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 PIERCE COUNTY, WASHINGTON

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 LOT 1 SEC 9, TWN 20 N, R 3 E, W/M
 Additional Legal Description: SEE ATTACHMENT 1 FOR FULL LEGAL DESCRIPTION
 Assessor's Tax Parcel Number: 0320092019

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 portion of Tax Parcel 320092019 that is located at 201 East 23rd 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.

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).

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 Bilderbach [Signature]

By: *Blaine Bilderbach* [Name]

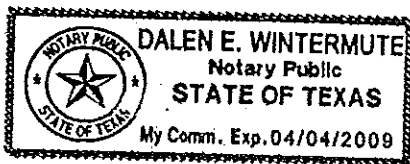
Its: *Director Facilities* [Title]

STATE OF *TEXAS*)

COUNTY OF *TARRANT*)

On this *24th* day of January, 2007, personally appeared before me *Blaine Bilderbach* 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.

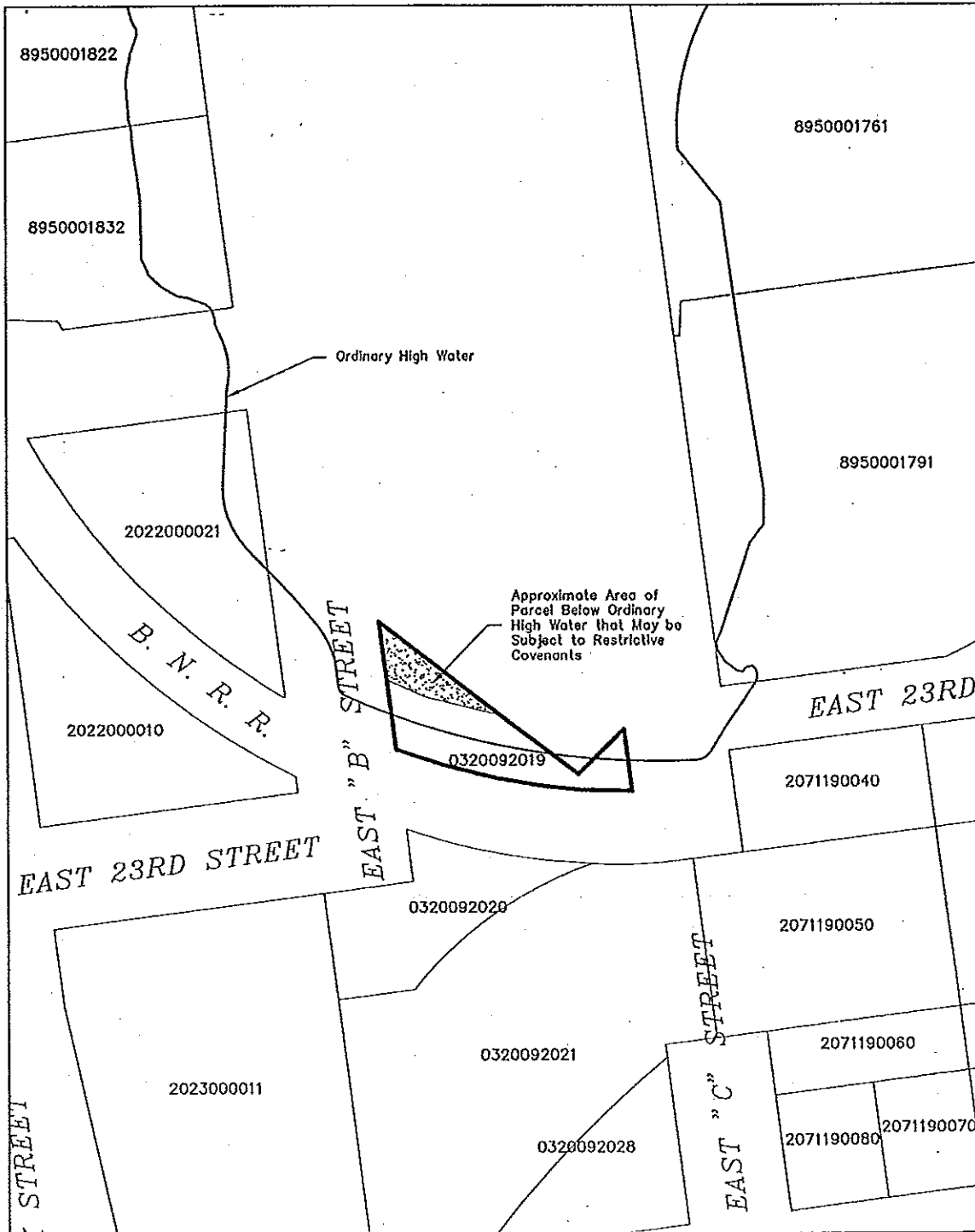


Dalen E. Wintermute
Notary Public in and for the State of
Texas, residing at *Ft. Worth, TX.*
My appointment expires *04/04/2009*.

ATTACHMENT 1

[Legal Description]

Beginning at the intersection of the Government Meander Line, located in Section 9, Township 20 North, Range 3 East of the Willamette Meridian, with the west line of East "C" Street; thence South 43° 55' 50" West, 47.95 feet along and to an angle point in said Meander Line; thence North 53° 46' 01" West, 193.75 feet to the intersection of said Meander Line and the east line of East "B" Street; thence South 08° 46' 53" East, 94.58 feet along said east line to its intersection with a non-tangent curve concave to the northeast and having a radius of 551.68 feet and which is tangent to a line parallel with and 22.00 feet northeasterly of the centerline of the BNSF Railway Company's right-of-way and to which intersection a radial bears North 19° 10' 29" East, said intersection also being 15.7 feet northeasterly from, when measured at right angles to the centerline of the BNSF Railway Company's most northerly track as now existing; thence southeasterly 185.35 feet along said curve to the west line of East "C" Street, and to which intersection a radial bears North 00° 04' 31" West, said intersection also being 15.0 feet northerly from, when measured at right angles to the centerline of the BNSF Railway Company's most northerly track as now existing; thence North 08° 46' 53" West, 44.62 feet to the place of beginning.



	DATE	SCALE	CITY OF TACOMA		SHEET NO. 1 of 1
	8/5/2008	1" = 100'	DEPARTMENT OF PUBLIC WORKS		
	DRAWN	CHECKED	Foss Restrictive Covenants		
	KSB	MLH	201 East 23rd Street		
	DATE	PROJECT NAME	Parcel 0320092019		
	1/01				
Tacoma <small>Tacoma, WA</small>					