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Name and Return Address:
 Environmental Covenants Coordinator
 Toxics Cleanup Program
 Washington State Department of Ecology
 P.O. Box 47775
 Olympia, WA 98504-7775

Document Title(s)

1. Environmental Covenant _____

2. _____

Reference Numbers(s) of Documents Assigned or Released

_____ ADDITIONAL REFERENCE #'S ON PAGE _____

Grantor(s)

1. Point Ruston, LLC _____

2. _____ ADDITIONAL GRANTORS ON PAGE _____

Grantee(s)

1. State of Washington, Department of Ecology _____

2. _____ ADDITIONAL GRANTEES ON PAGE _____

Legal Description (abbreviated form: i.e. lot, block, plat or section, township, range, quarter/quarter)

Lot 1 as shown on City of Ruston Boundary Line Adjustment LU20-0129 as recorded under _____

Recording No. 202107025002, Pierce County, Washington _____ ADDITIONAL LEGAL IS ON PAGE 12

Assessor's Property Tax Parcel/Account Number(s)

0221231090, 0221231104, 0221231089, 0221231088, 0221231092, 0221231091 _____ ADDITIONAL PARCEL #'S ON PAGE _____

THE AUDITOR/RECORDER WILL RELY ON THE INFORMATION PROVIDED ON THIS FORM. THE STAFF WILL NOT READ THE DOCUMENT TO VERIFY THE ACCURACY OR COMPLETENESS OF THE INDEXING INFORMATION PROVIDED HEREIN.

Chicago Title Insurance Company has placed this document of record as a customer courtesy and accepts no liability for the accuracy or validity of the document.

After Recording Return
Original Signed Covenant to:
Environmental Covenants Coordinator
Toxics Cleanup Program
Washington State Department of Ecology
P.O. Box 47775
Olympia, WA 98504 – 7775

Environmental Covenant

Grantor: Point Ruston, LLC

Grantee: State of Washington, Department of Ecology (hereafter “Ecology”)

Brief Legal Description: Lot 1 as shown on City of Ruston Boundary Line Adjustment LU20-0129 as recorded under Recording No. 202107025002, Pierce County, Washington.

Tax Parcel Nos.: A Portion of Tax Parcel Nos. 0221231090, 0221231104, 0221231089, 0221231088, 0221231092, and 0221231091.

Cross Reference: Consent Decree Civil Action Docket No. [C91-5528 B]

RECITALS

a. This document grants a valid and enforceable environmental (restrictive) covenant (hereafter “Covenant”) executed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 *et seq.*, the Model Toxics Control Act (MTCA), chapter 70.105D of the Revised Code of Washington (RCW), and the Uniform Environmental Covenants Act (UECA), chapter 64.70 RCW.

b. The covenants granted herein are required conditions of an Explanation of Significant Difference (ESD) and consistent with the Consent Decree entered into between Point Ruston, LLC and EPA, in Civil Action Docket No. C91-5528 B in the United States District Court for the Western District of Washington. EPA has determined that these conditions are necessary in order to protect public health and the environment. EPA made this determination on September 27, 2018, by issuing an Explanation of Significant Difference for the Commencement Bay Nearshore/Tideflats Superfund Site OU 02 Asarco Tacoma Smelter Facility.

c. The property that is the subject of this Covenant (hereafter “Property”) is part of a site commonly known as the Commencement Bay Nearshore/Tideflats Superfund Site [WAD980726368] (Site). The Property is part of the former Tacoma Smelter Facility. The Smelter Facility was operated primarily as a copper refinery by Asarco LLC from 1890 through 1985. By-products of the copper smelting process included sulfuric acid, liquid sulfur dioxide, arsenic trioxide, arsenic metal, and copper reverberatory slag. The Property subject to this Covenant is the location of the constructed On-Site Containment Facility (OCF) that was designed and constructed in 1995 in accordance with the regulatory standards for a RCRA Subtitle C hazardous waste landfill. 40 C.F.R. § 264.300 *et seq.* One objective in the OCF design was to provide as much access as practicable to the wells and cover of the OCF for maintenance and repair. The OCF was designed for a vegetative cover to prevent erosion consistent with the current land use for open space. The OCF has a low permeability liner and cap; leak detection, collection and removal system; leachate collection and removal system and surface run-on and run-off control systems.

There are also groundwater monitoring wells to monitor the performance of the landfill. The Property is legally described in Exhibit A, and illustrated in Exhibit B, both of which are attached. If there are differences between these two Exhibits, the legal description in Exhibit A shall prevail.

d. There was a remedial action conducted at the Site under CERCLA. The remedial action was an “environmental response project” within the meaning of UECA. One critical component of the remedial action was construction of a RCRA-compliant Subtitle C hazardous waste landfill, identified as the “On-Site Containment Facility (OCF)”. Pursuant to the 1995 Record of Decision (ROD) for the remedial action, the OCF contains RCRA characteristic hazardous waste source area soils, granular fill and demolition debris generated from cleanup of the Site. The OCF’s liner, cap, leak detection, collection and removal system, leachate collection and removal system and surface run-on and run-off control systems are required to meet federal and state standards for a RCRA Subtitle C hazardous waste landfill. This Covenant is required because the ROD allowed contamination to remain on the Property after completion of the remedial action. This Covenant is specifically required by the Explanation of Significant Difference (ESD) issued by EPA in September 2018, which added a specific institutional control prohibiting construction of any building on top of the OCF and required Grantor to record an environmental covenant pursuant to Chapter 64.70 RCW on the OCF. *See* Exhibit C.

Specifically, the following principal contaminants remain on the Property:

Medium	Principal Contaminants Present
Soil	<p>Metals: Antimony, Arsenic, Barium, Cadmium, Chromium, Copper, Lead, Mercury, Nickel, Selenium, Silver, Thallium, Zinc</p> <p>Organic Chemicals: Dibenzofurans, Phthalates, Polyaromatic Hydrocarbons (PAHs), Petroleum Hydrocarbons (TPH), Dibenzothiophene, Dimethylaniline (DMA), Methyl Phenanthrenes, Biphenyls, and Polychlorinated Biphenyls (PCBs)</p>

Approximately 196,090 cubic yards (cy) of highly contaminated soil from six source areas at the Tacoma Smelter Site were removed and disposed of within the OCF with contaminated demolition debris from on-site structures. Additionally, approximately 25,000 cy of soil contaminated with high concentrations of arsenic were transported from the Everett Smelter Site to the Tacoma Smelter Site and disposed of in the OCF.

Concentrations of metal contaminants within the OCF have the following maximum concentrations: 3,350 parts per million (ppm) antimony; 760,000 ppm arsenic; 1,528 ppm barium; 498 ppm cadmium; 142 ppm chromium; 62,250 ppm copper; 22,600 ppm lead; 695 ppm mercury; 575 ppm nickel; 274 ppm selenium; 2,075 ppm silver; 43 ppm thallium; and 16,500 ppm zinc.

Concentrations of organic contaminants within the OCF have the following maximum concentrations: 7,200 parts per billion (ppb) dibenzofurans; 530 ppb bis (2-exylhexyl) phthalate; 1,530 ppb dimethyl phthalate; 265 ppm LPAH; 277 ppm HPAH; 72,000 ppb benzo(a)pyrene; 41,000 ppb benzo(g,h,i)perylene; 112,000 ppb chrysene; 108,000 ppb benzo(a)fluoranthene; 39,700 ppb benzo(b)fluoranthene; 60,000 ppb benzo(b)fluoranthene; 169,000 ppb fluoranthene; 39,000 ppb indeno(1,2,3-cd)pyrene; 277,000 ppb pyrene; 5,700 ppm TPH; 1,400 ppb dibenzothiophene; 812 ppm dimethylaniline (DMA); 10,600 ppb methyl phenanthrenes; 400 ppb biphenyls; 4,720 ppb PCBs.

e. It is the purpose of this Covenant to restrict certain activities and uses of the Property to protect public health and the environment and the integrity of the remedial action conducted at the Site. A copy of the administrative record supporting the remedial action and ESD is on file with

EPA Region 10 or its successor agency and is available for public review. In order to make arrangements for such review, a person may contact the EPA Superfund Records Center by calling telephone number (206) 553-4494. The EPA Region 10 office is located at 1200 Sixth Avenue, Seattle, Washington.

f. This Covenant grants Ecology, as Holder of this Covenant, certain rights under UECA as specified in this Covenant. As a Holder of this Covenant under UECA, Ecology has an interest in real property; however, this is not an ownership interest under MTCA, RCRA, or CERCLA. The rights of Ecology and EPA as an “agency” under UECA, other than Ecology’s right as a holder, are not an interest in real property.

COVENANT

Point Ruston, LLC, as Grantor and Fee Simple owner of the Property hereby grants to the Washington State Department of Ecology the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall supersede any prior interests the Grantor has in the property and run with the land and be binding on all current and future owners of any portion of, or interest in, the Property. Consequently, the term “Grantor” shall be interpreted to mean the original grantor that executed this Covenant (Point Ruston LLC), as well the owner of any portion of, or interest in, the Property at such time that EPA and Ecology seek to enforce the terms of this Covenant as allowed under UECA.

Ecology and EPA have the full rights to enforce the restrictions, conditions, or other rights set forth in this Covenant, as provided by law, including but not limited to CERCLA, MTCA and UECA.

Section 1. General Restrictions and Requirements.

The following general restrictions and requirements shall apply to the Property:

a. **Interference with Remedial Action.** The Grantor shall not engage in any activity on the Property that may impact, interfere with, or disturb the integrity of the OCF final cover, liner(s), or any other components of the containment system (such as the leachate collection system), or the function of the facility’s monitoring systems, and any operation, maintenance, inspection or monitoring of the OCF without prior written approval from Ecology and EPA.

b. **Protection of Human Health and the Environment.** The Grantor shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from Ecology and EPA. This includes, but is not limited to, any activity that results in the release of contamination that was contained within the OCF as a part of the remedial action or that exacerbates or creates a new exposure to contamination remaining on the Property.

c. **Continued Compliance Required.** Grantor shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation, maintenance and monitoring of the OCF and continued compliance with this Covenant.

d. **Leases.** Grantor shall restrict any lease for any portion of the Property to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Property.

e. **Preservation of Reference Monuments.** Grantor shall make a good faith effort to preserve any reference monuments and boundary markers used to define the areal extent of coverage of this Covenant. Should a monument or marker be damaged or destroyed, Grantor

shall have it replaced by a licensed professional surveyor within 30 days of discovery of the damage or destruction.

Section 2. Specific Prohibitions and Requirements.

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and requirements shall apply to the Property.

a. Land use. The remedial action for the Property is based on a cleanup designed for a public park. The current zoning for this parcel is open space. As such, the Property shall be used in perpetuity only for a public park. Prohibited uses on the Property include, but are not limited to, residential uses, childcare facilities, K-12 public or private schools, grazing of animals, and growing of food crops.

Since this Property contains a RCRA Subtitle C landfill, the use of this Property is restricted under RCRA 40 CFR Part 264, Subpart G regulations. Post-closure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the facility's monitoring systems, unless the Regional Administrator finds that the disturbance: (1) is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or (2) is necessary to reduce a threat to human health or the environment.

b. Containment of soil/waste materials. The remedial action for the Property is based on containing highly contaminated soil and waste materials under an engineered cap consisting of: a 12 inch thick cover subgrade layer consisting of soil passing the ¾-inch screen, a geosynthetic clay liner (GCL), 40-mil double sided textured high-density polyethylene (DST HDPE) membrane, 16-ounce per yard cushion geotextile, 12 inches of biotic drain rock, 6-ounce per yard separation geotextile, and 2 feet of cover soil and located as illustrated in Exhibit B. The primary purpose of this cap is to: minimize the potential for contact with contaminated soil, minimize leaching of contaminants to groundwater and surface water, prevent runoff from contacting contaminated soil, and minimize airborne contaminants. As such, the following restrictions shall apply within the area illustrated in Exhibit B:

- The Grantor shall maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;
- The Grantor shall protect and maintain surveyed benchmarks used in complying with 40 CFR § 264.309;
- Any activity or use on the Property that will compromise the integrity of the cap including: drilling; digging; piercing the cap with a sampling device, post, stake or similar device; grading; excavation; installation of underground utilities; removal of the cap; or application of loads in excess of the cap load bearing capacity, is prohibited without prior written approval by Ecology and EPA. The Grantor shall report to Ecology and EPA within forty-eight (48) hours of the discovery of any damage to the cap. Unless an alternative plan has been approved by Ecology and EPA in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology and EPA within thirty (30) days of completing the repairs;
- The Grantor covenants and agrees that it shall annually, or at another time as approved in writing by Ecology and EPA, inspect the cap and report within thirty (30) days of the inspection the condition of the cap and any changes to the cap that would impair its performance; and

- If the Grantor, or the operator of the OCF if different than the Grantor, wishes to remove hazardous wastes and hazardous waste residues, the liner, or contaminated soils, they must request a modification and obtain approval from the EPA. By removing hazardous waste, the Grantor or operator may become a generator of hazardous waste and must manage it in accordance with all applicable requirements under RCRA. If granted approval by the EPA Regional Administrator to conduct such removal activities, the Grantor or operator may request the EPA Regional Administrator approve either: (1) the removal of this Covenant, or (2) the addition of a notation in the Covenant indicating the removal of the hazardous waste.

c. Stormwater facilities. To minimize the potential for mobilization of contaminants remaining in the waste materials within the OCF and groundwater on the Property, no stormwater infiltration facilities or ponds shall be constructed on the Property. All stormwater catch basins, conveyance systems, and other appurtenances located within this area shall be of water-tight construction. The Grantor shall prevent run-on and run-off from eroding or otherwise damaging the OCF cap. Any plans to redevelop the OCF that are inconsistent with the current land use shall provide details of a reserve area for infiltration to occur without exacerbating the leachate collection system or enhancing movement of contaminants within the groundwater.

d. Groundwater use. The groundwater beneath the Property remains contaminated and shall not be extracted for any purpose other than temporary construction dewatering, investigation, monitoring or remediation. Drilling of a well for any water supply purpose is strictly prohibited. Groundwater extracted from the Property for any purpose shall be considered potentially contaminated and any discharge of this water shall be done in accordance with state and federal law.

e. Inspection and Monitoring. The Grantor shall conduct all monitoring in accordance with the EPA approved 2007 OCF Operation Maintenance and Monitoring Plan (OMMP), 2020 Groundwater Long-Term Monitoring Plan for the OCF and the 2020 QAPP for groundwater monitoring, or any amendments to these documents approved by EPA. The Grantor must submit a written request of modification to authorize a change in the approved Groundwater Long-Term Monitoring Plan and/or QAPP. The written request must include a copy of the amended Groundwater Long-Term Monitoring Plan and/or QAPP for review and approval by the EPA Regional Administrator. Any approved modified versions of the Groundwater Long-Term Monitoring Plan and/or QAPP must be filed with this covenant by the Grantor and EPA and Ecology shall be notified of such filing.

The Grantor shall provide unobstructed access to the OCF landfill cap in order for the cap to be adequately monitored and inspected for subsidence, effectiveness, and protectiveness.

Groundwater monitoring wells are located on the property to monitor the performance of the OCF (see Exhibit B). A leak detection system is also located on the Property (see Exhibit B) to monitor the performance of the OCF. The Grantor shall maintain clear access to these devices and protect them from damage. The Grantor shall report to Ecology and EPA within forty-eight (48) hours of the discovery of any damage to any monitoring device. Unless Ecology and EPA approve of an alternative plan in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology and EPA within thirty (30) days of completing the repairs.

The Grantor shall maintain and monitor the leak detection system to minimize clogging during the active life and post-closure care period, collect and remove pumpable liquids in the leak detection system sumps to minimize the head on the bottom liner, and record the amount of liquids removed

from each leak detection system sump at least monthly. If the liquid level in the sump stays below the pump operating level¹ for two consecutive months, the amount of liquids in the sumps must be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps must be recorded at least semi-annually. If at any time during the post-closure care period the pump operating level is exceeded at units on quarterly or semi-annual recording schedules, the owner or operator must return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

The Grantor must determine whether there is statistically significant evidence of contamination for any chemical parameter of hazardous constituent specified in the OMMP using one of the methods specified in 40 CFR § 264.97(h). If there is statistically significant evidence of contamination for chemical parameters or hazardous constituents, the Grantor must:

- Notify the EPA Regional Administrator within seven (7) days. The notification must indicate what chemical parameters or hazardous constituents have shown statistically significant evidence of contamination.
- Submit to the Regional Administrator report describing corrective actions within 180 days. The report must at a minimum include a detailed description of corrective actions that will achieve compliance with the ground-water protection standard specified in the OMMP and a plan for a ground-water monitoring program that will demonstrate the effectiveness of the corrective action.
- If the Grantor determines that the ground-water concentrations are being exceeded at any monitoring well at the point of compliance, the Grantor may demonstrate that a source other than the OCF caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the ground water. In making a demonstration under this paragraph, the Grantor must:
 - (1) Notify the Regional Administrator in writing within seven days of the intents to make a demonstration under this paragraph;
 - (2) Within 90 days, submit a report to the Regional Administrator which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with the standards resulted from error in sampling, analysis, or evaluation;
 - (3) Within 90 days, submit to the Regional Administrator any modifications to make any appropriate changes to the compliance monitoring program at the facility (modifications to the OMMP); and
 - (4) Continue to monitor in accord with the compliance monitoring program established under this section.

f. Other. The Grantor shall continue to operate the leachate collection and removal system until leachate is no longer detected. If, thereafter, something occurs that has the potential to

¹ "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Regional Administrator based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

produce additional leachate, the Grantor shall inspect the leachate collection system, initiate monitoring if leachate is present, and monitor until no leachate is detected. [40 CFR § 264.303(c) and 264.310(b)]

Section 3. Access.

- a. The Grantor shall maintain clear access to all OCF components necessary to operate, inspect, monitor and maintain the OCF.
- b. The Grantor freely and voluntarily consents to provide Ecology, EPA, and their authorized representatives, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant and associated remedial action, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial action conducted on the Property, and to inspect related records.
- c. No right of access or use by a third party to any portion of the Property is conveyed or consensually provided by this instrument.

Section 4. Notice Requirements.

a. **Conveyance of Any Interest.** The Grantor, when conveying any interest within the area of the Property described and illustrated in Exhibits B, including but not limited to title, easement, leases, and security or other interests, must:

- i. Unless otherwise agreed to in writing by Ecology and EPA, provide written notice to Ecology and EPA of the intended conveyance at least ninety (90) days in advance of the conveyance.
- ii. Include in the conveying document a notice in substantially the following form, as well as a complete copy of this Covenant:

NOTICE: PURSUANT TO A REMEDIAL ACTION OVERSEEN BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY, THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON [DATE], AND RECORDED WITH THE PIERCE COUNTY AUDITOR UNDER RECORDING NUMBER [RECORDING NO.]. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.

- iii. Unless otherwise agreed to in writing by Ecology and EPA, provide Ecology and EPA with a complete copy of the executed document within thirty (30) days of the date of execution of such document.

b. **Reporting Violations.** Should the Grantor become aware of any violation of this Covenant, Grantor shall promptly report such violation in writing to Ecology and EPA.

c. **Emergencies.** For any emergency or significant change in site conditions due to Acts of Nature (for example, flood, fire, or earthquake) resulting in a violation of this Covenant, the Grantor is authorized to respond to such an event in accordance with state and federal law. The Grantor must notify Ecology and EPA in writing of the event and response actions planned or taken as soon as practical but no later than within 24 hours of the discovery of the event.

d. **Notification procedure.** Any required written notice, approval, reporting or other communication shall be either personally delivered or sent by first class parcel post to the

following persons. Any change in this contact information shall be submitted in writing and in advance of such change to all parties to this Covenant. Upon mutual agreement of the parties to this Covenant, an alternative to personal delivery or first-class parcel post, such as e-mail or other electronic means, may be used for these communications.

<p>Loren McBride Cohen Point Ruston, LLC 5020 Main Street, Suite H Tacoma, WA 98407 (253) 752-2185 loren@mcconstruction.com</p>	<p>Director, Superfund and Emergency Management Division, EPA 1200 6th Avenue, Suite 155 Seattle, WA 98101</p>	<p>Marian L. Abbett, PE Washington State Department of Ecology Toxics Cleanup Program, SWRO P.O. Box 47775 Olympia, WA 98504 – 7775 (360)407-6257 marian.abbett@ecy.wa.gov</p>
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Section 5. Modification or Termination.

a. In addition to Sections 1 and 2 of this Covenant and RCRA 40 CFR Part 264, Subpart G regulations, Grantor must also provide written notice and obtain approval from Ecology and EPA at least ninety (90) days in advance of any proposed activity or use of the Property in a manner that is inconsistent with this Covenant. For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction at the site:

- i. Ecology or EPA must issue a public notice and provide an opportunity for the public to comment on the proposal consistent with RCRA 40 CFR Part 264 and WAC 173-303; and
- ii. If Ecology and EPA approve of the proposal, the Covenant must be amended to reflect the change before the activity or use can proceed.

b. If the conditions at the site requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology and EPA that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in MTCA and UECA and any rules promulgated under these chapters.

c. By signing this agreement, per RCW 64.70.100, the original signatories to this agreement, other than Ecology and EPA, agree to waive all rights to sign amendments to and termination of this Covenant.

Section 6. Enforcement and Construction.

a. This Covenant is being freely and voluntarily granted by the Grantor.

b. Within ten (10) days of execution of this Covenant, Grantor shall provide Ecology with an original signed Covenant and proof of recording and a copy of the Covenant and proof of recording to EPA and others required by RCW 64.70.070.

c. Ecology and EPA shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity, including CERCLA, RCRA, MTCA and UECA. Enforcement of the terms of this Covenant shall be at the discretion of Ecology and EPA, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology or EPA of that term or of any

GRANTEE SIGNATORY

The Department of Ecology hereby accepts the status as GRANTEE and HOLDER of the above Environmental Covenant.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Rebecca S. Lawson

Rebecca S. Lawson, P.E., LHG
Section Manager
Toxics Cleanup Program
Southwest Regional Office Department of Ecology

Dated: 8/17/2021

STATE ACKNOWLEDGMENT

STATE OF Washington
COUNTY OF Thurston

On this 17th day of August, 2021, I certify that Rebecca S. Lawson personally appeared before me, acknowledged that he/she is the TCP SWRO Section Mgr. of the state agency that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument for said state agency.



Treasure A Mitchell
Notary Public in and for the State of Washington

Residing at McCleary, WA

My appointment expires 8/2/2023

USEPA SIGNATORY

The U.S. Environmental Protection Agency hereby approves of the above described Environmental Covenant.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY, REGION 10



Calvin J. Terada

Director
Superfund and Emergency Management Division
U.S. EPA, Region 10

Dated:

August 27, 2021

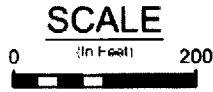
Exhibit A

LEGAL DESCRIPTION

Lot 1 of City of Ruston Boundary Line Adjustment LU20-0129 as recorded under Recording No.
202107025002, Pierce County, Washington.

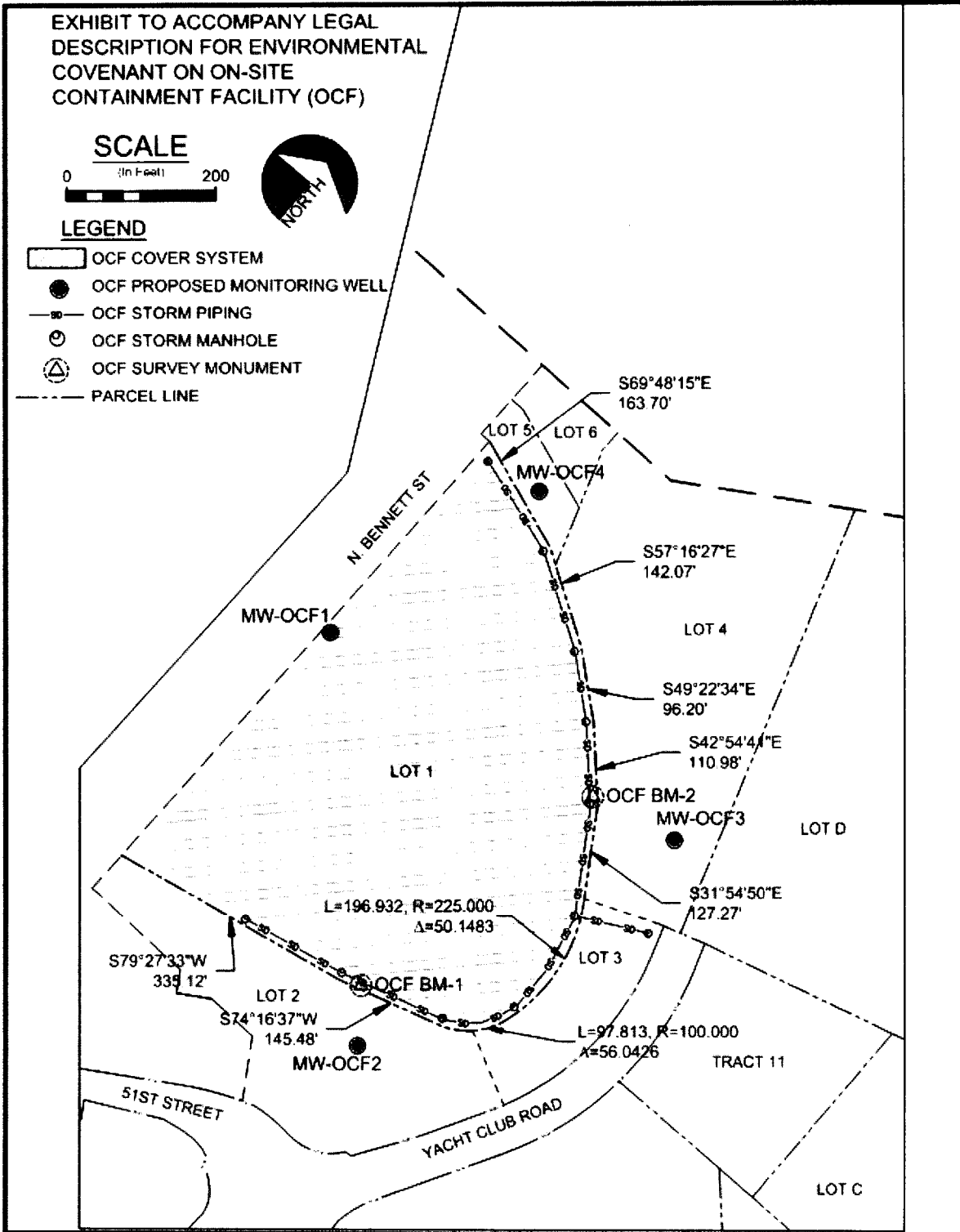
Exhibit B

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION FOR ENVIRONMENTAL COVENANT ON ON-SITE CONTAINMENT FACILITY (OCF)



LEGEND

- OCF COVER SYSTEM
- OCF PROPOSED MONITORING WELL
- OCF STORM PIPING
- OCF STORM MANHOLE
- OCF SURVEY MONUMENT
- PARCEL LINE



POINT RUSTON, LLC	PROPERTY MAP	EXHIBIT B
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Exhibit C

EXPLANATION OF SIGNIFICANT DIFFERENCE

EXPLANATION OF SIGNIFICANT DIFFERENCE

FOR THE

**COMMENCEMENT BAY
NEARSHORE/TIDEFLATS SUPERFUND SITE**


**OPERABLE UNIT 02
ASARCO TACOMA SMELTER FACILITY
AND
SLAG PENINSULA**

RUSTON AND TACOMA, WASHINGTON

EPA IDENTIFICATION NUMBER: WAD980726368

SEPTEMBER 2018

Issued by:



Chris Hladick
Regional Administrator
U.S. Environmental Protection Agency

Date:

Sept 27, 2018

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Commencement Bay Nearshore/Tideflats Superfund Site

Operable Unit 02

Asarco Tacoma Smelter Facility and Slag Peninsula

September 2018

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Figures

- 1 Asarco Facility Location Map
- 2 Location of the On-Site Containment Facility (OCF)

1.0 INTRODUCTION

1.1 Site Name and Location

The former Asarco Tacoma Smelter Facility (Asarco Smelter) is denoted as Operable Unit (OU) 02 of the Commencement Bay Nearshore/Tideflats Superfund Site. The Asarco Smelter is located along the Commencement Bay shoreline within the municipal boundaries of Ruston and Tacoma, Washington (Figure 1-1). The upland portion of the Asarco Smelter is approximately 100 acres in size, and encompasses a 67-acre former smelter and a 23-acre slag breakwater peninsula. The U.S. Environmental Protection Agency (EPA) identification (ID) number for this site is WAD980726368. The EPA is the lead agency for conducting response actions, and the State of Washington Department of Ecology (Ecology) is the support agency for the site.

1.2 Statement of Purpose

EPA issued a Record of Decision (ROD) for OU 02 on March 24, 1995. This Explanation of Significant Differences (ESD) sets forth additional measures; specifically, institutional controls, to protect the integrity of the on-site containment facility (OCF). These additional measures represent a significant, but not fundamental, change to the remedy described in the ROD. This ESD impacts OU 02 only and is issued in accordance Section 117(c) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the National Contingency Plan (NCP), 40 CFR § 300.435(c)(2)(i).

1.3 Administrative Record

This ESD and supporting documents will become part of the Administrative Record file for this site, in accordance with the Section 300.825(a)(2) of the NCP. The Administrative Record is available for review at the following locations:

- Tacoma Public Library Wheelock Branch
3722 N 26th St
(253) 292-2001
- U.S. EPA Region 10 Superfund Records Center, 1200 Sixth Avenue Seattle, WA, 98101 (please call 206-553-4494 for an appointment)
- U.S. EPA Region 10 website:
<https://www.epa.gov/superfund/commencement-bay>

2.0 BACKGROUND

2.1 Site History

The Tacoma Smelter Company began operation as a lead smelter in 1890. Copper production began in 1902. In 1905, ASARCO Incorporated purchased the smelter. In February 2005, ASARCO Incorporated merged into a newly formed Delaware limited liability company, ASARCO LLC (“Asarco LLC”). During the active industrial life of the Asarco Tacoma Smelter, the primary product was refined copper. By-products of the copper smelting process included sulfuric acid, liquid sulfur dioxide, arsenic trioxide, arsenic metal, and copper reverbatory slag. Copper smelting operations were discontinued in 1985, and in 1986 the facility was taken completely out of production. Much of the smelter facility was built over fill material, including slag, which was placed by Asarco as part of the smelter operations. Cleanup activities began in January 1987. On August 9, 2005, Asarco LLC filed for bankruptcy protection under Chapter 11 of the bankruptcy code in the United States District Court for the Southern District of Texas (“Bankruptcy Court”). On December 8, 2005, Asarco LLC entered into an agreement with MC Construction Consultants, Inc. (“MC Construction”), to sell approximately 97 acres of its real property (the “Purchased Property”) located in Tacoma and Ruston, Washington. The Purchased

Property includes parts of the former Asarco Smelter Site, Operable Unit 02. MC Construction subsequently assigned to Point Ruston, LLC (“Point Ruston”) its rights under the Tacoma Purchase Agreement. Pursuant to a Consent Decree with the United States, Point Ruston, LLC is performing the remediation of the site as it undertakes plans to develop the Purchased Property as a residential mixed-use neighborhood with the lower portion of the Purchased Property being developed with condominiums, apartments and other residential units along with commercial, retail, recreation, entertainment and public use facilities.

2.2 Contamination

The following contaminants were identified in the 1995 ROD as contaminants of concern based on risks to human health and the environment from exposure to contaminated soils:

- Metals: Antimony, Arsenic, Cadmium, Copper, Lead, Mercury, Silver, Thallium, Zinc
- Organic Chemicals: Polyaromatic Hydrocarbons (PAHs) and Polychlorinated Biphenyls (PCBs)

Slag contains high concentrations of metals, including arsenic and lead, in a rock-like form. Concentrations of arsenic found in slag ranged from 100 to 24,950 ppm.

2.3 Selected Remedy

The remedy involves the cleanup of metal (e.g., arsenic, copper, lead) and organic contaminated soil, slag, surface water, and groundwater found at the former Smelter Facility and adjacent Slag Peninsula. The remedy includes the following elements:

- Excavate source area soils and slag (approximately 160,000 cubic yards).
- Dispose of source area soils and demolition debris designated as hazardous waste (approximately 240,000 cubic yards total) in an on-site containment facility (OCF) that meets or exceeds regulatory standards for hazardous waste landfills.
- Cap the entire site (plant site soils and slag, and the Slag Peninsula). The

low permeability cap will be composed of layers of clean soils, gravel, and clay. The contaminated residential soils excavated from the Ruston/North Tacoma Study Area will be used as a sub-base for the cap.

- Demolish the remaining buildings and structures.
- Replace the entire surface water drainage system.
- Armor portions of the plant site and slag peninsula shoreline.
- Continue to monitor the surface water and groundwater.
- Sample marine sediments.
- Develop and implement an enforceable program of restrictions and guidelines to supplement the actual cleanup activities to ensure that the remedial action remains protective and that development activities do not impact the long-term effectiveness of cleanup.

The ROD also states that if it is determined that source control activities do not result in ground water that meets federal and state standards, additional cleanup activities, if practicable, will be identified in a separate ROD.

3.0 DESCRIPTION OF CHANGES TO THE ROD

The OCF construction commenced in 1995, and the final cap was placed on top of it in 2005. This ESD will add a specific institutional control to the selected remedy that prohibits the construction of any building on top of the OCF, as it lacks the structural stability to support any such building. This additional institutional control is consistent with the original selected remedy, and is only necessary to more explicitly explain the parameters of the OCF requirements set forth in the OU 2 ROD. While Section 9.1.2 of the OU 2 ROD discusses the requirements for the OCF, it did not specifically contemplate future land use at the OCF and was silent on the structural requirements for the OCF, but it did note that “If there is a breach of the OCF structure, the soil and debris could pose a threat to human health and the environment.” (ROD, Section 8.0(3))

The current land use for the OCF calls for a residential park (Merritt+Pardini 1997), and the

structural design and construction of the OCF was sufficient for a park development to be placed on the OCF cap. The OCF, as constructed, does not have sufficient structural integrity to support a building. To support a building on the OCF, construction would have included a number of structural beams keyed into the subgrade prior to installation of the groundwater liner system. This would ensure that the groundwater liner would be adequately sealed to the structural beams prior to filling of the OCF. Additionally, the material (waste soils and demolition debris) would have been disposed in lifts and compacted such that it would provide structural support for a building. Since these features were not included in the OCF design and construction, the weight of any building constructed on the OCF would cause any demolition debris near the bottom of the OCF to puncture the groundwater liner, which could pose a threat to human health and the environment.

In Section IX. of the Third Amended Consent Decree between the United States and Point Ruston LLC, Point Ruston agreed that it is appropriate and necessary to impose certain institutional controls, such as land and groundwater restrictions, on the property that it owns (which includes the OCF) for the purpose of protecting human health and the environment by protecting in perpetuity the remedial actions that have been, and will be taken at the Site. To that end, the Consent Decree prohibits Point Ruston from permitting any use or activity on any portion of the Site which may disturb or adversely affect any of the remedial measures at the Site, including those in place at the OCF. Consistent with the ROD and this ESD, this prohibition set forth in the Consent Decree now explicitly includes the prohibition against building on top of the OCF, and that prohibition is binding on Point Ruston and any future owners of the OCF property. To ensure that this prohibition remains in perpetuity, this ESD also requires Point Ruston to record an environmental covenant on the OCF property pursuant to Chapter 64.70 of the Revised Code of Washington (Uniform Environmental Covenants Act).

4.0 CHANGE IN COST

The change in cost for the remedy would be the cost to record the environmental covenant with the local zoning authority, or the authority with jurisdiction over local land use. EPA estimates the recording cost to be less than \$500.

5.0 SOURCES OF INFORMATION

The following information in the Administrative Record supports the need for the significant differences described herein:

Hydrometrics 1999. Plans and Specifications Primary Activity 1.0 - Group 1b On-Site Containment Facility - FINAL -. Prepared by Hydrometrics, Inc. October 1999. 10-1234023.

Hydrometrics 2000. Standard Specifications and Special Provisions for the Construction of On-Site Containment Facility. Prepared by Hydrometrics, Inc. February 2000. 10-1115692.

Merritt+Pardini 1997. Asarco Master Development Plan (Stakeholder Approved Draft). Prepared by Merritt_Pardini / Sasaki Associates. August 26, 1997. 10-1072861.

USEPA 2002. Reusing Superfund Sites: Commercial Use Where Waste is Left on Site. Office of Emergency and Remedial Response. EPA 540-K-01-008. OSWER 9230.0-100. February 2002.

USEPA 2004. (Draft) Technical Guidance For RCRA/CERCLA Final Covers. Office of Emergency and Remedial Response. EPA 540-R-04-007. OSWER 9283.1-26. April 2004.

USEPA 2014. Letter from Shawn Blocker, USEPA, to Mike Cohen, Point Ruston LLC regarding development on the OCF. September 30, 2014.

Womack & Associates 2005. Asarco LLC – Tacoma OCF As-Built Report. Womack & Associates, Inc. December 2005. 10-1231937.

6.0 SUPPORT AGENCY ACCEPTANCE

In a letter dated September 13, 2018, Ecology expressed its support of this action.

7.0 STATUTORY DETERMINATIONS

The amended remedy for the site, as modified by this ESD, continues to satisfy the relevant requirements of Section 121 of CERCLA to:

- Protect human health and the environment, through a combination of treatment, engineering controls, and institutional controls;
- Comply with applicable or relevant and appropriate requirements;
- Be cost-effective.

8.0 PUBLIC PARTICIPATION COMPLIANCE

The public participation requirements for an ESD set out in the NCP §300.435(c)(2)(i) will be met as follows:

- The ESD and supporting information will be added to the OU 2 administrative record established under Section 300.815 of the NCP and made available at the information repositories listed in Section 1.0 of this ESD.
- A public notice of the availability of the ESD and supporting information will be published in the *Tacoma News Tribune*.

Figure 2: Location of the On-site Containment Facility

