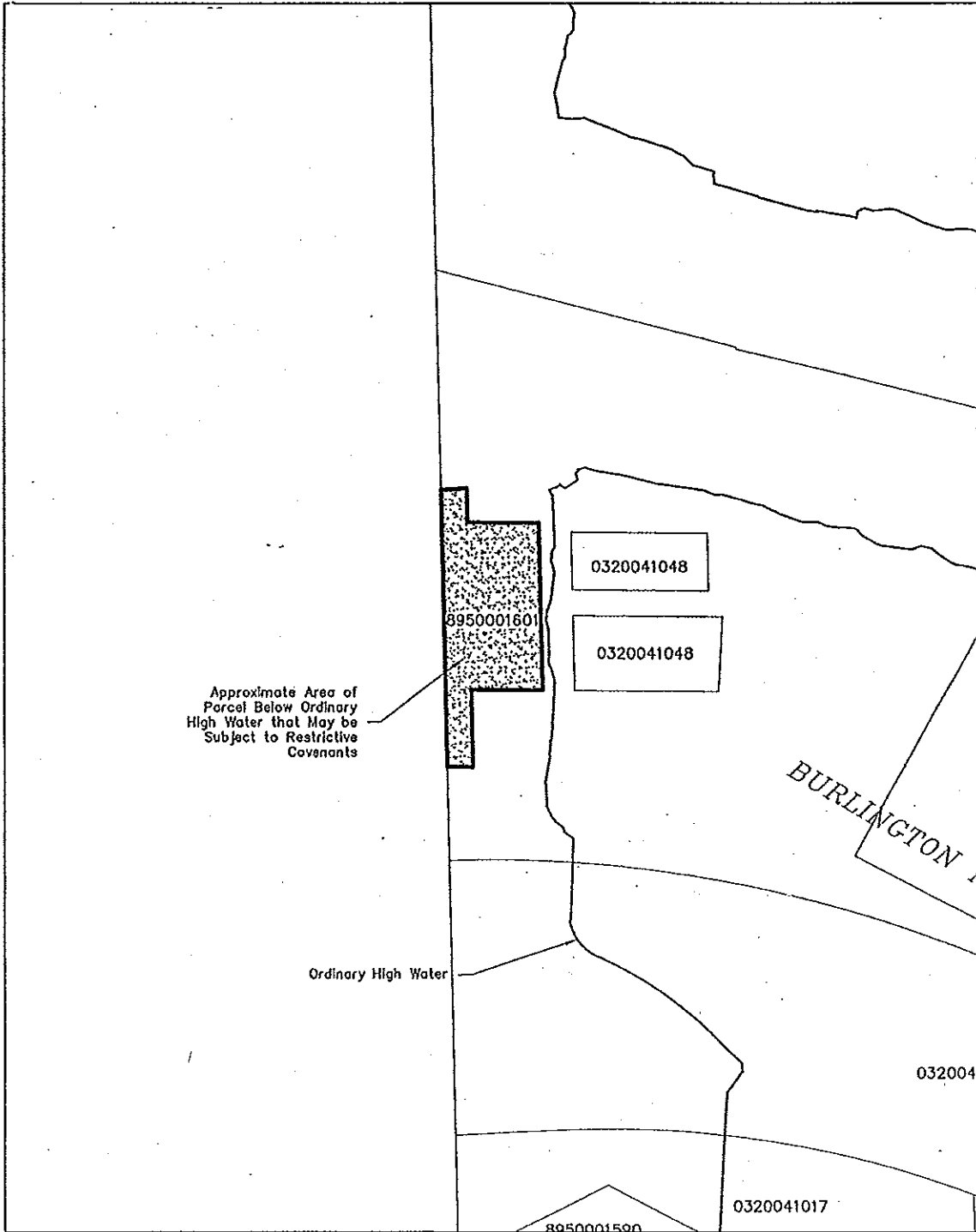
Approximate Area of Parcel Below Ordinary High Water that May be Subject to Restrictive Covenants

Ordinary High Water

	DATE	05/2008	SCALE	1" = 25'
	DRAWN BY	RSB	CHECKED BY	MUH
	DATE	LH	PROJECT NAME	
	<small>Final restrictiveCovenants_Map_City.doc</small>			

CITY OF TACOMA
DEPARTMENT OF PUBLIC WORKS

Foss Restrictive Covenants
1125 East D Street
Parcel 0320041028



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

Ordinary High Water

BURLINGTON

CITY OF TACOMA
DEPARTMENT OF PUBLIC WORKS

Foss Restrictive Covenants
401 East 15th Street
Parcel 8950001601

	DATE	SCALE
	9/5/2006	1" = 100'
	DESIGNED	CHECKED
	KES	JMH
	DRAWN	PROJECT NAME
LNH		
<small>DATE PLOTTED: 9/20/06 FILE: F:\GIS\Projects\2006\15th_Street_City.doc</small>		