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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

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

Document Title:	Restrictive Covenant
Grantor:	CITY OF TACOMA
Grantee:	WA DEPARTMENT OF ECOLOGY
Legal Description:	PORTION OF SECTION 3, TOWNSHIP 20 NORTH, RANGE EAST, W.M.
Additional Legal Description:	SEE ATTACHMENT 1 FOR FULL LEGAL DESCRIPTION
Assessor's Tax Parcel Number:	8950000404

RESTRICTIVE COVENANT

This Restrictive Covenant is made this 11th day of January, 2007, pursuant to RCW 43.21A.440 and RCW 70.105D.030(1)(f), (g) and (j), by the City 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 property referenced above is subject to this Restrictive Covenant because 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. 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 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 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, which is legally described in Attachment 1. The Property subject to this Restrictive Covenant is the portion of Tax Parcel 8950000404 that is located at 1711 East Portland Avenue, Tacoma, in Pierce County, Washington, which 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 is has authority to enter into this Restrictive Covenant.

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. Habitat mitigation work undertaken on the Property consists of an inter-tidal and shoreline habitat mitigation area along the Puyallup River ("Habitat Mitigation Area") for the rearing and refuge of juvenile salmonids, among other things.

Section 2. The Grantor shall not conduct, or allow to be conducted any activity on the Property that may interfere with the Habitat Mitigation Area, or operation, maintenance and monitoring of such area 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. Provided however, this Restrictive Covenant is not intended, nor shall it affect or diminish any rights the U.S. Army Corps

of Engineers may have under federal law or by agreement with the City of Tacoma with respect to the Property. Activities prohibited unless otherwise approved include, but are not limited to:

- 2.1 Any activity that alters, modifies, or removes the habitat mitigation work undertaken on the Property.

Section 3. 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 Grantor without adequate and complete provision for the continued compliance with all required institutional controls, including this Restrictive Covenant.

Section 4. 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 5. Grantor shall allow authorized representatives of EPA and Ecology 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 6. Subject to the rights of the U.S. Army Corps of Engineers, as set forth above in Section 2, 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 7. 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 8. If requested by EPA, the Grantor shall allow, at no cost, the placement and maintenance of signs on the Property regarding prohibited activities to the extent such activities do not unreasonably interfere with the public's use and enjoyment of the Property.

Section 9. 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 10. Grantor hereby confirms that this Restrictive Covenant is enforceable at law by EPA and Ecology.

Section 11. 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

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

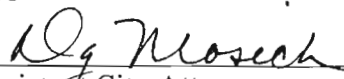
PacifiCorp – Thea Foss Waterway Cleanup
c/o Richard Gleason
Stoel Rives
900 SW Fifth Avenue
Suite 2600
Portland, OR 97204

CITY OF TACOMA



Eric Anderson, City Manager

Approved as to Form:



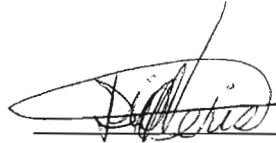
Assistant City Attorney

STATE OF WASHINGTON)

COUNTY OF PIERCE)

On this 11th day of January, 2007, Eric Anderson personally appeared before me and on oath acknowledged that he was authorized to sign this instrument as the City Manager for the City of Tacoma, and further acknowledged that his signature was a free and voluntary act on behalf of the City of Tacoma, 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 Pierce County
My appointment expires 4-9-09.

ATTACHMENT 1

[Legal Description]

SURVEYOR'S METES AND BOUNDS LEGAL DESCRIPTION

THAT PORTION OF THE MAP OF TACOMA TIDELANDS AS SURVEYED AND PLATTED BY THE BOARD OF TIDELAND APPRAISERS FOR PIERCE COUNTY, ACCORDING TO THE PLAT THEREOF FILED SEPTEMBER 14, 1895, AND THE BED OF THE PUYALLUP RIVER ALL IN SECTION 3, TOWNSHIP 20 NORTH, RANGE 3 EAST, W.M., AS SHOWN ON CITY OF TACOMA MAP OF SAID SECTION 3, AND RECORDED UNDER CITY OF TACOMA ARCHIVE NUMBERS 0038413 AND 0038364, ALL LYING WESTERLY OF THE UNITED STATES ARMY CORP OF ENGINEERS PB LINE AS SHOWN ON UNITED STATES ARMY CORP OF ENGINEERS DRAWING ENTITLED "PUYALLUP RIVER CHANNEL IMPROVEMENTS-SEGMENT A" AND DATED APRIL 22, 1988 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 34, TOWNSHIP 21 NORTH, RANGE 3 EAST, HAVING WASHINGTON COORDINATE SYSTEM SOUTH ZONE COORDINATES OF N 707611.26 AND E 1163686.75, BEING A 2 INCH BRASS DISC IN CONCRETE, BURIED 1.0 FOOT DEEP, AND BEARING SOUTH 11°36'14" EAST 481.05 FEET FROM A 1 1/2 INCH DIAMETER SURFACE DISC AT THE INTERSECTION OF EAST 11TH STREET AND PORTLAND AVENUE (FORMERLY CANAL STREET) AND ALSO BEARING NORTH 88°09'17" WEST 3,175.26 FEET FROM A MEANDER CORNER ON THE SOUTH LINE OF SECTION 34, TOWNSHIP 21 NORTH, RANGE 3 EAST, W.M., SAID MEANDER CORNER BEING A 2 INCH BRASS DISC IN CONCRETE BURIED 0.8 FEET DEEP;

THENCE SOUTH 20°49'46" EAST 988.86 FEET TO THE UNITED STATES ARMY CORP OF ENGINEERS MONUMENT PB-7 AS SHOWN ON SAID UNITED STATES ARMY CORP OF ENGINEERS MAP AND THE TRUE POINT OF BEGINNING OF THIS LEGAL DESCRIPTION, SAID MONUMENT HAVING A COORDINATE VALUE OF N 706687.04 AND E 1164038.37 AND BEING A POINT ON THE WESTERLY LINE OF THE PUYALLUP RIVER AS SHOWN ON SAID UNITED STATES ARMY CORP OF ENGINEERS MAP;

THENCE SOUTH 09°49'23" WEST ALONG SAID WESTERLY LINE 151.66 FEET TO A SET MONUMENT PBM-1 AND STATION 1+51.66, SAID MONUMENT BEING A 3 1/2 INCH ALUMINUM DISC MARKED "U.S. ARMY CORP OF ENGINEERS" AND MOUNTED TO AN ALUMINUM TUBE BURIED IN THE GROUND;

THENCE CONTINUING, ALONG SAID WESTERLY LINE, SOUTH 09°49'23" WEST 150.00 FEET TO PBM-2 AND STATION 3+01.66 TO A SET ALUMINUM MONUMENT;

THENCE CONTINUING, ALONG SAID WESTERLY LINE, SOUTH 09°49'23" WEST 150.00 FEET TO PBM-3 AND STATION 4+51.66 TO A SET ALUMINUM MONUMENT;

THENCE CONTINUING, ALONG SAID WESTERLY LINE, SOUTH 09°49'23" WEST 150.00 FEET TO PBM-4 AND STATION 6+01.66 TO A SET ALUMINUM MONUMENT;

THENCE CONTINUING, ALONG SAID WESTERLY LINE, SOUTH 09°49'23" WEST 150.00 FEET TO PBM-5 AND STATION 7+51.66 TO A SET ALUMINUM MONUMENT;

THENCE CONTINUING, ALONG SAID WESTERLY LINE, SOUTH 09°49'23" WEST 38.27 FEET TO PBM-6 AND PC STATION 7+89.93 TO A SET

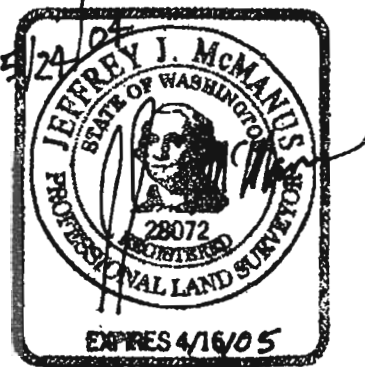
ALUMINUM MONUMENT AND A TANGENT POINT OF CURVATURE OF SAID WESTERLY LINE, SAID CURVE HAVING A RADIUS OF 600.00 FEET AND BEING CONCAVE TO THE EAST;
THENCE SOUTHERLY ALONG SAID CURVE AND WESTERLY LINE 111.71 FEET THROUGH A CENTRAL ANGLE OF 10°40'03" TO PBM-7 AND STATION 9+01.64 TO A SET ALUMINUM MONUMENT;
THENCE CONTINUING SOUTHERLY ALONG SAID CURVE AND WESTERLY LINE 149.97 FEET THROUGH A CENTRAL ANGLE OF 14°19'16" TO PBM-8 AND STATION 10+51.61 TO A SET ALUMINUM MONUMENT;
THENCE CONTINUING SOUTHERLY ALONG SAID CURVE AND WESTERLY LINE 149.98 FEET THROUGH A CENTRAL ANGLE OF 14°19'20" TO PBM-9 AND STATION 12+01.59 TO A SET ALUMINUM MONUMENT;
THENCE CONTINUING SOUTHERLY ALONG SAID CURVE AND WESTERLY LINE 166.98 FEET THROUGH A CENTRAL ANGLE OF 15°56'42" TO PBM-10 AND STATION 13+68.57 TO A SET ALUMINUM MONUMENT AND A POINT OF TANGENCY IN SAID WESTERLY LINE;
THENCE CONTINUING, ALONG SAID WESTERLY LINE, SOUTH 45°25'58" EAST 133.02 FEET TO PBM-11 AND STATION 15+01.59 AND A SET ALUMINUM MONUMENT;
THENCE CONTINUING, ALONG SAID WESTERLY LINE, SOUTH 45°25'58" EAST 150.00 FEET TO PBM-12 AND STATION 16+51.59 AND A SET ALUMINUM MONUMENT;
THENCE CONTINUING, ALONG SAID WESTERLY LINE, SOUTH 45°25'58" EAST 150.00 FEET TO PBM-13 AND STATION 18+01.59 AND A SET ALUMINUM MONUMENT;
THENCE CONTINUING SOUTH 45°25'58" EAST 152.56 FEET TO PBM-14 AND STATION 19+54.15 AND A SET ALUMINUM MONUMENT WHICH IS A CUSP OF A CURVE AT A POINT OF INTERSECTION WITH A CURVED PORTION OF SAID PB LINE PREVIOUSLY KNOWN AS PB-12 ON SAID UNITED STATES ARMY CORP OF ENGINEERS MAP AND ALSO BEING A POINT ON A CURVED PORTION OF PB LINE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS POINT WHICH BEARS NORTH 59°29'27" EAST, A RADIUS OF 3,080.00 FEET, SAID PB-12 BEARS NORTH 36°21'04" WEST 505.32 FEET FROM A FOUND UNITED STATES ARMY CORP OF ENGINEERS 3 1/4 INCH DIAMETER ALUMINUM CAPPED MONUMENT LABELED PB-15 HAVING STATE PLANE COORDINATES OF N 704561.00 AND E 1164790.45, SAID PB-12 ALSO BEARS NORTH 45°25'58" WEST 159.43 FEET FROM THE COMMON CORNER BETWEEN BLOCKS 17 AND 18 OF SAID TACOMA TIDELANDS MAP;
THENCE NORTHERLY ALONG SAID CURVED PORTION OF PB LINE 207.87 FEET THROUGH A CENTRAL ANGLE OF 03°52'01" TO PB-11A;
THENCE CONTINUING ALONG SAID CURVED PORTION OF PB LINE 249.98 FEET THROUGH A CENTRAL ANGLE OF 04°39'01" TO PB-11 AND AN ANGLE POINT IN SAID PB LINE;
THENCE NORTH 45°25'50" WEST ALONG SAID PB LINE 119.28 FEET TO PB-10 AND A TANGENT CURVE CONCAVE TO THE EAST AND HAVING A RADIUS OF 400.00 FEET;
THENCE NORTHERLY ALONG SAID CURVED LINE 185.83 FEET THROUGH A CENTRAL ANGLE OF 26°37'07" TO PB-9A;
THENCE CONTINUING ALONG SAID CURVED LINE 199.97 FEET THROUGH A CENTRAL ANGLE OF 28°38'38" TO PB-9 AND AN ANGLE POINT;

THENCE NORTH 09°45'55" EAST ALONG SAID PB LINE 71.15 FEET TO PB-8 AND A NON-TANGENT CURVED PORTION OF PB LINE CONCAVE TO THE EAST HAVING A RADIUS OF 3,110.00 FEET AND A RADIUS POINT WHICH BEARS NORTH 78°00'22" EAST;
THENCE ALONG SAID CURVED PB LINE 256.55 FEET THROUGH A CENTRAL ANGLE OF 04°43'35" TO A FOUND 3 1/4 INCH DIAMETER ALUMINUM CAPPED MONUMENT MARKED PB-7B AND HAVING COORDINATES OF N 706138.16 AND E 1164059.46
THENCE CONTINUING NORTHERLY ALONG SAID CURVED PB LINE 300.00 FEET THROUGH A CENTRAL ANGLE OF 05°31'37" TO PB-7A;
THENCE CONTINUING NORTHERLY ALONG SAID CURVED PB LINE 250.02 FEET THROUGH A CENTRAL ANGLE OF 04°36'22" TO FOUND PB-7 MONUMENT AND THE TRUE POINT OF BEGINNING.

ALL SITUATE IN TACOMA, PIERCE COUNTY, WASHINGTON.

PARCEL CONTAINS 205,805 SQUARE FEET OR 4.7246 ACRES.

COORDINATES IN THIS DESCRIPTION ARE BASED ON WASHINGTON COORDINATE SYSTEM-SOUTH ZONE, NAD-83/91, ALL DISTANCES ARE GROUND. COMBINED FACTOR IS 0.99998512.

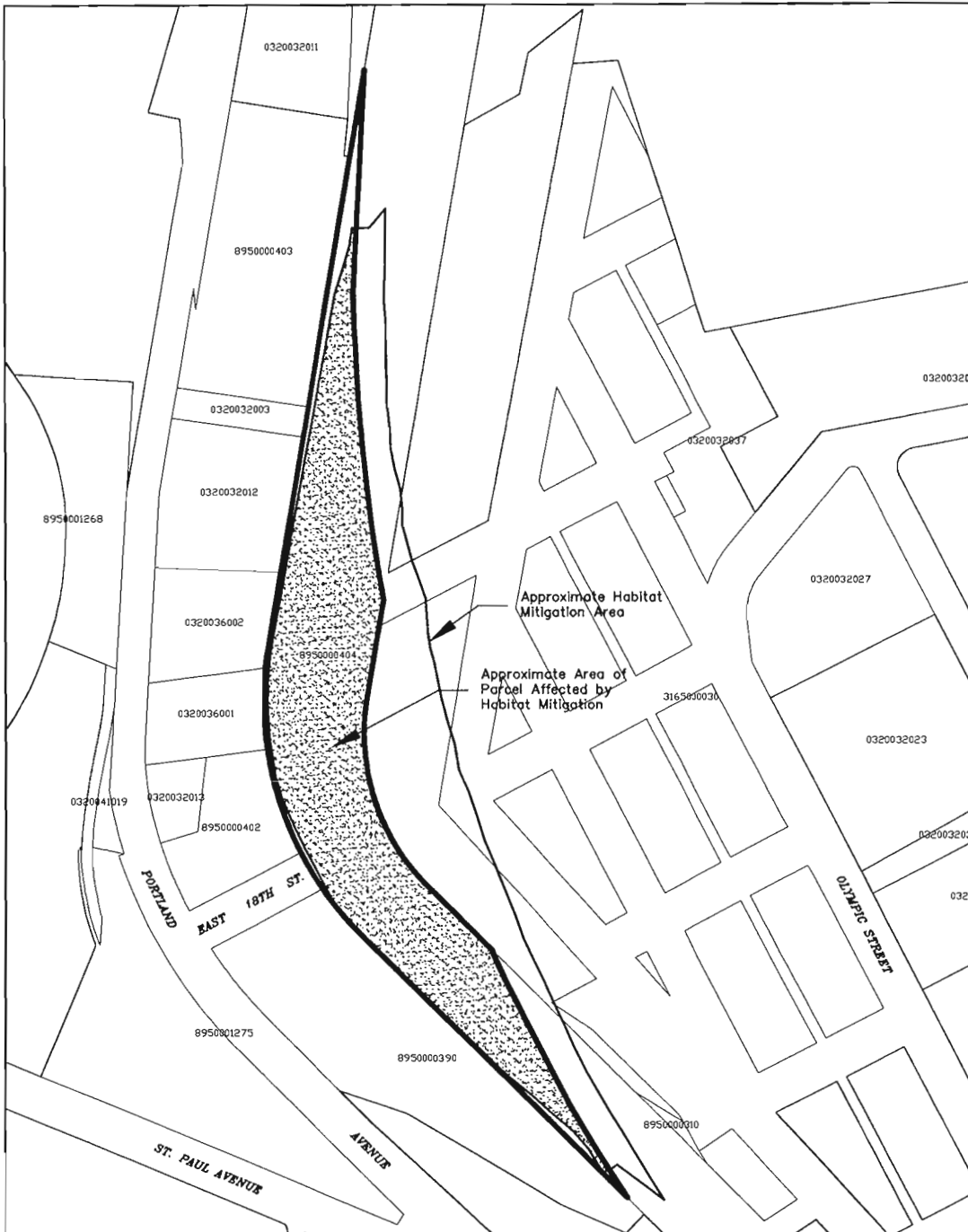




CITY OF TACOMA
PUYALLUP RIVER PROJECT
JEFFREY J. McMANUS, P.L.S.
BRH JOB NO. 2004079.00
MAY 13, 2004
REVISED MAY 17, 2004
REVISED MAY 24, 2004

BUSH, ROED & HITCHINGS, INC.
2009 MINOR AVENUE EAST
SEATTLE, WA 98102
(206) 323-4144

ATTACHMENT 2

(Map Depicting Area of Property Affected by Restrictive Covenant)



 	DATE	SCALE	CITY OF TACOMA DEPARTMENT OF PUBLIC WORKS		SHEET NO. SHEET 1 of 1
	8/18/2006	1" = 300'			
	DRAWN	CHECKED	Habitat Mitigation Areas Puyallup River Side Channel Parcel 8950000404		
	KSB	MLH			
PROJECT	PROJECT MGR				
LSH					
DATE/FILE NAME					
HabitatMitigation_PRSC.dwg					