

RECORDED AT THE REQUEST OF
AND AFTER RECORDING RETURN TO:

DECLARATION OF RESTRICTIVE COVENANTS
(_____ **Mitigation Area**)

Grantor: Sumas Energy 2, Inc., a Washington corporation

Grantees: Sumas Energy 2, Inc., a Washington corporation

Legal Description: _____
Official legal description attached on Exhibit A.

Assessor's Tax Parcel ID#: _____

Reference # (If applicable): N/A

This Declaration of Restrictive Covenants (this "Declaration") is made as of this _____ day of _____, _____, by Sumas Energy 2, Inc., a Washington corporation ("SE2") as required by the Washington Energy Facility Site Evaluation Council ("EFSEC") Site Certification Order No. _____, issued pursuant to RCW 80.50.

RECITALS

A. In January 1999, SE2 applied to EFSEC for a permit to construct the Sumas 2 Generation Facility ("S2GF"), a 660 MW natural gas-fired combined-cycle combustion generation facility in Sumas, Washington. On _____, EFSEC issued Site Certification Order No. _____ recommending issuance of a permit to SE2.

B. In accordance with RCW 80.50.100, the Governor of Washington State accepted EFSEC's recommendation and on _____ executed a Site Certification Agreement authorizing construction and operation of the S2GF.

C. In its application to EFSEC, SE2 proposed certain mitigation activities for impacts to wetlands caused by construction and operation of the S2GF that include: wetland preservation, enhancement, and creation (the "Mitigation Activities"). EFSEC incorporated the Mitigation Activities into Site Certification Order No. _____ as conditions for construction and operation of the S2GF.

D. The Mitigation Activities are located on those certain real properties owned by SE2 in Whatcom County, Washington, and described as follows: (i) the real property West of the proposed Sumas 2 Generation Facility ("the Western Mitigation Area"); and (ii) the real property East of the proposed Sumas 2 Generation Facility formerly owned by the Port of Bellingham ("Eastern Mitigation Area"), referred to collectively as the "Mitigation Sites." This Declaration relates only to the _____ Mitigation Area, which is legally described in Exhibit A attached hereto and by this reference incorporated herein.

E. In order to comply with EFSEC's Site Certification Order No. _____ for SE2's Mitigation Activities at the Mitigation Sites, SE2 has executed this Declaration regarding the _____ Mitigation Area to submit the _____ Mitigation Area to the covenants, conditions, and restrictions herein.

NOW, THEREFORE:

1. Declaration. SE2 hereby declares that the _____ Mitigation Area shall be subject to the covenants, conditions, and restrictions stated herein which shall be binding on all parties having any right, title, or interest in the _____ Mitigation Area or any part thereof and shall inure to the benefit of each subsequent owner thereof.

2. Purpose. The purpose of this Declaration is to meet the requirements of the federal Clean Water Act and state water quality standards, as set forth in EFSEC's Site Certification Order No. _____, and to restrict development and construction activities within the _____ Mitigation Area as hereinafter provided.

3. Restrictive Covenants. The _____ Mitigation Area shall be a _____ [INSERT APPLICABLE DESCRIPTION OF NATURE OF WETLAND IN EASTERN OR WESTERN WETLAND MITIGATION AREAS]. No development activity including clearing, grading, filling, or the construction of any building, structure,

or other improvement shall occur in the _____ Mitigation Area, except for the following:

- a. Monitoring, maintenance, and contingency actions pursuant to EFSEC Site Certification Order No. _____.
- b. Activities necessary for the maintenance and effective functioning of the wetlands and buffers, including but not limited to: (i) monitoring, maintenance, and contingency actions pursuant to EFSEC's Site Certification Order; (ii) the removal of exotic, non-native, invasive vegetation; and (iii) maintenance of drainage channels.
- c. Removal of trees that a certified arborist has recommended be removed to prevent a hazard to persons or property. SE2 shall replant areas where trees are removed, as necessary to maintain consistency with the EFSEC's Site Certification Order.
- d. Other activities authorized in writing by EFSEC.

Following any activity in the _____ Mitigation Area, as authorized above, SE2 shall restore the _____ Mitigation Area to the condition contemplated in EFSEC Site Certification Order No. _____.

4. Default; Remedies. Any violation of a covenant or condition in this Declaration shall be considered a violation of EFSEC's Site Certification Order, and this Declaration may be enforced by EFSEC pursuant to the terms of EFSEC's Site Certification Order.

5. Binding Effect. The Declaration shall run with the land and be binding upon SE2 and its successors and assigns.

6. Captions. The captions and paragraph headings contained in this Declaration are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Declaration, nor the intent of any provision hereof.

7. Recording. This Declaration shall be recorded in the real property records of Whatcom County.

8. No Third Party Rights. Nothing in this Declaration, express or implied, is intended to confer upon any person, other than SE2 and its successors and assigns any rights or remedies under or by reason of this Declaration; provided that this Declaration may be enforced by EFSEC as described herein.

9. Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the state of Washington.

EXECUTED AND EFFECTIVE as of the date first written above.

SUMAS ENERGY 2, INC., a Washington
corporation

By: _____
Name: _____
Its: _____

EXHIBIT A
TO
DECLARATION OF RESTRICTIVE COVENANTS

LEGAL DESCRIPTION OF THE WESTERN MITIGATION AREA